

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF KENTUCKY-AMERICAN WATER COMPANY FOR AN ADJUSTMENT OF RATES)
CASE NO.)
2018-00358)

ORDER

This matter arises on petitions for confidential treatment filed on November 28, 2018, December 12, 2018, January 25, 2019, and March 1, 2019, by Kentucky-American Water Company (Kentucky-American), all of which requested confidential treatment for the designated materials for an indefinite period.

In the November 28, 2018 petition, Kentucky-American requested confidential treatment for designated materials the 2018 General Rate Case Total Compensation Study filed as an attachment to the Direct Testimony of Robert V. Mustich. As a basis for its request, Kentucky-American asserted that the designated materials consist of confidential and proprietary position-specific salary information that, if publicly disclosed, enables individual non-executive employee compensation to be readily determined, and therefore is entitled to confidential protection under KRS 61.878(1)(a). Kentucky-American further asserted that public disclosure of the designated materials would result in competitive harm because the materials contain compensation strategy that would enable competitors to have an unfair commercial advantage in hiring away current and future Kentucky-American employees, and therefore entitled to confidential protection

under KRS 61.878(1)(c)(1). Kentucky-American stated that the Commission granted confidential treatment for similar compensation information in prior rate proceedings.¹

In the December 12, 2018 petition, Kentucky-American requested confidential treatment for designated materials in its response to Commission Staff's First Request for Information (Staff's First Request), Items 1, 4, 5, 29, 33(a), 33(c), and 36. The designated materials in the response to Staff's First Request, Items 1 and 33(c) contains non-executive employee-specific compensation information. The response to Staff's First Request, Item 1 also contains forecasted chemical prices by supplier. The designated materials in the response to Staff's First Request, Items 4 and 5 contain confidential accounting policies, practices, and assumptions that reflect Kentucky-American's business planning and strategies. The designated materials in the response to Staff's First Request, Items 29, 33(a), and 36 contain employee compensation studies, analyses, actuarial reports developed by a third party. Kentucky-American asserted that designated materials pertaining to non-executive employee compensation is information of a personal nature that is entitled to confidential protection under KRS 61.878(1)(a). Kentucky-American further asserted that the remaining designated materials consist of commercial information that is confidential and proprietary, and therefore entitled to confidential protection under KRS 61.878(1)(c)(1). Additionally, Kentucky-American stated that the information in its response to Staff's First Request, Item 36 contains material non-public information governed by the Securities and Exchange Commission's regulations.

¹ Case No. 2012-00520, *Application of Kentucky-American Water Company for an Adjustment of Rates Supported by a Fully Forecasted Test Year* (Ky. PSC Apr. 17, 2014).

In the January 25, 2019 petition, Kentucky-American requested confidential treatment for designated materials in the response to certain data requests. The designated materials in the response to Commission Staff's Second Request for Information (Staff's Second Request), Items 23, 33, 37, and 47 contain forecasted costs, non-executive employee compensation and benefits strategy, non-executive employee-specific compensation, and critical infrastructure location. The designated materials in the response to the Attorney General of the Commonwealth of Kentucky, by and through the Office of Rate Intervention's First Request for Information (Attorney General's First Request), Items 10, 23, and 71 contain non-executive employee-specific retirement contributions, actuarial reports, and critical infrastructure location. The designated materials in the response to Lexington-Fayette Urban County Government's (LFUCG) First Request for Information (LFUCG's First Request), Item 27 contain fire hydrant maintenance procedures. Kentucky-American asserted that designated materials pertaining to non-executive employee compensation is information of a personal nature that is entitled to confidential protection under KRS 61.878(1)(a). Kentucky-American further asserted that public disclosure of the confidential and proprietary commercial information would allow competitors to derive an unfair commercial advantage, and therefore the materials are entitled to confidential protection under KRS 61.878(1)(c)(1). Finally, Kentucky-American asserted that the critical infrastructure information is entitled to confidential protection pursuant to KRS 61.878(1)(m), which prohibits public disclosure of information that, if disclosed, would have a reasonable likelihood of threatening public safety.

In the March 1, 2019 petition, Kentucky-American requested confidential treatment for designated materials in responses to certain data requests. The designated materials in the response to Commission Staff's Third Request for Information (Staff's Third Request), Item 53 contain meter pricing that was the product of negotiation, which, if publicly disclosed, would reduce or eliminate third parties' incentive to provide their most competitive bids. The designated materials in the response to the Attorney General's Supplemental Data Request for Information (Attorney General's Second Request), Items 24, 25, and 42 contain suppliers' bids and forecasted costs, and non-executive compensation and benefits strategy, which would result in competitive harm if publicly disclosed. The designated materials in the response to LFUCG's Second Request for Information (LFUCG's Second Request), Item 10, strategies for capitalizing employee time and salary expense, which would result in competitive harm if publicly disclosed. Kentucky-American also requested confidential treatment for inadvertent disclosure of confidential information provided in its response to Staff's Second Request, Item 16, which contains the same information as provided in the response to Staff's Third Request, Item 53.

Having carefully considered the petitions and the materials at issue, the Commission finds that the designated materials contained in Kentucky-American's petitions filed on November 28, 2018, December 12, 2018, January 25, 2019, and March 1, 2019, are records that are generally recognized as confidential, and therefore meet the criteria for confidential treatment and are exempted from public disclosure pursuant to KRS 61.878(1)(a), KRS 61.878(1)(c)(1), KRS 61.878(1)(m), and 807 KAR 5:001, Section 13.

IT IS THEREFORE ORDERED that:

1. Kentucky-American's petitions for confidential protection filed on November 28, 2018, December 12, 2018, January 25, 2019, and March 1, 2019, are granted.

2. The designated materials for which Kentucky-American requested confidential treatment shall not be placed in the public record or made available for public inspection for an indefinite period of time, or until further Orders of this Commission.

3. Use of the materials in question in any Commission proceeding shall be in compliance with 807 KAR 5:001, Section 13(9).

4. Kentucky-American shall inform the Commission if the materials in question become publicly available or no longer qualify for confidential treatment.

5. If a non-party to this proceeding requests to inspect materials granted confidential treatment by this Order and the period during which the materials have been granted confidential treatment has not run, then Kentucky-American shall have 30 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. Otherwise, the Commission shall deny the request for inspection.

6. The Commission shall not make the requested materials available for inspection for 30 days following an Order finding that the materials no longer qualify for confidential treatment in order to allow Kentucky-American to seek a remedy afforded by law.

By the Commission

ENTERED
MAR 14 2019
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:


Executive Director

Case No. 2018-00358

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