

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF KENTUCKY-AMERICAN)
WATER COMPANY FOR A CERTIFICATE OF)
PUBLIC CONVENIENCE AND NECESSITY) CASE NO. 2012-00096
AUTHORIZING CONSTRUCTION OF THE)
NORTHERN DIVISION CONNECTION)

ORDER REGARDING REQUEST FOR CONFIDENTIAL TREATMENT

On July 23, 2012, Kentucky American Water Company ("Kentucky American") petitioned pursuant to 807 KAR 5:001, Section 13,¹ that certain materials filed with the Commission be afforded confidential treatment and not be placed in the public record subject to public inspection. The materials for which Kentucky American seeks confidential treatment fall into two categories: personal information and proprietary commercial information.

Kentucky American contends that portions of its responses to Items 2 and 44(a) involve personal identifying information and are exempted from public disclosure under KRS 61.878(1)(a). In its response to Item 2 of Commission Staff's First Request for Information, Kentucky American provided information that included the names, Social Security numbers, and birth dates of Kentucky American employees. In its response to Item 44(a), Kentucky American provided the name, title, length of employment, job duties, 2011 and 2012 pay rates, test-period regular time worked and overtime worked, percentage of payroll capitalized in 2011 and type of employee benefits for all

¹ Kentucky American made its motion pursuant 807 KAR 5:001, Section 7. Since the filing of this motion, the Commission has promulgated revisions to 807 KAR 5:001. The section of the Commission's Rules of Procedure pertaining to confidential treatment of records is now found at Section 13.

employees that operate the Owenton Water Treatment Plant. To protect the personal and confidential information of its employees, Kentucky American proposes to redact its employees' Social Security numbers and birth dates from its Response to Item 2 and to redact the employees' names in its Response to Item 44(a).

The Commission agrees that employees' Social Security numbers and birth dates are exempted from public disclosure. The Kentucky Attorney General has held that such information is exempted on several occasions.² The Commission's Rules of Procedures, promulgated after the submission of Kentucky American's Response, require that such information be redacted from any paper filed with the Commission.³ We further find that disclosure of an employee's name with the other information required to the response to Item 44(a) would constitute an unwarranted invasion of the employee's personal privacy. Redaction of the employee's name, while disclosing the other information, will protect the employee without unduly infringing the public's interest in the information.

In response to Items 3 and 65 of Commission Staff's First Request for Information,⁴ Kentucky American has provided, *inter alia*, bid information on improvement projects at its Owenton Water Treatment Plant. The documents in Item 3 involve an electronic mail that states the bid amounts submitted in 2005 on a proposed water intake for the Owenton Water Treatment and the cost estimate of the proposed

² Ky. OAG 04-ORD-010 (Jan. 14, 2004); Ky. OAG 79-275 (Mar. 27, 1979).

³ 807 KAR 5:001, Section 4(10)(a).

⁴ In its motion, Kentucky American also seeks confidential treatment for its Response to the Attorney General's First Request for Information, Item 2. In responding to this request for information, Kentucky American refers to its Response to Commission Staff's First Request for Information, Item 65.

improvement based upon those bids. The documents in Item 65 concern the bids submitted for the Northern Connection Project and tabulations of those bids.

Kentucky American contends that this information reveals the business model Kentucky American uses – the procedure it follows and the factors and inputs it considers – in evaluating bids for construction projects and that its disclosure would damage Kentucky American’s competitive position and business interests. Kentucky American further contends that disclosure would enable potential bidders to review the information and prospectively manipulate the bid solicitation process to the detriment of Kentucky American and its customers by tailoring bids to correspond to and comport with Kentucky American’s bidding criteria and process.⁵

We find little support in the record for Kentucky American’s position. Kentucky American has provided no evidence to demonstrate that the nature of competition within the construction industry in this region is so limited as that disclosure of bidding information will have a harmful effect, nor has it provided supporting evidence for or explained its contention that disclosure of the information would likely result in manipulation of the bid process.⁶ The Commission notes that the information provided in its Response to Item 3 is over seven years old and contains only the final bid amount.

⁵ Kentucky American Petition at 2.

