

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF)	
KENTUCKY-AMERICAN WATER)	
COMPANY FOR AN ADJUSTMENT OF)	CASE NO. 2025-00122
RATES)	

PETITION OF KENTUCKY-AMERICAN WATER COMPANY, INC.
FOR CONFIDENTIAL PROTECTION

Kentucky-American Water Company, Inc. (“KAWC” or “Company”), hereby petitions the Kentucky Public Service Commission (“Commission”) pursuant to 807 KAR 5:001, Section 13 and KRS 61.878(1) to grant confidential protection for certain information the Company is providing in response to the Commission Staff’s First Request for Information (“PSC”) Item Nos. 1, 4, 5, 29, 33, 37, 38, and 39. In support of its Petition, KAWC 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.

2. The responses to PSC 1-4 and PSC 1-5 contain accounting and budgeting practices and procedures that are the product of extensive time and money invested by KAWC’s parent company, American Water Works Company, Inc. (“American Water”). These practices and procedures consist of commercial information that is confidential and proprietary, the disclosure of which would unfairly disadvantage American Water and KAWC. If those competitors have

¹ KRS 61.878(1)(c)(1).

free access to the same information that American Water expended substantial resources to develop, they will derive an unfair commercial advantage.

3. KAWC is also providing confidential and proprietary information regarding American Water's strategies for employee compensation. In response to PSC 1-29, KAWC is providing an attachment showing a benchmark comparison of American Water's medical benefits. In response to PSC 1-38, KAWC is providing the employee contribution rate for annual premiums. Similarly, in response to PSC 1-39, KAWC is providing the cost to employees of health care, dental, and vision plans. These documents contain information that is confidential and proprietary, the disclosure of which would unfairly disadvantage American Water and KAWC relative to their 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. Furthermore, access to this information would also provide competitors with information that could be used to recruit and hire KAWC and American Water employees. Although the Commission previously denied confidential protection for certain benefit information,² KAWC respectfully asks the Commission to reconsider. KAWC's employee benefits, as compared to the utility industry average, is an important tool for recruiting and retaining employees and public disclosure would allow competitors access to this information.

4. Certain spreadsheets provided in response to PSC 1-1 include chemical prices, purchased water expense, and waste disposal expense KAWC has paid and expects to pay in future years. KAWC is seeking confidential treatment for the price information so that suppliers are not privy to the amounts the Company paid and expects to pay for chemicals, purchased water, and

² *Electronic Application of Kentucky-American Water Company for an Adjustment of Rates, a Certificate of Public Convenience and Necessity for Installation of Advanced Metering Infrastructure, Approval of Regulatory and Accounting Treatments, and Tariff Revisions*, Case No. 2023-00191, Order (Ky. PSC Oct. 10, 2023).

waste disposal. If the pricing information is disclosed, this may impede KAWC's ability to negotiate with potential suppliers for more favorable pricing terms if potential suppliers are aware of the amount KAWC paid or expects to pay. This would harm both KAWC and its customers, and provide an unfair commercial advantage to those suppliers. Although the confidential spreadsheets include some information that the Commission has previously found is not confidential,³ KAWC cannot remove portions of the spreadsheet without breaking linked information in the spreadsheet. KAWC is thus requesting confidential protection for the entirety of the confidential spreadsheets included in the attachment to PSC 1-1.

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

5. The Kentucky Open Records Act exempts from disclosure certain private and personal information.⁴ 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.”⁵ The Kentucky Supreme Court has characterized “one’s income” as “intimate” information of a private nature.⁶

6. In response to PSC 1-1, the Company is providing a spreadsheet that contains current wages and projected wages for employees. In the confidential attachment to PSC 1-33, KAWC is providing performance pay by position. In response to PSC 1-37, the Company is providing salary and benefit information by group for certain categories of employees. KAWC requests confidential protection for all non-officer compensation information.

