

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF KNOTT COUNTY WATER AND )	CASE NO.
SEWER DISTRICT FOR AN ALTERNATIVE RATE )	2019-00268
ADJUSTMENT )	

ORDER

On September 20, 2019, Knott County Water and Sewer District (Knott District), pursuant to KRS 61.878 and 807 KAR 5:001, Section 13, filed a motion requesting confidential treatment for its responses to Letcher County Water and Sewer District's (Letcher District) and the city of Hindman's (Hindman), filed jointly, Requests Nos. 6, 12, 14, 16, 18, and 27, and its response to the Attorney General of the Commonwealth of Kentucky, by and through the Office of Rate Intervention (Attorney General), Request No. 10. The information is more particularly described as a systems facility map providing critical energy infrastructure information; employees' names and titles in relation to compensation, benefits, pension expense, and payroll taxes; and the names of each Knott District Commissioner provided with corresponding salaries. Knott District requests that the system facilities map remain confidential in perpetuity and that the remainder of the designated information remain confidential for ten years.

In support of its motion, Knott District asserts that public disclosure of the designated information will result in unfair commercial advantage to Knott District competitors. Knott District further asserts that the designated information in response to

Request No. 6 would be valuable to any terrorist or miscreant intent on damaging or sabotaging the Knott District system. Further, that disclosure would endanger Knott District's customers' access to potable water.

Having carefully considered the motion and the material at issue, the Commission finds that only the designated information contained in Knott District's responses to Letcher District's and Hindman's, Request No. 6, is information that is generally recognized as confidential, and therefore meets the criteria for confidential treatment and is exempted from public disclosure pursuant to KRS 61.878(1)(c)(1) and 807 KAR 5:001, Section 13.

The Commission also finds that the designated information contained in Knott District's response to Letcher District's and Hindman's, Request Nos. 12, 14, 16, 18, and 27, and Attorney General's, Request No. 10, does not meet the criteria for confidential treatment and is not exempted from public disclosure pursuant to KRS 61.878(1)(c)(1) and 807 KAR 5:001, Section 13.

Pursuant to KRS 74.010, a fiscal court may create a water district. As such, a water district is a "public agency" as defined by KRS 61.870. According to Knott District's 2018 Annual Report, Knott District was created by the Knott County Fiscal Court on February 10, 1999, to be governed and operated under the rules and procedures in KRS Chapter 74, relating to water districts.<sup>1</sup> Therefore, the employees of Knott District are public employees for the purposes of applying KRS 61.870 *et seq.* to information designated by a request for confidentiality. The Attorney General of the Commonwealth of Kentucky (Attorney General) has long held that, as to public employees, "[t]he public

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<sup>1</sup> 2018 Annual Report at 10.

is entitled to know the name, position, work station and salary of state employees. These are matters in which the public has an interest since state employees are carrying on the public's business at public expense."<sup>2</sup> Therefore, the Commission finds that Knott District's motion to grant confidentiality to Knott District employees' names and titles should be denied.

The Commission has generally held that executive officer salary and compensation does not meet the criteria for confidential treatment because salaries are included as an expense in base rate calculations and because certain executive salary information must be disclosed to the public in any case in other regulatory filings.<sup>3</sup> Further, the designated information, with the exception of one name, was publicly disclosed in Knott District's 2018 Annual Report. Therefore, the Commission finds that Knott District's motion to grant confidentiality to Knott District's Commissioners' names should be denied.

Further, Knott District redacted portions of its response Item 4 and Item 24. Knott District did not make a request in its September 20, 2019 motion for confidential treatment of the material redacted therein, pursuant to 807 KAR 5:001, Section 13(2)(a). Knott District also did not establish specific grounds pursuant to KRS 61.878 for classification of the material redacted therein nor did it state the time period for the material to be treated as confidential pursuant to 807 KAR 5:001, Section 13(2)(a)(1) and (2). The Commission finds, therefore, that this material does not meet the criteria for confidential treatment and

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<sup>2</sup> Ky. Op. Atty. Gen. 76-717.

<sup>3</sup> *E.g.*, Case No. 2017-00349, *Electronic Application of Atmos Energy Corporation for an Adjustment of Rates and Tariff Modifications* (Ky. PSC May 17, 2018) at 1–2; *See also*, Case No. 2012-00221, *Application of Kentucky Utilities Company for an Adjustment of its Electric Rates* (Ky. PSC Sept. 11, 2013) at 1 (denying a request to treat executive salary and benefits as confidential for those reasons).

is not exempted from public disclosure pursuant to KRS 61.878 and 807 KAR 5:001, Section 13.

IT IS THEREFORE ORDERED that:

1. Knott District's motion for confidential treatment for its responses to Letcher District's and Hindman's, Request No. 6 is granted.

2. Knott District's motion for confidential treatment for its responses to Letcher District's and Hindman's, Request Nos. 12, 14, 16, 18 and 27, and the Attorney General's, Request No. 10 is denied.

3. Knott District's Response Items 4 and 24 are not granted confidential treatment.

4. The designated material in Knott District's responses to Letcher District's and Hindman's, Request No. 6 shall not be placed in the public record or made available for public inspection in perpetuity, or until further Orders of this Commission.

5. The designated materials in Knott District's responses to Letcher District's and Hindman's, Request Nos. 12, 14, 16, 18 and 27, and the Attorney General's, Request No. 10, are not exempt from public disclosure and shall be placed in the public record or made available for public inspection.

6. If Knott District objects to the Commission's determination that certain requested information not be granted confidential treatment, it must seek either rehearing pursuant to KRS 278.400 or judicial review of this Order pursuant to KRS 278.410. Failure to exercise either of these statutory rights will be deemed as agreement with the Commission's determination of which materials should be granted confidential treatment. Knott District will be required to demonstrate a change in circumstances in any

subsequent motion for continued confidential treatment of materials in question after the end of the period set forth in ordering paragraphs 4 and 5 of this Order.

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

8. If a non-party to this proceeding requests to inspect the material granted confidential treatment by this Order and the period during which the materials have been granted confidential treatment has not run, then Knott District 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 Knott District is unable to make such demonstration, the requested materials shall be made available for inspection. Otherwise, the Commission shall deny the request for inspection.

9. 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 Knott District to seek a remedy afforded by law.

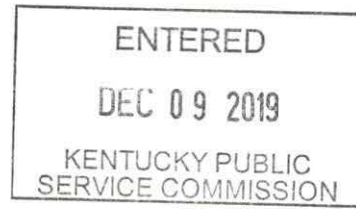
10. Within 20 days of the date of this Order, Knott District shall file a revised version of the response to Letcher District's and Hindman's, Request Nos. 12, 14, 16, 18 and 27; the response to Attorney General's, Request No. 10; Knott District's Response Items 4; and Knott District's Response Item 24 for which confidential protection was denied, reflecting as unredacted the information that has been denied confidential treatment.

11. The material for which Knott District's request for confidential treatment has been denied shall neither be placed in the public record nor made available for inspection

for 30 days from the date of this Order in order to allow Knott District to seek a remedy afforded by law.

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By the Commission



ATTEST:

  
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