⁶ In its motion, Kentucky American contends that the Commission has previously treated bidding information as confidential. See Letter from Beth O’Donnell, Executive Director, Public Service Commission, to Kendrick R. Riggs, W. Duncan Crosby, and Allyson K. Sturgeon, Counsel, Kentucky Utilities Co. (Feb. 27, 2008) filed in Case No. 2007-00524, *An Examination of the Application of the Fuel Adjustment Clause of Kentucky Utilities Co. from May 1, 2007 through October 31, 2007* (Ky. PSC Jan. 23, 2008). Its authority for this contention, however, refers only to “coal bid analysis information.” The Commission has previously addressed the issue of confidential treatment for materials related to coal supply bids and coal bid analysis. After taking extensive testimony on the nature of the coal industry, we found that such materials were proprietary and confidential. See *An Examination of the Application of the Fuel Adjustment Clause of Kentucky Utilities Co. from May 1, 1993 to October 31, 1993* (Ky. PSC Nov. 30, 1995). No evidence regarding the nature of the construction industry has been presented in the current proceeding.

No breakdown of the components of the bid is provided nor does the response contain any evaluation of the bids other than very general comments. The response to Item 65 contains only the submitted bids and no evaluation of those bids other than a compilation or summary of all bids.

Having carefully considered the petition and the materials at issue, the Commission finds that:

1. The materials in Items 2 and 44(a) of Kentucky American's Response to Commission Staff's First Request for Information for which Kentucky American seeks confidential treatment meet the criteria for confidential treatment and are exempted from public disclosure pursuant to KRS 61.878(1)(a) and 807 KAR 5:001, Section 13. These materials should not be placed in the public record or made available for public inspection until the Commission otherwise orders.

2. Kentucky American has failed to demonstrate that the materials in Items 3 and 65 of Kentucky American's Response to Commission Staff's First Request for Information for which Kentucky American seeks confidential treatment meet the criteria for confidential treatment and are exempted from public disclosure pursuant to KRS 61.878(1)(c).⁷

IT IS THEREFORE ORDERED that:

1. Kentucky American's petition for confidential protection is granted in part and denied in part.

2. The materials in Items 2 and 44(a) of Kentucky American's Response to Commission Staff's First Request for Information for which Kentucky American seeks

⁷ The burden is on the party opposing disclosure to establish that a record is exempt from release. See *Com., Cabinet for Health and Family Services v. Lexington H-L Services, Inc.*, 382 S.W.3d 875 (Ky.App. 2012); *Medley v. Bd. of Education of Shelby County*, 168 S.W.3d 398 (Ky.App. 2005).

confidential treatment shall not be placed in the public record or made available for public inspection until the Commission otherwise orders.

3. Kentucky American shall inform the Commission if any of the materials in Items 2 and 44(a) of Kentucky American's Response to Commission Staff's First Request for Information become publicly available or no longer qualify for confidential treatment.

4. If a non-party to this proceeding requests to inspect materials granted confidential treatment by this Order, Kentucky American shall have 20 days from receipt of written notice of the request to demonstrate that the materials still fall within the exclusions from disclosure requirements established in KRS 61.878. If Kentucky American is unable to make such demonstration, the requested materials shall be made available for inspection.

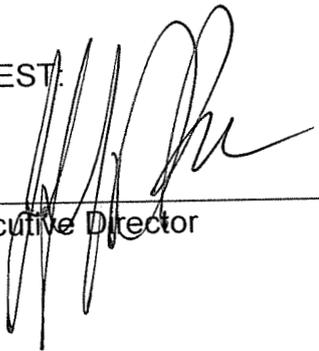
5. Kentucky American's petition for confidential protection for the materials in Items 3 and 65 of Kentucky American's Response to Commission Staff's First Request for Information is denied.

6. The materials in Items 3 and 65 of Kentucky American's Response to Commission Staff's First Request for Information shall not be placed in the public record for 23 days following the date of this Order to allow Kentucky American to seek any remedy afforded by law.

By the Commission

ENTERED
APR 25 2013
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:



Executive Director

Case No. 2012-00096

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