

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF KENTUCKY-)	
AMERICAN WATER COMPANY FOR AN)	
ADJUSTMENT OF RATES, A CERTIFICATE OF)	
PUBLIC CONVENIENCE AND NECESSITY FOR)	CASE NO.
INSTALLATION OF ADVANCED METERING)	2023-00191
INFRASTRUCTURE, APPROVAL OF)	
REGULATORY AND ACCOUNTING)	
TREATMENTS, AND TARIFF REVISIONS)	

ORDER

On August 18, 2023, Kentucky-American Water Company (Kentucky-American) filed a petition, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, requesting that the Commission grant confidential protection for a period five years for certain responses to Commission Staff's Second Request for Information (Staff's Second Request), Attorney General's First Request for Information (Attorney General's First Request), and Lexington-Fayette Urban County Government's First Request for Information (LFUCG's First Request), except for its responses to Staff's Second Request, Item 81, Item 82, and, Item 12, Attachment 2, which Kentucky-American requests to remain confidential indefinitely.

LEGAL STANDARD

The Commission is a public agency subject to Kentucky's Open Records Act, which requires that all public records "be open for inspection by any person, except as

otherwise provided by KRS 61.870 to 61.884.”¹ Exceptions to the free and open examination of public records contained in KRS 61.878 should be strictly construed.² The party requesting that materials be treated confidentially has the burden of establishing that one of the exceptions is applicable.³ KRS 61.878(1)(a) exempts from disclosure “[p]ublic records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.”⁴ KRS 61.878(1)(c)(1) provides an exception to the requirement for public disclosure of records that are “generally recognized as confidential and proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records.”⁵ KRS 61.878(1)(m) permits an exception for records that if disclosed would have a reasonable likelihood of threatening the public safety by exposing a vulnerability in preventing, protecting against, mitigating, or responding to a terrorist act.⁶ The exemption is limited to certain types of records, including:

(f) Infrastructure records that expose a vulnerability referred to in this subparagraph through the disclosure of the location, configuration, or security of critical systems, including public utility critical systems. These critical systems shall include but not be limited to information technology, communication, electrical, fire suppression, ventilation, water, wastewater, sewage, and gas systems.⁷

¹ KRS 61.872(1).

² See KRS 61.871.

³ 807 KAR 5:001, Section 12(2)(c).

⁴ KRS 61.878(1)(a).

⁵ KRS 61.878(1)(c)(1).

⁶ KRS 61.878(1)(m)(1).

⁷ KRS 61.878(1)(m)(1)(f).

(g) the following records when their disclosure will expose a vulnerability referred to in this subparagraph: detailed drawings, schematics, maps or specifications of structural elements . . . of any building or facility owned, occupied, leased, or maintained by a public agency.⁸

A terrorist act is defined as including a criminal act intended to “[d]isrupt a system” identified in the above.⁹

DISCUSSION

Response to Staff’s Second Request, Item 11, Attachment 4

In response to Staff’s Second Request, Item 11, Attachment 4, Kentucky-American provided in bid analysis notes and information about the process of selecting bidders. Kentucky-American argued that this information should be granted confidential treatment pursuant to KRS 61.878(1)(c)(1) and disclosing the information would provide insight into the internal analysis surrounding the bidding process, which could prevent Kentucky-American obtaining the most favorable terms in future bids and negotiations, which could result in financial harm to Kentucky-American and its customers.

Response to Staff’s Second Request, Item 12; Attachment 1-3; Item 17; Response to Attorney General’s First Request, Item No. 46, Attachments 1-4; and Response to LFUCG’s First Request, Item No. 75

In response to Staff’s Second Request, Items 12, Attachments 1-3 and Item 17, Kentucky-American requested confidential treatment for individual vendor names and proposed costs evaluated in connection to selecting an advanced metering infrastructure system (AMI) through the bid process. In response to Attorney General’s First Request, Item 46, Attachment 1-4, Kentucky-American provided vendor-specific cellular coverage

⁸ KRS 61.878(1)(m)(1)(g).

