

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF WATER	)	
SERVICE CORPORATION OF KENTUCKY	)	CASE NO.
ALONG WITH CORIX INFRASTRUCTURE (US)	)	2022-00396
INC. AND SW MERGER ACQUISITION CORP.	)	
FOR APPROVAL OF TRANSFER OF CONTROL	)	

ORDER

On November 23, 2022, January 12, 2023, and February 14, 2023, Water Service Corporation of Kentucky (Water Service Kentucky), Corix Infrastructure (US) Inc. (Corix US), and SW Merger Acquisition Corp. (SWMAC) (collectively, Joint Applicants) filed motions, pursuant to 807 KAR 5:001E, Section 13, and KRS 61.878, requesting that the Commission grant confidential treatment for an indefinite period for certain documents filed with its application and in response to Commission Staff's First Request for Information (Staff's First Request).

November 23, 2022 Motion:

Joint Applicants requested confidential treatment pursuant to KRS 61.878(1)(c)(1) for Exhibit A to the Transaction Agreement (Exhibit A), produced in Application Appendix B; and Appendix I of Exhibit D to the Transaction Agreement (Appendix I), produced in Application Appendix B. Joint Applicants argued that both Exhibit A and Appendix I contain sensitive information regarding the organizational structure and intimate financial information that is not otherwise disclosed and that public disclosure of these documents would work a severe competitive disadvantage against the Joint Applicants and the

proposed newly merged entity. They argue the components of the Transaction Agreement are not publicly available, nor will they become publicly available after the close of the merger; these documents contain information about the duties, obligations and rights of shareholders, and the allocation of responsibilities between management, the Board of Directors, and shareholders, which represents the quintessential inner-workings of a corporation; and that these documents contain extraordinarily sensitive information including financial projections, commercially sensitive transaction terms and figures such as corporate structure and governance of the newly merged entity and capital calculations for the newly merged entity.

The Commission finds that Exhibit A and Appendix I are generally recognized as confidential or proprietary; therefore, they meet the criteria for confidential treatment and should be exempted from public disclosure pursuant to 807 KAR 5:001E, Section 13, and KRS 61.878(1)(c)(1).

January 12, 2023 Motion:

Joint Applicants requested confidential treatment for information provided in its response to Staff's First Request Items 9, 10 and 11, pursuant to KRS 61.878(1)(c)(1).

Joint Applicants argued the disclosure of the estimated transaction cost provided in response to Staff's First Request Item 9 would provide an advantage to the Joint Applicants' competitors, who would benefit from knowledge of estimated and actual transaction costs without the hurdles systematically associated with acquisition of such information about privately owned organizations.

Joint Applicants further argue that disclosure of non-executive employees' personally identifiable information, provided in response to Staff's First Request Item 10,

would invade personal privacy. Joint Applicants pointed out that Water Service Kentucky also requested confidential treatment of employees' names and titles in the rate case before the Commission, 2022-00147<sup>1</sup>. In the rate case, this information was provided in conjunction with the individual employees' salary information. Joint Applicants stated that, if the employees' names and job duties were publicly disclosed in this transfer-of-control case, anyone could easily cross-reference the filings in the rate case and determine employees' salary information.

Joint Applicants also argued that the information provided in response to Staff's First Request Item 11 is confidential and proprietary information, containing related entities' finances and due diligence processes, which, if disclosed, could be used by the Joint Applicants' competitors to gain a competitive advantage over them.

Joint Applicants pledged that the customers of Water Service Kentucky will not incur any cost in conjunction with the proposed transfer, and Joint Applicants are also required by the Commission's March 23, 2023 Order to provide written acceptance of a regulatory commitment.<sup>2</sup>

Given Water Service Kentucky's assurances that it will not seek to recover the transaction costs of the proposed merger through rates, and the potential commercial disadvantage if disclosed, the Commission finds that the information in response to Staff's First Request should be granted confidential protection. The Commission further finds that the information provided by Joint Applicants in response to Staff's First Request,

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<sup>1</sup> Case No. 2022-00147, *Electronic Application of Water Service Corporation of Kentucky for a General Adjustment in Existing Rates and a Certificate of Public Convenience and Necessity to Deploy Advanced Metering Infrastructure*.

<sup>2</sup> Order (Ky. PSC Mar. 23, 2023) at Appendix Items 14, 15.

Items 10 and 11, is generally recognized as confidential or proprietary; therefore, it meets the criteria for confidential treatment and is exempted from public disclosure pursuant to 807 KAR 5:001E, Section 13, and KRS 61.878(1)(a) and (1)(c)(1).

February 14, 2023 Motion:

Joint Applicants requested confidential treatment for information provided as a supplemental response to Staff's First Request Item 9. In the response, Joint Applicants provided actual transaction costs through December 31, 2022. Joint Applicants argued the same rationale discussed above in its January 12, 2023 motion applies to the supplemental response as well. The Commission finds that this supplemental information is likewise afforded confidential protection, for the same reasons above, pursuant to KRS 61.878(1)(c)(1).

IT IS THEREFORE ORDERED that:

1. Joint Applicants' motions for confidential treatment are granted.
2. The designated material granted confidential treatment by this Order shall not be placed in the public record or made available for public inspection for an indefinite period or until further Order of this Commission.
3. Use of the designated material granted confidential treatment by this Order in any Commission proceeding shall comply with 807 KAR 5:001E, Section 13(9).
4. Joint Applicants shall inform the Commission if the designated material granted confidential treatment by this Order becomes publicly available or no longer qualifies for confidential treatment.
5. If a nonparty to this proceeding requests to inspect the material granted confidential treatment by this Order and the period during which the material has been

granted confidential treatment has not expired, Joint Applicants shall have 30 days from receipt of written notice of the request to demonstrate that the material still falls within the exclusions from disclosure requirements established in KRS 61.878. If Joint Applicants are unable to make such demonstration, the requested material shall be made available for inspection. Otherwise, the Commission shall deny the request for inspection.

6. The Commission shall not make the requested material available for inspection for 30 days from the date of service of an Order finding that the material no longer qualifies for confidential treatment in order to allow Joint Applicants to seek a remedy afforded by law.

PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

  
Commissioner

ENTERED  
APR 14 2023 bsb  
KENTUCKY PUBLIC  
SERVICE COMMISSION

ATTEST:

  
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