

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE VERIFIED APPLICATION OF AMERICAN)	
WATER WORKS COMPANY, KENTUCKY-)	
AMERICAN WATER COMPANY, NEXUS)	
REGULATED UTILITIES, LLC, AND WATER)	CASE NO. 2025-00171
SERVICE COMPANY OF KENTUCKY FOR)	
APPROVAL OF THE TRANSFER OF CONTROL)	
OF WATER SERVICE COMPANY OF)	
KENTUCKY)	

**NOTICE OF FILING AND
PETITION FOR CONFIDENTIAL TREATMENT**

Water Service Corporation of Kentucky, (“WSCK”), by counsel, hereby provides notice that it is filing a management presentation presented by Nexus Water Group (“WSCK”) to American Water Works Company (“American Water”) on February 20, 2025. Certain information that is not relevant to the transaction or Kentucky operations has been redacted. In addition, WSCK respectfully moves the Public Service Commission of Kentucky (the “Commission”) pursuant to 807 KAR 5:001, Section 13(2) and KRS 61.878(1)(c) for an Order granting confidential treatment to the information contained within the management presentation.

Administrative Regulation 807 KAR 5:001, Section 13 sets forth the procedure by which certain information filed with the Commission shall be treated as confidential. Specifically, the party seeking confidential treatment must establish “establish specific grounds pursuant to KRS 61.878 for classification of that material as confidential.” *See* 807 KAR 5:001, Section 13(2)(a)(1).

The Kentucky Open Records Act exempts certain records from the requirement of public inspection. *See* KRS 61.878. In particular, KRS 61.878(1)(c)(1) exempts from disclosure:

Records confidentially disclosed to an agency or required by an agency to be disclosed to it, generally recognized as confidential or proprietary, which if openly disclosed would present an unfair commercial advantage to competitors of the entity that disclosed the records.

This exception “is aimed at protecting records of private entities which, by virtue of involvement in public affairs, must disclose confidential or proprietary records to a public agency, if disclosure of those records would place the private entities at a competitive disadvantage.” Ky. OAG 97-ORD-66 at 10 (Apr. 17, 1997). One “obvious disadvantage” is created when proprietary information is disclosed “without the hurdles systematically associated with acquisition of such information about privately owned organizations.” *See Marina Management Service, Inc. v. Commonwealth of Ky., Cabinet for Tourism*, 906 S.W.2d 318, 319 (Ky. 1995).

Item 11 of the Second Request for Information to Kentucky-American Water Company seeks “any acquisition-related due diligence communications between American-Water and Nexus. Include in the response any written correspondence, presentations, reports, studies, memos, or other documents that materially discuss the proposed transaction.” In coordination with American Water, WSKK is confidentially disclosing a management presentation presented by Nexus to American Water from February 2025. The information contained in the presentation is not publicly available, nor will it become publicly available after the close of the merger, thus satisfying the first element of the statutory standard for confidentiality of a proprietary record.

In *Hoy v. Kentucky Indus. Revitalization Auth.*, 907 S.W.2d 766, 768 (Ky. 1995), the Kentucky Supreme Court held that documents detailing the “inner workings of a corporation [are] ‘generally recognized as confidential or proprietary.’” The management presentation satisfies this standard and, therefore, meet the second element of the statutory standard.

The management presentation also contains extraordinarily sensitive information. The information could reveal how parties negotiate and value transactions. Moreover, the information contains commercially sensitive transaction terms and figures of various entities. The disclosure of

this information would result in a clear commercial disadvantage against the Joint Applicants for competitors to gain invaluable insight into the structure, operation, and financial outlook of the newly merged entity. Kentucky Courts have deemed this private, corporate information to be confidential. *See Marina Management Service, Inc.*, 906 S.W.2d at 319. As such, these confidential documents are subject to the proprietary exemption in KRS 61.878(1)(c)(1).

The information contained in this management presentation also includes sensitive documentation relating to Nexus and its subsidiaries, which would reveal analysis on the entities' finances, as well as highly confidential information relating to the Joint Applicants' due diligence process. All of the information is confidential business information not available to the public and would cause damage to Nexus and its subsidiaries, if publicly disclosed.¹ As such, the documents responsive to these requests contain sensitive confidential and proprietary information, the disclosure of which could be used by Nexus's competitors to gain a competitive advantage over them. Further, the disclosure of this type of information could place Nexus at an economic disadvantage related to future transactions if their analysis of the corporations is revealed.

The Commission has previously granted confidential treatment for this type of due diligence analysis in prior acquisition cases. For example, the Commission granted confidential treatment to similar management presentations submitted in conjunction with WSKC's request for approval of an indirect transfer of control involving Corix Infrastructure (US) Inc. and SW Merger Acquisition Corporation. *See Application by Water Service Corp. of Kentucky along with Corix Infrastructure (US) Inc. and SW Merger Acquisition Corp. for Approval of Transfer of Control*, Case No. 2022-00396 (Ky. PSC Apr. 14, 2023).² Accordingly, WSKC requests confidential treatment for the document being produced in conjunction with this Notice of Filing.

¹ To the extent that Nexus disclosed this information to other entities, it did so only under the terms of Non-disclosure Agreements.

² *See also Electronic Joint Application of American Electric Power Company, Inc., Kentucky Power Company and Liberty Utilities Co. for Approval of the Transfer of Ownership and Control of Kentucky Power Company*, Case No.

For the foregoing reasons, the Joint Applicants respectfully request confidential treatment in perpetuity of the information described above. If the Commission disagrees with this request for confidential protection, it must hold an evidentiary hearing (a) to protect the Joint Applicants' due process rights and (b) to supply the Commission with a complete record to enable it to reach a decision about this matter.

Respectfully submitted,



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2021-00481 (Ky. PSC March 24, 2022); *Electronic Proposed Acquisition by Bluegrass Water Utility Operating Company, LLC and the Transfer of Ownership and Control of Assets by P.R. Wastewater Management, Inc., Marshall County Environmental Services, LLC, LH Treatment Company, LLC, Kingswood Development Inc., Airview Utilities, LLC, Brooklyn Utilities, LLC, Fox Run Utilities, LLC, and Lake Columbia Utilities, Inc.*, Case No. 2019-00104 (Ky. PSC Feb. 25, 2021); *Application Of Atmos Energy Corporation For An Adjustment Of Rates And Tariff Modifications*, Case No. 2013-00148 (Ky. PSC Dec. 3, 2013); *Application Of PPL Corporation, E.ON AG, E.ON US Investments Corp., E.ON U.S. LLC, Louisville Gas And Electric Company, And Kentucky Utilities Company For Approval Of An Acquisition Of Ownership And Control Of Utilities*, Case No. 2010-00204 (Ky PSC Staff Letter Sept. 30, 2010)(granting confidential treatment for due diligence materials).