⁹ KRS 61.878(1)(m)(2)(b).

analysis for each project, including endpoint locations, contained in AMI bids. In response to LFUCG's First Request, Item 75, Kentucky-American provided vendor-specific bid information and the cost/benefit analysis conducted by Kentucky-American. Kentucky American argued that this information should be granted confidential treatment pursuant to KRS 61.878(1)(c)(1) and public disclosure of the vendor-specific bid information could negatively influence future negotiations and prevent Kentucky-American from receiving the most favorable prices and terms, which would result in Kentucky-American and its customers paying increased costs.

Response to Staff's Second Request Item 29, Attachment 1 and Item 30, Attachments 13, 20, and 21; and Response to Attorney General's First Request, Item 99, Attachments 20, 33, 34, 36, 37, 38, 39, 50 and Item 104, Attachment 1

In response to Staff's Second Request, Items 29 and 30 and the Attorney General's First Request, Items 99 and 104, Kentucky-American provided data from third-party sources that Kentucky-American argued are subject to copyright restrictions and are available through a paid subscription. Kentucky-American argued this information should be granted confidential treatment pursuant to KRS 61.878(1)(c)(1). Kentucky-American argued that the third party has a copyright for the designated material, and if the information is disclosed, Kentucky-American may not be able to receive financial reports in the future leading to harm Kentucky-American and its customers.

Response to LFUCG's First Request, Item 25, Attachments 1 and 2

In response to LFUCG's First Request, Item 25, Attachments 1 and 2, Kentucky-American provided internal business documents, specifically a hydrant inspection form and hydrant inspection practice. Kentucky-American argued this information should be granted confidential treatment pursuant to KRS 61.878(1)(c)(1). Kentucky-American

argued that the designated material contains proprietary information that if disclosed would give Kentucky-American's competitors an unfair commercial disadvantage given the resources expended by Kentucky-American's parent, American Water, to develop the internal business documents.

Response to Attorney General's First Request, Item 3, Attachments 1-4

In response to Attorney General's First Request, Item 3, Kentucky-American provided Attachments 1-4 which contain both non-executive and executive employee salary by position with unredacted executive salary, average bonus by employee type, and annual performance plan pay by position. Kentucky-American argued this information should be granted confidential treatment pursuant to KRS 61.878(1)(a). Kentucky-American argued that the information is propriety and disclosure would violate the privacy rights of employees and well as provide insight into Kentucky-American's salary practices. Kentucky-American also argued that the Commission has previously recognized that salary information should be confidential.¹⁰

Response to Staff's Second Request, Item 81, Attachment 1; Item 82, Attachment 1; and Item 12, Attachment 2

In response to Staff's Second Request, Item 81, Kentucky-American provided Attachment 1 which contain detailed engineering drawings and diagrams of DMA vaults to be installed at Kentucky Horse Park. In response to Staff's Second Request, Item 82, Kentucky-American provided Attachment 1 which contain maps and specific locations of special connections within Kentucky-American's distribution system. In response to

¹⁰ Case No. 1989-00374, *In the Matter of Application of Louisville Gas and Electric Company for an Order Approving an Agreement and Plan of Exchange and to Carry Out Certain Transactions in Connection Therewith* (Ky. PSC Apr. 30, 1997), Order at 2.

Staff's Second Request, Item 12, Kentucky-American provided Attachment 2 which contains specific GPS asset gateway locations. Kentucky-American argued this information should be granted confidential treatment pursuant to KRS 61.878(1)(m). Kentucky-American argued that this information is critical infrastructure information that if disclosed would threaten public safety and could compromise Kentucky-Americans facilities or service.

