

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

**IN THE MATTER OF:**

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

**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 response to the Commission Staff’s Second Request for Information (“PSC”) Item Nos. 11, 12, 17, 29, 30, 81, and 82, Attorney General’s First Request for Information (“AG”) Item Nos. 3, 46, 99, and 104, and Louisville-Fayette Urban County Government’s First Request for Information (“LFUCG”) Item Nos. 25 and 75. 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.<sup>1</sup> Public disclosure of the information identified herein would, in fact, prompt such a result for the reasons set forth below.

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<sup>1</sup> KRS 61.878(1)(c)(1).

2. In response to PSC 2-11, Attachment 4, Kentucky American Water is providing a document with Kentucky American Water's parent company, American Water Works Company, Inc. ("American Water") notes regarding bid analysis and detailing American Water's process for selecting bidders. Confidential protection of this information is necessary because disclosure would reveal Kentucky American Water's internal analysis of bids to the detriment of the Company and its customers. Thus, Kentucky American Water requests confidential protection for the entire document provided as Attachment 4 in response to PSC 2-11.

3. In response to PSC 2-12, PSC 2-17, AG 1-46, and LFUCG 1-75, Kentucky American Water is providing confidential vendor names and costs Kentucky American Water considered in assessing AMI and the cost/benefit analysis that identified a selected metering option. Kentucky American Water is requesting confidential protection for Attachments 1, 2, and 3 to PSC 2-12, a portion of the response to PSC 2-17, Attachments 1, 2, 3, and 4 to AG 1-46, and Attachment 1 to LFUCG 1-75. Kentucky American Water requests that the vendor names, costs, and meter and meter component prices be kept confidential.

4. 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 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 Attachments 1, 2, 3, and 4 to AG 1-46 be treated as confidential because they identify one of the vendors Kentucky American Water considered.

5. If the 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 costs and meter and meter component prices be treated as confidential.

6. In response to PSC 2-29, PSC 2-30, AG 1-99, and AG 1-104, Kentucky American Water is providing documents and data from S&P, Moody's and FitchRatings. Kentucky American Water is requesting confidential protection for Attachment 1 to PSC 2-29, Attachments 13, 20, and 21 to PSC 2-30, Attachments 20, 33, 34, 36, 37, 38, 39, and 40 to AG 1-99, and Attachment 1 to AG 1-104. Per The Brattle Group's license agreement with S&P, Moody's, and FitchRatings, these documents cannot be disclosed publicly. These third parties make money from selling these documents. As players in competitive markets, S&P, Moody's, and FitchRatings do not want proprietary reports and information to be available to the public without payment. If this proprietary information is disclosed, S&P, Moody's, and FitchRatings and other third-party suppliers of the same kinds of information and analyses may be less willing to supply reports to Kentucky American Water and its consultants in the future. Diminishing the Company's ability to receive this information would harm both Kentucky American Water and its customers.

7. Kentucky American Water's response to LFUCG 1-25 includes two attachments containing the hydrant inspection form and hydrant inspection practice that are the product of extensive time and money invested by Kentucky American Water's parent company, American Water Works Company, Inc. ("American Water"). The attachments contain confidential and proprietary information, the disclosure of which would unfairly advantage American Water and Kentucky American Water's competitors. If those competitors have free access to the same

information that American Water expended substantial resources to develop, they will derive an unfair commercial advantage. Because of the proprietary nature of the information at issue, Kentucky American Water requests confidential protection for the entirety of Attachments 1 and 2 provided in response to LFUCG 1-25.

**Confidential Personal Information – Compensation Information (KRS 61.878(1)(a))**

8. The Kentucky Open Records Act exempts from disclosure certain private and personal information.<sup>2</sup> The Kentucky Court of Appeals has stated, “information such as . . . wage rate . . . [is] generally accepted by society as [a] detail in which an individual has at least some expectation of privacy.”<sup>3</sup> The Kentucky Supreme Court has characterized “one’s income” as “intimate” information of a private nature.<sup>4</sup>

9. In response to AG 1-3, Attachments 1-4, the Company is providing attachments that contains current wages and bonus information and projected raises for employees. Kentucky American Water requests confidential protection for all non-officer compensation information. Disclosure of this information would invade the privacy rights of the individuals named and provide insight into the Company’s salary determinations. This personal and private information is not in the public realm. The Company’s employees have a reasonable expectation that their compensation is personal and private information. Disclosure would constitute an unwarranted invasion of their personal privacy in contravention of KRS 61.878(1)(a).

