

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 (1) Commission Staff’s Second Request for Information (“PSC”) Item No. 10; (2) Attorney General’s (“AG”) First Request for Information Nos. 2, 3, 5, 41, 56, 58, 95, 107, 111, 127, 134, 150, 185; and (3) Lexington-Fayette Urban County Government’s (“LFUCG”) Request for Information Item Nos. 2, 24. 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 response to LFUCG 1-24 contains includes two attachments containing the hydrant inspection form and hydrant inspection practice that are the product of extensive time and money invested by KAWC’s parent company, American Water Works Company, Inc. (“American

¹ KRS 61.878(1)(c)(1).

Water”). The attachments contain confidential and proprietary information, the disclosure of which would unfairly advantage American Water and KAWC’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. The Commission has previously found that KAWC’s fire hydrant maintenance procedures should be afforded confidential treatment.² Because of the proprietary nature of the information at issue, KAWC’s requests confidential protection for the entirety of Attachments 1 and 2 provided in response to LFUCG 1-24.

3. Similarly, in response to AG 1-58, the Company is providing confidential corporate governance and asset investment strategy information. These policies are the result of significant investment and effort, and contain highly proprietary information related to American Water, the disclosure of which could harm both American Water and KAWC. These confidential documents are a small subset of the attachments that the Company is providing in response to this question.

4. In response to PSC 2-10, KAW is providing documents and data from S&P in Attachments 24 and 29. Per The Brattle Group’s license agreement with S&P, these documents cannot be disclosed publicly. Relatedly, KAWC is providing bond rating agency reports from S&P and Moody’s in response to AG 1-185. S&P and Moody’s makes money from selling these documents. As players in competitive markets, S&P and Moody’s does 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 other third-party suppliers of the same kinds of information and analyses may be less willing to supply reports to KAWC’s and its consultants in the future. Diminishing the Company’s ability to receive this information would harm both KAWC

² Case No. 2018-00358, *Electronic Application of Kentucky-American for an Adjustment of Rates* (Ky. PSC Mar. 14, 2019 Order).

and its customers. The Commission has previously held that reports from subscription-based rating services such as Moody's and S&P should be granted confidential treatment.³

5. KAWC is also providing confidential and proprietary information regarding American Water's strategies for employee compensation. In response to AG 1-41 and AG 1-95, KAWC is providing attachments that reveal the cost to employees of health care, dental, and vision plans, along with the employee contribution rate for annual premiums. Similarly, the Company is providing copies of its incentive compensation plan information in response to AG 1-107, along with specific performance metrics and payouts under its plans in response to AG 1-111. Also, KAWC is providing the expected wages and benefits for vacant positions in response to AG 1-5. 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,⁴ 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. Moreover, American Water seeks and obtains confidential

³ See Case No. 2021-00190, *Electronic Application of Duke Energy Kentucky, Inc. for: 1) an Adjustment of the Nat. Gas Rates; 2) Approval of New Tariffs, & 3) All Other Required Approvals, Waivers, & Relief*, (Ky. PSC Apr. 14, 2022 Order); Case No. 2021-00481, *Electronic. Joint Application of Am. Elec. Power Co., Inc., Kentucky Power Co., & Liberty Utilities Co. for Approval of the Transfer of Ownership & Control of Kentucky Power Co.* (Ky. PSC Mar. 29, 2022 Order).

⁴ *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).

protection for this information in its other operating jurisdictions, which further demonstrates that the Company does not disseminate this information publicly.

6. In response to AG 1-127, 1-134, and 1-150, KAWC is providing contracts and quotes from vendors. If the pricing and terms are 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. While the Company is requesting that the contracts and quotes be afforded confidential protection, the forecast expenses that were derived from these business documents have been publicly disclosed, which allows ratepayers to know the facts the Commission considers in reaching its decisions. Moreover, one of the third parties whose contracts and quotes are being provided in response to AG 1-127 and AG 1-150 include language in the documents prohibiting public disclosure.