DISCUSSION AND FINDINGS

Having considered the petition and material at issue, the Commission finds that Kentucky-American's petition should be granted in part and denied in part. The Commission finds that the bid analysis notes and information about the process of selecting bidders contained in Kentucky-American's response to Staff's Second Request, Item 11, Attachment 4; the cost and benefit analysis contained in Kentucky-American's response to Staff's Second Request, Item No. 12, Attachment 1; the information provided by Moody's Investor Service and S&P Global to Kentucky-American contained in Attachment 1 provided in response to Staff's Second Request Item 29; Attachments 13, 20, and 21 provided in response to Staff's First's Request Item 30; Attachments 20, 33, 34, and 36-40 provided in response to Attorney General's First Request, Item 99; Attachment 1 provided in response to Attorney General's First Request Item 104; and Attachment 1 and 2 provided in response to LFUCG' First Request, Item 25 are records that meet the criteria for confidential treatment and should be exempted from public disclosure pursuant to KRS 61.878 (1)(c)(1) and 807 KAR 5:001, Section 13.

Disclosure of bid analysis information could put Kentucky-American at a commercial disadvantage. The Commission has previously found that bid analysis and selection information should be afforded confidential treatment.¹¹

Disclosure of the cost and benefits analyses and cost-specific information could put Kentucky-American at a future disadvantage in its negotiations with vendors. The Commission has previously found that cost and benefit analyses be afforded confidential treatment.¹²

Disclosure of the information provided by Moody's Investor Service and S&P Global would put Kentucky-American at a commercial disadvantage and violate their contractual obligations. The Commission has previously held that reports from subscription-based rating services such as Moody's and S&P Global Ratings should be granted confidential treatment.¹³

The Commission has previously found that Kentucky-American's fire hydrant maintenance procedures should be afforded confidential treatment.¹⁴

The Commission finds that Attachments 1-4 provided in response to Attorney General's First Request, Item 3 should be granted confidential treatment pursuant to

¹¹See Case No. 2021-00294, *An Electronic Examination of the Application of the Fuel Adjustment Clause of Kentucky Utilities Co. from Nov. 1, 2020 Through Apr. 30, 2021*, (Ky. PSC May 17, 2022), Order at 2.

¹² See Case No. 2016-00026, *Application of Kentucky Utilities Co. for Certificates of Pub. Convenience & Necessity & Approval of Its 2016 Compliance Plan for Recovery by Env't Surcharge*, (Ky. PSC Sept. 27, 2016), Order at 1-2.

¹³ See Case No. 2021-00190, *Electronic Application of Duke Energy Kentucky, Inc. for: 1) an Adjustment of the Nat. Gas Rates; 2) Approval of New Tariffs, & 3) All Other Required Approvals, Waivers, & Relief*, (Ky. PSC Apr. 14, 2022), Order. Case No. 2021-00481, *Electronic Joint Application of Am. Elec. Power Co., Inc., Kentucky Power Co., & Liberty Utilities Co. for Approval of the Transfer of Ownership & Control of Kentucky Power Co.* (Ky. PSC Mar. 29, 2022), Order.

¹⁴ Case No. 2018-00358, *Electronic Application of Kentucky-American for an Adjustment of Rates* (Ky. PSC Mar. 14, 2019), Order at 2-3.

KRS 61.878(1)(a). This information is related to non-executive compensation. For non-executive compensation, the Commission has previously found that such information should be afforded confidential treatment and disclosure would be a violation of employee's expectation of privacy.¹⁵

The Commission finds that Attachment 1 provided in response to Staff's Second request Item 81; Item 82, Attachment 1; and Item 12, Attachment 2 should be granted confidential treatment pursuant to KRS 61. 878(1)(m). The detailed drawings provided in response to Staff's Second Request, Item 81 would be considered critical infrastructure information and disclosing such information would create a risk to public safety.

The Commission has previously found that maps of Kentucky-American's water distribution system could pose a risk to public safety.¹⁶ The Commission further finds that while the Kentucky Infrastructure Authority does show the water line distribution system, the maps provided by Kentucky-American are more detailed and provide specific information for where the special connections, water valves, and water mains are.

The specific locations of GPS gateway locations would be considered critical infrastructure information and disclosing such information would create a risk to public safety.

