

**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”), petitions the Kentucky Public Service Commission (“Commission”) pursuant to 807 KAR 5:001 Section 13 to grant confidential protection for certain information the Company is providing in response to the Commission Staff’s Third Request for Information (“PSC”) Item No. 43, Attorney General’s Second Request for Information (“AG”) Item No. 10, and Lexington-Fayette Urban County Government’s Second Request for Information (“LFUCG”) Item No. 6. 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 LFUCG 2-6, Kentucky American Water is providing two attachments, Attachment 1 and Attachment 2, which contain confidential and proprietary information pertaining to the Company's response to the request for proposal ("RFP") process being conducted by Peaks Mill Water District.

3. Confidential protection of this information is necessary because disclosure would reveal Kentucky American Water's detailed and proprietary provisions for providing water service to the detriment of the Company and its customers. In addition, disclosure of this information would allow the Company's competitors to see Kentucky American Water's purchase price offer and the specifics of the Company's proposal to supply water service, providing Kentucky American Water's competitors with an unfair commercial advantage.

4. Thus, Kentucky American Water requests confidential protection for the entire document provided as Attachment 1 in response to LFUCG 2-6, and for the identified portions of Attachment 2 in response to LFUCG 2-6.

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

5. 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>

6. In response to PSC 3-43 and AG 2-10, the Company is providing attachments that contain non-executive employee salary information.

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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) (emphasis added).

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

7. Kentucky American Water requests confidential protection for all non-executive 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).

8. 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, 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 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>

9. 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

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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).

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>

10. 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 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.

11. Thus, Kentucky American Water requests confidential protection for the identified portions of the attachments provided in response to PSC 3-43 and AG 2-10.

### **Confidential Information Subject to this Petition**

12. 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

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<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.*

<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).

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.

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

14. 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.

15. 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>

16. Pursuant to 807 KAR 5:001, Section 13(2)(b), for Attachment 1 to LFUCG 2-6, the Company is providing written notification that the entire document is confidential.

17. For Attachment 2 to LFUCG 2-6, the attachment to PSC 3-43, and the attachment to AG 2-10, 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

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<sup>10</sup> See, e.g., *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 of information relating to non-executive employee compensation and Kentucky American Water's January 25, 2019 Petition for Confidential Protection of information relating to proprietary commercial information that would allow competitors to derive an unfair commercial advantage).


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

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.

18. 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.

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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 September 21, 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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