10. Disclosure of the compensation information of the Company’s employees – private citizens who are not government officers or employees – would not further the Act’s purpose,

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<sup>2</sup> KRS 61.878(1)(a).

<sup>3</sup> *Zink v. Department of Workers’ Claims, Labor Cabinet*, 902 S.W.2d 825, 828 (Ky. App. 1994).

<sup>4</sup> *Cape Pub’ns, Inc. v. Univ. of Louisville Found., Inc.*, 260 S.W.3d 818, 822 (Ky. 2008).

which is to make government and its actions open to public scrutiny. Discussing the rationale for the Act, the Kentucky Court of Appeals has stated:

[T]he public’s “right to know” under the Open Records Act is premised upon the public’s right to expect *its agencies* properly to execute *their statutory functions*. In general, inspection of records may reveal whether *the public servants* are indeed serving the public, and the policy of disclosure provides impetus for *an agency* steadfastly to pursue the public good. At its most basic level, the purpose of disclosure focuses on the citizens’ right to be informed as to *what their government is doing*.<sup>5</sup>

Relying upon this precedent, the Kentucky Office of the Attorney General (“AG”) has opined that “[i]f disclosure of the requested record would not advance the underlying purpose of the Open Records Act, namely exposing agency action to public scrutiny, then countervailing interests, such as privacy, must prevail.”<sup>6</sup>

11. The Commission has recognized a right to utility employee privacy. In an order approving a petition for confidential treatment in Case No. 89-374, the Commission found that salary information “should be available for customers to determine whether those salaries are reasonable,” but “the right of each individual employee within a job classification to protect such information as private outweighs the public interest in the information.”<sup>7</sup> In the same order, the Commission concluded, “Thus, the salary paid to each individual within a classification is entitled to protection from public disclosure.”<sup>8</sup>

12. The Commission also has previously denied confidential protection to executive officer information and held that because executive officer “salaries are included as an expense in

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<sup>5</sup> 902 S.W.2d at 828-29 (Ky. App. 1994) (bold italics added).

<sup>6</sup> *James L. Thomerson/Fayette County Schools*, KY OAG 96-ORD-232 (Nov. 1, 1996) (citing *Zink v. Department of Workers’ Claims, Labor Cabinet*, 902 S.W.2d 825 (Ky. App. 1994)) (emphasis added).

<sup>7</sup> *Application of Louisville Gas and Electric Company for an Order Approving an Agreement and Plan of Exchange and to Carry Out Certain Transactions in Connection Therewith*, Case No. 89-374, Order at 2 (Ky. PSC Apr. 30, 1997).

<sup>8</sup> *Id.*

base rate calculations” and are “subject to public dissemination of regulatory filings,” the information should not be entitled to confidential protection.<sup>9</sup> Such reasoning, however, is not applicable in the current request because the Company is not requesting confidential protection for executive salaries.

13. Disclosure of this information would invade the privacy rights of the individuals named and provide insight into the Company’s salary calculation. This personal and private information is not in the public realm. The Company’s employees have a reasonable expectation that their compensation is personal and private information. Disclosure would constitute an unwarranted invasion of their personal privacy in contravention of KRS 61.878(1)(a).

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

14. 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.”

15. In response to PSC 2-81, Kentucky American Water is providing detailed drawings and diagrams of DMA vaults to be installed at the Kentucky Horse Park. Similarly, in response to

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<sup>9</sup> *Application of Kentucky Utilities Company for an Adjustment of its Electric Rates*, Case No. 2012-00222, Order Regarding Request for Confidential Treatment at 2 (Ky. PSC Sept. 11, 2013). See also *Application of Kentucky-American Water Company for an Adjustment of Rates*, Case No. 2015-00418, Order at 2 (Ky. PSC Aug. 31, 2016) (finding “that KAWC’s executive salaries are an expense in the rate base calculations” and holding that “such salary compensation is not entitled to confidential protection”); *Application of Kentucky Utilities Company for an Adjustment of its Electric Rates*, Case No. 2014-00371, Order Regarding Request for Confidential Treatment at 1-2 (Ky. PSC Jan. 20, 2016) (denying confidential protection for executive salary information for the same reasons as Case No. 2012-00222 and noting that “[m]ovant has not offered any argument to depart from this precedent”); *An Adjustment of Gas and Electric Rates of Louisville Gas and Electric Company*, Case No. 90-158, Order (Ky. PSC Sept. 7, 1990) (“Since LG&E seeks to recover through its rate structure the compensation in salaries paid to its executive employees, LG&E customers have a right to know whether the salaries and compensation paid to such employees are reasonable.”). See also Case No. 2018-00294, Order (Ky. PSC Oct. 8, 2019); Case No. 2018-00295, Order (Ky. PSC Oct. 8, 2019).