The Commission further finds that the request for confidential treatment should be denied pursuant to 807 KAR 5001 Section 13 (1)(c) for the highlighted vendor names

¹⁵ See Case No. 2020-00104, *Electric Application of Clark Energy Coop., Inc. for A General Adjustment of Rates Pursuant to Streamlined Proc. Pilot Program Established in Case No. 2018-00407* (Jan. 25, 2022), Order at 3.

¹⁶ *Case No. 2014-00258, Application of Kentucky-American for A Certificate of Convenience & Necessity Authorizing the Construction of Richmond Rd. Station Filter Bldg. Improvements*, (Ky. PSC, Mar. 4, 2019), Order at 1.

contained in Kentucky-American's response to Commission Staff's Second Request, Item 12, Attachment 2 and 3 and Item 17. Kentucky-American has provided that as a subsidiary of American Water, they can choose between Badger and Neptune for small meter hardware after pricing and performance is negotiated every 2-3 years.¹⁷ These two vendors were previously selected by American Water as strategic partners for Meter and Endpoint Software.¹⁸ Kentucky-American has failed to meet its burden of proof as to how release of vendor names alone would put the company at a competitive disadvantage, as the provided reasoning did not relate to the names but to the pricing information. Kentucky-American has previously argued before the Commission that disclosing the names of meter suppliers could increase prices to Kentucky-American and harm relationships with other meter-suppliers.¹⁹ The Commission denied the request for confidential treatment, noting that ratepayers should be aware of the facts the Commission relied upon in its decisions. The Commission also noted that the information did not include pricing information or specific information that could be considered as useful information to competitors.²⁰ Kentucky-American's argument in this case is very similar to this argument and reasoning. Therefore, the highlighted vendor names contained in Kentucky-American's response to Staff's Second Request, Item 12, Attachment 2 and 3, and Item 17 do not meet the criteria for confidential treatment and

¹⁷ Kentucky-American's Response to Staff's Second Request, (filed Aug. 18, 2023), Item No. 11.

¹⁸ Kentucky-American's Response to Staff's Second Request, Item No. 11

¹⁹ No. 2022-00299, *Electronic Investigation of Kentucky-American's Alleged Violation of A Tariff & Comm'n Regulations. Regarding Meters & Monitoring Customer Usage*, (Ky. PSC June 5, 2023), Order at 3.

²⁰ No. 2022-00299, June 5, 2023 Order at 4.

should not be exempted from public disclosure pursuant to KRS 61.878 (1)(c)(1) and 807 KAR 5:001, Section 13.

The Commission finds that the designated material contained in Kentucky American's response to Attorney General's First Request, Item 46, Attachments 1-4 for cellular coverage analysis for each project from each selected vendor including endpoint locations and should be denied confidential treatment pursuant to 807 KAR 5001 Section 13 (1)(c). Kentucky-American provided no additional information about why cellular coverage analysis should be confidential, besides that it contains vendor names.

The Commission finds that Attachment 1 provided in response to LFUCG's First Request, Item 75 are vendor names and AMI of selected vendors and should be denied confidential treatment pursuant to 807 KAR 5001 Section 13 (1)(c). The majority of the features of the AMI of selected vendor are publicly available on the vendor's website.

IT IS THEREFORE ORDERED that:

1. Kentucky-American's August 18, 2023 petition for confidential treatment is granted in part and denied in part.
2. Kentucky-American's petition for confidential treatment for its responses to Staff's Second Request, Item 11, Attachment 4; Staff's Second Request, Item 12; Attachments 1; Staff's Second Request, Item 29, Attachment 1; Staff's First Request, Item 30, Attachments 13, 20, and 21; Attorney General's First Request Item 99, Attachments 20, 33, 34, and 36-40; Attorney General's First Request Item 104, Attachment 1; LFUCG's First Request, Item No. 25, Attachments 1 and 2; Attorney General's First Request, Item 3, Attachments 1-4; Staff's Second Request, Item 81,

Attachment 1; Staff's Second Request Item 82, Attachment 1; and Staff's Second Request, Item 12, Attachment 2 is granted.

