

**COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION**

IN THE MATTER OF:

ELECTRONIC APPLICATION OF KENTUCKY-)	
AMERICAN WATER COMPANY FOR AN)	
ADJUSTMENT OF RATES, A CERTIFICATE)	
OF PUBLIC CONVENIENCE AND NECESSITY)	CASE NO. 2023-00191
FOR INSTALLATION OF ADVANCED METERING)	
INFRASTRUCTURE, APPROVAL OF CERTAIN)	
REGULATORY AND ACCOUNTING)	
TREATMENTS, AND TARIFF REVISIONS)	

PETITION FOR CONFIDENTIAL PROTECTION

Kentucky-American Water Company (“Kentucky American Water” or “Company”), petition the Public Service Commission of Kentucky (“Commission”) pursuant to 807 KAR 5:001 Section 13 to grant confidential protection for certain information the Companies are providing in the 2023 General Rate Case Total Compensation Study attached to the Direct Testimony of Robert V. Mustich (“Mustich Study”), the Direct Testimony of Thomas O’Drain, the Direct Testimony of Melissa Schwarzell, the Advanced Metering Infrastructure Deployment Plan attached as Exhibit A to the Application (“Exhibit A”), and Exhibit WAL-1 to the Direct Testimony of William A. Lewis. In support of its Petition, Kentucky American Water states the following:

Confidential or Proprietary Commercial Information (KRS 61.878(1)(c)(1))

1. The Kentucky Open Records Act exempts from disclosure certain records which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records.¹ Public disclosure of the information identified herein would, in fact, prompt such a result for the reasons set forth below.

¹ KRS 61.878(1)(c)(1).

2. In support of its Application, Kentucky American Water is submitting the testimony of Robert V. Mustich of Willis Towers Watson (“WTW”) regarding the reasonableness of Kentucky American Water’s compensation and benefits. An attachment to Mr. Mustich’s testimony is the Mustich Study that examines every facet of Kentucky American Water’s (and its parent company, American Water’s) compensation philosophy, market positioning, performance programs, and position-specific compensation information for certain Kentucky American Water employees.

3. The Mustich Study is based entirely on confidential and proprietary information. With respect to confidentiality, the Mustich Study reveals compensation information for a number of Kentucky American Water individuals. Because there is position-specific information (and in many instances only one person has that position), the public would be able to determine the employees’ compensation information. The amount of compensation a person receives is generally regarded as confidential information and those employees have a reasonable expectation that such information would not be publicly disseminated. The Kentucky Court of Appeals has stated that “information such as...wage rate...[is] generally accepted by society as [a] detail [] in which an individual has at least some expectation of privacy.”²

4. With respect to the Mustich Study containing proprietary information, this concern is two-fold. First, the Mustich Study is replete with information regarding Kentucky American Water’s compensation targets and market positioning. If competitors were able to access this information, competitors would have an unfair commercial advantage in hiring away current and future Kentucky American Water employees. Second, as mentioned, WTW has assisted Kentucky American Water and American Water in developing and assessing its compensation strategy and

² *Zink v. Dept. of Workers’ Claims, Labor Cabinet*, 902 S.W.2d 825, 828 (Ky. App. 1994).

philosophy. These analyses, which are reflected in the Mustich Study, are the product of the investment of extensive time and money. Allowing competitors to have access to this Mustich Study and the assessments discussed therein would give a competitive advantage to those competitors, who would benefit from Kentucky American Water's and WTW's work without paying for same. The Commission previously found that the compensation study in Kentucky American Water's last rate case was confidential for the same reasons as the Company asserts here.³

5. The O'Drain Testimony includes chemical prices Kentucky American Water paid in 2021, 2022, and 2023. Kentucky American Water is seeking confidential treatment for the price information so that suppliers are not privy to the amounts the Company has paid and is currently paying for chemicals. If the pricing information is disclosed, this may impede Kentucky American Water's ability to negotiate with potential suppliers for more favorable pricing terms if potential suppliers are aware of the amount Kentucky American Water is paying. This would harm both Kentucky American Water and its customers, and provide an unfair commercial advantage to those suppliers.

6. The Schwarzell Testimony and Exhibit A contain the vendor names and installation labor costs Kentucky American Water considered in assessing AMI and the cost/benefit analysis that identified a selected metering option. Exhibit A also contains meter and meter component prices. Kentucky American Water requests that the vendor names, installation labor costs, and meter and meter component prices be kept confidential.