³ *Electronic Application of Kentucky-American Water Company for an Adjustment of Rates, a Certificate of Public Convenience and Necessity for Installation of Advanced Metering Infrastructure, Approval of Regulatory and Accounting Treatments, and Tariff Revisions*, Case No. 2023-00191, Order (Ky. PSC Oct. 10, 2023) (denying confidential protection for present purchased water expense and chemical prices); Case No. 2023-00191, Order (Ky. PSC Nov. 17, 2023) (granting the Company’s motion for reconsideration and finding that present chemical pricing information should be granted confidential treatment).

⁴ KRS 61.878(1)(a).

⁵ *Zink v. Department of Workers’ Claims, Labor Cabinet*, 902 S.W.2d 825, 828 (Ky. App. 1994).

⁶ *Cape Pub’ns, Inc. v. Univ. of Louisville Found., Inc.*, 260 S.W.3d 818, 822 (Ky. 2008).

7. 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*.⁷

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."⁸

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 reasonable," but "the right of each individual employee within a job classification to protect such

⁷ 902 S.W.2d at 828-29 (Ky. App. 1994) (bold italics added).

⁸ *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).

information as private outweighs the public interest in the information.”⁹ In the same order, the Commission concluded, “Thus, the salary paid to each individual within a classification is entitled to protection from public disclosure.”¹⁰

10. Although the confidential spreadsheet provided in response to PSC 1-1 includes some executive compensation information that the Commission has previously found is not confidential,¹¹ KAWC cannot remove portions of the spreadsheet without breaking linked information in the spreadsheet. KAWC is thus requesting confidential protection for the entirety of the confidential spreadsheet included in the attachment to PSC 1-1. KAWC is only requesting confidential protection for non-executive compensation information and is not requesting confidential protection for any executive pay information in response to PSC 1-33 and PSC 1-37.

11. 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).

Confidential Information Subject to this Petition

12. The information for which KAWC is seeking confidential treatment is not known outside of KAWC, its consultants with a need to know the information, and the Company’s counsel, is not disseminated within KAWC except to those employees with a legitimate business

⁹ *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).

¹⁰ *Id.*

¹¹ *Electronic Application of Kentucky-American Water Company for an Adjustment of Rates, a Certificate of Public Convenience and Necessity for Installation of Advanced Metering Infrastructure, Approval of Regulatory and Accounting Treatments, and Tariff Revisions*, Case No. 2023-00191, Order (Ky. PSC Oct. 10, 2023).

need to know and act upon the information, and is generally recognized as confidential and proprietary information in the utility industry.

13. KAWC 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.

14. If the Commission disagrees with this request for confidential protection, it must hold an evidentiary hearing (a) to protect KAWC'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.¹²

15. In compliance with 807 KAR 5:001, Section 13, KAWC is providing notice that the confidential attachments to PSC 1-1, PSC 1-4, PSC 1-5, and PSC 1-29 are confidential in full. For the attachment provided in response to PSC 1-33, and the response to PSC 1-37, PSC 1-38, and PSC 1-39, which are not entirely confidential, KAWC is filing with the Commission one electronic copy that identifies with redactions the information for which confidential protection is sought. KAWC is providing unredacted copies noting the confidential information with highlighting to the Commission.

16. Access to the confidential information will be provided to intervenors upon request pursuant to a confidentiality agreement.

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

WHEREFORE, KAWC respectfully requests the Kentucky Public Service Commission grant confidential protection for the information described herein.

¹² *Utility Regulatory Commission v. Kentucky Water Service Company, Inc.*, 642 S.W.2d 591, 592-94 (Ky. App. 1982).

Dated: June 5, 2025

Respectfully submitted,



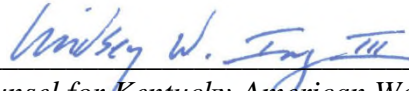
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CERTIFICATE OF COMPLIANCE

In accordance with 807 KAR 5:001, Section 8 as modified by 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 5, 2025; and that there are currently no parties in this proceeding that the Commission has excused from participation by electronic means.



*Counsel for Kentucky-American Water
Company*

4911-7626-5290.1