3. Kentucky-American's petition for confidential treatment for its responses to Staff's Second Request Item 17; Staff's Second Request, Item 12, Attachments 2-3; Attorney General's First Request, Item 46, Attachment 1-4; and LFUCG's First Request, Item 75, Attachment 1 is denied.

4. The designated material granted confidential treatment by this Order shall not be placed in the public record or made available for public inspection for five years or until further order of this Commission, except for its responses to Staff's Second Request, Item 81, Attachment 1; Staff's Second Request Item 82, Attachment 1; and Staff's Second Request, Item 12, Attachment 2 in which the designated material granted confidential treatment by this Order shall not be placed in the public record or made available for public inspection indefinitely or until further order of this Commission.

5. Use of the designated material granted confidential treatment by this Order in any Commission proceeding shall comply with 807 KAR 5:001, Section 13(9).

6. Kentucky-American shall inform the Commission if the designated material granted confidential treatment becomes publicly available or no longer qualifies for confidential treatment.

7. 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, Kentucky-American 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 Kentucky-

American is unable to make such demonstration, the requested material shall be made available for inspection. Otherwise, the Commission shall deny the request for inspection.

8. The Commission shall not make the requested material for which confidential treatment was granted 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 Kentucky-American to seek a remedy afforded by law.


9. The designated material denied confidential treatment by this Order is not exempt from public disclosure and shall be placed in the public record and made available for public inspection.

10. If Kentucky-American objects to the Commission's determination that the requested material 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 shall be granted confidential treatment.

11. Within 30 days of the date of service of this Order, Kentucky-American shall file a revised version of the designated material for which confidential treatment was denied, reflecting as unredacted the information that has been denied confidential treatment.

12. The designated material for which Kentucky-American'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 service of this Order to allow Kentucky-American to seek a remedy afforded by law.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ENTERED
DEC 11 2023 bsb
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:


Executive Director

*Angela M Goad
Assistant Attorney General
Office of the Attorney General Office of Rate
700 Capitol Avenue
Suite 20
Frankfort, KENTUCKY 40601-8204

*Larry Cook
Assistant Attorney General
Office of the Attorney General Office of Rate
700 Capitol Avenue
Suite 20
Frankfort, KENTUCKY 40601-8204

*Honorable David J. Barberie
Managing Attorney
Lexington-Fayette Urban County Government
Department Of Law
200 East Main Street
Lexington, KENTUCKY 40507

*Mary Ellen Wimberly
STOLL KEENON OGDEN PLLC
300 West Vine Street
Suite 2100
Lexington, KENTUCKY 40507-1801

*Kentucky-American Water Company
2300 Richmond Road
Lexington, KY 40502

*J. Michael West
Office of the Attorney General Office of Rate
700 Capitol Avenue
Suite 20
Frankfort, KENTUCKY 40601-8204

*Jeffrey Newcomb
Kentucky-American Water Company
2300 Richmond Road
Lexington, KY 40502

*Monica Braun
STOLL KEENON OGDEN PLLC
300 West Vine Street
Suite 2100
Lexington, KENTUCKY 40507-1801

*James W Gardner
Sturgill, Turner, Barker & Moloney, PLLC
333 West Vine Street
Suite 1400
Lexington, KENTUCKY 40507

*Rebecca C. Price
Sturgill, Turner, Barker & Moloney
155 East Main Street
Lexington, KENTUCKY 40507

*John G Horne, II
Office of the Attorney General Office of Rate
700 Capitol Avenue
Suite 20
Frankfort, KENTUCKY 40601-8204

*Susan Speckert
Lexington-Fayette Urban County Government
Department Of Law
200 East Main Street
Lexington, KENTUCKY 40507

*Honorable Lindsey W Ingram, III
Attorney at Law
STOLL KEENON OGDEN PLLC
300 West Vine Street
Suite 2100
Lexington, KENTUCKY 40507-1801

*M. Todd Osterloh
Sturgill, Turner, Barker & Moloney, PLLC
333 West Vine Street
Suite 1400
Lexington, KENTUCKY 40507