PSC 2-82, Kentucky American Water is providing maps and specific locations of special connections within Kentucky American Water's distribution system. Finally, Attachment 2 to PSC 2-12 is also confidential because it contains specific GPS asset locations. The disclosure of this information could be used to compromise Kentucky American Water's facilities or service. With regard to PSC 2-82, the disclosure of this information could particularly threaten public safety because of the high number of people at the Kentucky Horse Park. Because Attachment 2 to PSC 2-12, Attachment 1 to PSC 2-81, and Attachment 1 to PSC 2-82 contain Critical Infrastructure Information that would threaten public safety if disclosed, these attachments should be protected from public disclosure in their entirety.

**Confidential Information Subject to this Petition**

16. 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.

17. The Commission has previously granted confidential protection for similar information.<sup>10</sup>

18. 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.

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<sup>10</sup> *Electronic Application of Kentucky-American Water Company for an Adjustment of Rates*, Case No. 2018-00358, Order (Ky. PSC Mar. 14, 2019) (granting Kentucky American Water's December 12, 2018 Petition for Confidential Protection).

19. 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.<sup>11</sup>

20. Pursuant to 807 KAR 5:001, Section 13(2)(b), for all of Attachment 4 to PSC 2-11, Attachment 1 to PSC 2-12, Attachment 1 to PSC 2-29, Attachments 13, 20, and 21 to PSC 2-30, Attachment 1 to PSC 2-81, Attachment 1 to PSC 2-82, Attachment 3 to AG 1-3, Attachments 1, 2, 3, and 4 to AG 1-46, Attachments 20, 33, 34, 36, 37, 38, 39, and 40 to AG 1-99, Attachment 1 to AG 1-104, and Attachments 1 and 2 to LFUCG 1-25, Kentucky American Water is providing written notification that the entire document is confidential. For Attachments 2 and 3 to PSC 2-12, Attachments 1, 2, and 4 to AG 1-3, Attachment 1 to LFUCG 1-75, and the response to PSC 2-17, 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 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.

21. Due to the serious security concerns related to the disclosure of Critical Infrastructure Information, Kentucky American Water requests that the Critical Infrastructure Information contained in Attachment 1 to PSC 2-81, Attachment 1 to PSC 2-82, and Attachment 2 to PSC 2-12 remain confidential indefinitely. For all other requests for confidential protection,

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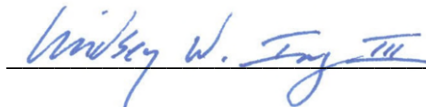
<sup>11</sup> *Utility Regulatory Commission v. Kentucky Water Service Company, Inc.*, 642 S.W.2d 591, 592-94 (Ky. App. 1982).



the Company requests that confidential protection be granted for five years due to the sensitive nature of the information at issue.

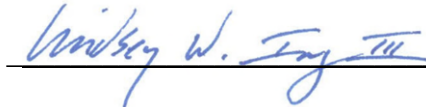
**WHEREFORE**, Kentucky-American Water Company respectfully requests that the Commission grant confidential protection for all of the information described herein.

Lindsey W. Ingram III  
[L.Ingram@skofirm.com](mailto:L.Ingram@skofirm.com)  
Monica H. Braun  
[Monica.braun@skofirm.com](mailto:Monica.braun@skofirm.com)  
Mary Ellen Wimberly  
[MaryEllen.Wimberly@skofirm.com](mailto:MaryEllen.Wimberly@skofirm.com)  
STOLL KEENON OGDEN PLLC  
300 West Vine Street, Suite 2100  
Lexington, Kentucky 40507-1801  
Telephone: (859) 231-3000  
Fax: (859) 259-3503

BY:   
Attorneys for Kentucky-American Water Company

**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 August 18, 2023; and that there are currently no parties in this proceeding that the Commission has excused from participation by electronic means.

STOLL KEENON OGDEN PLLC  
BY:   
Attorneys for Kentucky-American Water Company