

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC PROPOSED ACQUISITION BY)	
BLUEGRASS WATER UTILITY OPERATING)	
COMPANY, LLC AND THE TRANSFER OF)	CASE NO.
OWNERSHIP AND CONTROL OF ASSETS BY)	2019-00360
CENTER RIDGE WATER DISTRICT, INC.; JOANN)	
ESTATES UTILITIES, INC.; AND RIVER BLUFFS,)	
INC.)	

ORDER

On October 21, 2019, Bluegrass Water Utility Operating Company, LLC (Bluegrass Water), Center Ridge Water District, Inc. (Center Ridge Water), Joann Estates Utilities, Inc. (Joann Estates), and River Bluffs, Inc. (River Bluffs), (collectively, Joint Applicants), electronically filed a motion, pursuant to 807 KAR 5:001, Section 13, requesting confidential treatment for certain Exhibits attached to the Joint Application for Approval of Acquisition and Transfer of Ownership and Control of Utility Assets (Joint Application) for a period of five years.

In particular, Joint Applicants state that, as a part of its Joint Application, it attached as Exhibits C–E a copy of each fully executed Purchase Agreement between Bluegrass Water and each transferring utility, specifically the dollar amounts contained therein; as Exhibit F Central States Water Resources, LLC’s (CSWR) June 30, 2019 Consolidated Balance Sheet; as Exhibit G the engineering reports for each system; and as Exhibit I the Bluegrass Water pro forma balance sheet and income statement.

Joint Applicants maintain that the information sought to be treated as confidential is not publicly disseminated, and public disclosure of this information would harm Bluegrass Water, CSWR and its affiliates, the transferring utilities, or all of them. Joint Applicants argue that Exhibit F reveals information regarding the internal financial ability and workings of CSWR and its affiliates. Furthermore, as CSWR is not a utility, the information disclosed in Exhibit F would not otherwise be subject to disclosure to a regulatory body in the usual course of business. Joint Applicants advised that other significant redactions were required to Exhibit F because minimal redaction would allow competitively sensitive confidential information to be inferred from other information disclosed. Joint Applicants argue that disclosure of the acquisition amounts in Exhibits C–G and Exhibit I could create incentives for other potential purchasers to undercut efforts by the Joint Applicants to successfully close these transactions. Joint Applicants also argue that the dollar amounts in Exhibits F and I could be used by competitors to the business injury of CSWR and its affiliates, including Bluegrass Water. If disclosed, the purchase prices, plans for the future, and consolidated financials would give competitors sensitive information about CSWR's acquisition strategy and capability, its valuation of systems, their problems, and potential.

In addition, Joint Applicants assert that the cost estimates in the Exhibit I balance sheet reflect innovative and proprietary technology and processes developed through experience and used by CSWR and its affiliates to renovate small wastewater systems. Therefore, the public disclosure of this information and accessibility to the information by other potential purchasers would lessen competition in a subsequent bidding process. Such disclosure would also be costly in the future when attempts to acquire similarly

distressed systems are made, and CSWR's ability to negotiate terms specific to a particular utility and its circumstances have been compromised. Joint Applicants argue that the reports in Exhibit G reveal information regarding the internal ability and workings of Bluegrass Water and its affiliates. Specifically, this information reveals how they evaluate potential systems for acquisition and the internal processes by which they respond to various issues that arise in similar wastewater systems. Joint Applicants also argue that these documents demonstrate innovative and proprietary technology and processes developed through experience and used by CSWR and its affiliates to renovate small water and wastewater systems. As such, Joint Applicants assert that these processes are "trade secrets" as defined by KRS 365.880(4) and fall within the scope of the trade secret exemption from disclosure pursuant to KRS 61.878(c). Joint Applicants argue that Bluegrass Water and its affiliates would suffer a serious business injury if these trade secrets were misappropriated by other competitors in the wastewater industry. Joint Applicants also assert that the engineering reports in Exhibit G are exempt from public disclosure as proprietary because Bluegrass Water expended funds with a third party in investigating the systems. Accordingly, if this information were shared publicly, Bluegrass Water would suffer harm because it would give other potential purchasers and competitors a "leg-up" with the systems discussed in the report and lessen competition in a subsequent bidding process.

Having carefully considered the motion and the material at issue, the Commission finds that the designated information of Exhibits C–E, a copy of each fully executed Purchase Agreement between Bluegrass Water and each transferring utility, specifically the dollar amounts contained therein; Exhibit F CSWR's June 30, 2019 Consolidated

Balance Sheet; Exhibit G, the engineering reports for each system; and Exhibit I the Bluegrass Water pro forma balance sheet and income statement for which Joint Applicants seek confidential treatment meet the criteria for confidential treatment and are exempted from public disclosure pursuant to KRS 61.878(1)(c)(1). The Commission finds that the designated information in Exhibits F and G should not be placed in the public record or made available for public inspection for a period of five years. The Commission finds that the designated information in Exhibits C–E and Exhibit I should not be placed in the public record or made available for public inspection until such time as the transactions have closed, rather than the five years as requested by Joint Applicants.

IT IS THEREFORE ORDERED that:

1. Joint Applicant’s motion for confidential protection is granted.
2. Joint Applicant’s request to keep the information identified out of the public record and not be subject to public inspection for a period of five years is granted as to Exhibits F and G.
3. Joint Applicant’s request to keep the information identified out of the public record and not be subject to public inspection for five years is denied as to Exhibits C – E and Exhibit I.
4. The designated material in Exhibits F and G shall not be placed in the public record or made available for public inspection for five years, or until further Orders of this Commission.
5. The designated material in Exhibits C–E and Exhibit I shall not be placed in the public record or made available for public inspection until the transactions have closed. Within five days from each of the dates of the closing of the transactions, Joint

Applicants shall submit written notification to the Commission, advising either that the information discussed herein no longer qualifies for confidential treatment or requesting that the information continue to be treated as confidential and demonstrating that the information still falls within the exclusions established in KRS 61.878.

6. If Joint Applicants object to the time limits that the Commission has placed on the confidential treatment for the information in question, 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 the period for which the materials are afforded confidential treatment. Joint Applicants 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 materials granted confidential treatment by this Order and the period during which the materials have been granted confidential treatment has not run, then Joint Applicants 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 Joint Applicants are 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 Joint Applicants to seek a remedy afforded by law.

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By the Commission

ENTERED
MAR 10 2020
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:



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