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

7. The Kentucky Open Records Act exempts from disclosure certain private and personal information.⁵ 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.”⁶ The Kentucky Supreme Court has characterized “one’s income” as “intimate” information of a private nature.⁷

8. In response to Item Nos. AG 1-2, AG 1-3, and AG 1-56, the Company is providing current and projected wage information for employees. KAWC requests confidential protection for all non-officer compensation information. Disclosure of this information would invade the

⁵ KRS 61.878(1)(a).

⁶ *Zink v. Department of Workers' Claims, Labor Cabinet*, 902 S.W.2d 825, 828 (Ky. App. 1994).

⁷ *Cape Pub'ns, Inc. v. Univ. of Louisville Found., Inc.*, 260 S.W.3d 818, 822 (Ky. 2008).

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).

9. 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*.⁵

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."⁶

10. 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.”⁸ In the same order, the Commission concluded, “Thus, the salary paid to each individual within a classification is entitled to protection from public disclosure.”⁹

11. 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.¹⁰ Such reasoning, however, is not applicable in the current request because the Company is not requesting confidential protection for executive salaries. For non-executive compensation, the Commission has previously found that such information should be afforded confidential treatment and disclosure would be a violation of employee’s expectation of privacy.¹¹

12. 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

⁸ *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).

⁹ *Id.*

¹⁰ *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).

¹¹ *See* Case No. 2020-00104, *Electric Application of Clark Energy Coop., Inc. for A General Adjustment of Rates Pursuant to Streamlined Proc. Pilot Program Established in Case No. 2018-00407* (Jan. 25, 2022 Order).

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 Personal Information – Customer-Identifying Information (KRS 61.878(1)(a))

13. The Kentucky Open Records Act exempts from disclosure certain private and personal information and information that will reveal specific customers' billing information. In response to LFUCG 1-2, KAWC is providing account information regarding LFUCG, including account numbers, premise locations, billing information and related customer-identifying information. The Commission previously granted confidential protection to similar information.¹²

Confidential Information Subject to this Petition

14. The information for which KAWC is seeking confidential treatment is not known outside of the Company, their 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 need to know and act upon the information and is generally recognized as confidential and proprietary information in the energy industry.

15. The Commission has previously granted confidential protection for similar information.¹³

¹² *Application of Duke Energy Kentucky, Inc. for: (1) An Adjustment of the Electric Rates; (2) Approval of an Environmental Compliance Plan and Surcharge Mechanism; (3) Approval of New Tariffs; (4) Approval of Accounting Practices to Establish Regulatory Assets and Liabilities; and (5) All Other Required Approvals and Relief*, Case No. 2017-00321 (Ky. PSC May 3, 2018 Order) (granting confidential protection to specific customer account information, including account numbers and billing data); *Application of Kentucky Utilities Company for an Adjustment of its Electric Rates*, Case No. 2012-000221 (Ky. PSC July 25, 2013 Order) (granting confidential protection to customer names, account numbers, and usage information).

¹³ *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).

16. The Company 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.

17. 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.¹⁴

18. In compliance with 807 KAR 5:001, Section 13, KAWC is providing notice that the confidential attachments to LFCUG 1-24, AG 1-58, PSC 2-10, AG 1-185, AG 1-41, AG 1-95, AG 1-107, AG 1-111, AG 1-127, AG 1-134, AG 1-150, LFUCG 1-2 are confidential in full. For the attachments to AG 1-2, AG 1-3, and AG 1-5, along with the response to AG 1-56, 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.

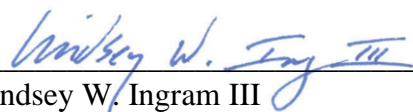
19. The Company requests that confidential protection be granted for five years due to the sensitive nature of the information at issue.

¹⁴ *Utility Regulatory Commission v. Kentucky Water Service Company, Inc.*, 642 S.W.2d 591, 592-94 (Ky. App. 1982).

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

Dated: July 7, 2025

Respectfully submitted,



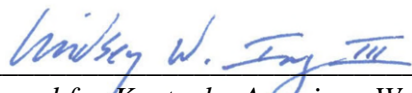
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CERTIFICATE OF COMPLIANCE

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 July 7, 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*