7. If the vendor names are disclosed, the vendor of the selected metering option could charge higher prices with the understanding of the difference in price between the selected

³ *Electronic Application of Kentucky-American Water Company for an Adjustment of Rates*, Case No. 2018-00358, Order (Ky. PSC Mar. 14, 2019).

metering option and other options. Similarly, if the vendor who was not selected is aware of the cost margin between its technology and the selected metering option, it might influence its negotiations to the disadvantage of the selected vendor and other vendors. The disclosure could damage Kentucky American Water's relationship with these vendors, harming both the Company and its customers. Kentucky American Water also requests that the product sheets attached as Appendix B to Exhibit A be treated as confidential because they identify the vendors Kentucky American Water considered.

8. If the installation labor costs and meter and meter component prices are disclosed, vendors would become aware of how much Kentucky American Water expects to pay for these items. This would disadvantage Kentucky American Water in its negotiations for these items. For these reasons, Kentucky American Water requests that the confidential items identified in the Schwarzell Testimony and Exhibit A be treated as confidential.

Critical Infrastructure Information (KRS 61.878(1)(m))

9. KRS 61.878(1)(m)(1) exempts from disclosure public records that have a reasonable likelihood of threatening public safety by exposing a vulnerability, such as infrastructure records that disclose the "location, configuration, or security of critical systems," or "detailed drawings, schematics, maps, or specifications of structural elements, floor plans, and operating, utility, or security systems."

10. In Exhibit WAL-1, Kentucky American Water is providing an overview of three of the special connections within Kentucky American Water's distribution system at the Kentucky Horse Park, Bluegrass Airport, and University of Kentucky. The maps show detailed locations of mains and valves, the disclosure of which could be used to compromise Kentucky American Water's facilities or service. The disclosure of this information could particularly threaten public

safety because of the high number of people in each location. Because Exhibit WAL-1 contains Critical Infrastructure Information that would threaten public safety if disclosed, Exhibit WAL-1 should be protected from public disclosure in its entirety.

Confidential Information Subject to this Petition

11. The information for which Kentucky American Water is seeking confidential treatment is not known outside of Kentucky American Water, their consultants with a need to know the information, and the Company's counsel, is not disseminated within Kentucky American Water except to those employees with a legitimate business need to know and act upon the information, and is generally recognized as confidential and proprietary information in the energy industry.

12. Kentucky American Water will disclose the confidential information, pursuant to a confidentiality agreement, to intervenors with a legitimate interest in this information and as required by the Commission.

13. If the Commission disagrees with this request for confidential protection, it must hold an evidentiary hearing (a) to protect Kentucky American Water's due process rights and (b) to supply the Commission with a complete record to enable it to reach a decision with regard to this matter.⁴

14. Pursuant to 807 KAR 5:001, Section 13(2)(b), for all of the Mustich Study and Exhibit WAL-1, Kentucky American Water is providing written notification that the entire document is confidential. For the Schwarzell Testimony, O'Drain Testimony, and Exhibit A, which are not entirely confidential, Kentucky American Water is filing with the Commission one electronic copy that identifies with redactions the information for which confidential protection is

⁴ *Utility Regulatory Commission v. Kentucky Water Service Company, Inc.*, 642 S.W.2d 591, 592-94 (Ky. App. 1982).

sought. In accordance with the Commission's March 24, 2020 and July 22, 2021 Orders in Case No. 2020-00085, Kentucky American Water will provide unredacted copies noting the confidential information with highlighting to the Commission. Access to the confidential information will be provided to intervenors upon request pursuant to a confidentiality agreement.

15. Due to the serious security concerns related to the disclosure of Critical Infrastructure Information at issue in Exhibit WAL-1, Kentucky American Water requests that Exhibit WAL-1 remain confidential indefinitely.

16. For all other requests for confidential protection herein, Kentucky American Water requests that confidential protection be granted for five years due to the sensitive nature of the information at issue.

WHEREFORE, Kentucky-American Water Company respectfully requests that the Commission grant confidential protection for all of the information described herein.

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CERTIFICATE

In accordance with the Commission's Order of July 22, 2021 in Case No. 2020-00085 (Electronic Emergency Docket Related to the Novel Coronavirus COVID-19), this is to certify that the electronic filing has been transmitted to the Commission on June 30, 2023; and that there are currently no parties in this proceeding that the Commission has excused from participation by electronic means.

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BY: _____

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