

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC PROPOSED ACQUISITION BY)	
BLUEGRASS WATER UTILITY OPERATING)	
COMPANY, LLC OF WASTEWATER SYSTEM)	CASE NO.
FACILITIES AND SUBSEQUENT TARIFFED)	2020-00028
SERVICE TO USERS PRESENTLY SERVED)	
BY THOSE FACILITIES)	

ORDER

On February 24, 2020, Bluegrass Water Utility Operating Company, LLC (Bluegrass Water) electronically filed a motion, pursuant to 807 KAR 5:001, Section 13, requesting confidential treatment for certain information contained in exhibits attached to the application filed with the Commission for any approvals necessary to acquire the facilities of certain wastewater systems that are not subject to the Commission's jurisdiction, and to thereafter provide service to those systems' present users for five years. In particular, Bluegrass Water states that, as a part of its application, Exhibits A-3, B-3, C-3, and D-3 are copies of each Sale Agreements between Bluegrass Water and the four selling systems, specifically the dollar amounts contained therein and Exhibits A-4, B-4, C-4, and D-4, the engineering reports for each system.

Bluegrass Water maintains that the information sought to be treated as confidential is not publicly disseminated and that public disclosure of this information would harm Bluegrass Water and the selling systems. Bluegrass Water states that competitors could use the designated information to the injury of Bluegrass Water and its affiliates, including Central States Water Resources, Inc. (CSWR, Inc.), and cause injury in other ways as

well, including acquisition strategy and capability and valuation of systems and their problems and potential. The Commission or the Division of Water does not regulate the systems, and the redacted information in these Exhibits would not be disclosed to a regulatory body in the usual course of business. Bluegrass Water argues that there is a risk of harm if the sale amounts contained in Exhibits A-3, B-3, C-3, and D-3 are disclosed. Bluegrass Water states that such disclosure could create incentives for other potential purchasers to undercut efforts by Bluegrass Water to successfully close this acquisition and that public disclosure of this information could distort competition in a subsequent bidding process. Further, that public disclosure would be costly in the future when attempts to acquire other Kentucky systems are made, and Bluegrass Water's, or its affiliate's, ability to negotiate terms specific to a system and its circumstances have been compromised. Bluegrass Water argues that the engineering reports in Exhibits A-4, B-4, C-4, and D-4 reveal information regarding the internal ability and workings of Bluegrass Water and its affiliates. In particular, how they evaluate potential acquisitions and respond to various issues that arise in wastewater systems.

Further, these documents demonstrate innovative and proprietary technology and processes developed through experience and used by CSWR, Inc. and affiliates like Bluegrass Water to renovate small wastewater systems. Bluegrass Water maintains that these processes are "trade secrets" as defined by KRS 365.880(4) and are exempt from disclosure under KRS 61.878(1)(c)(1). Bluegrass Water states that if the trade secrets contained in the engineering reports do not receive confidential treatment, the risk of harm would be unnecessarily increased that Bluegrass Water and its affiliates suffer a serious business injury and these trade secrets would be misappropriated by competitors in the

wastewater industry. Bluegrass Water also argues that the engineering reports are proprietary and that Bluegrass Water, directly or indirectly through CSWR, Inc. expended funds with a third party as a part of the due diligence in investigating these systems. As a result, Bluegrass Water should not be forced to share this information publicly as public accessibility would cause Bluegrass Water harm as it would give other potential purchasers and competitors a “leg-up” regarding the systems discussed in the reports and lessen competition in the subsequent bidding process.

Finally, Bluegrass Water argues that public disclosure of the engineering reports would be costly in the future when attempts to acquire other systems are made and Bluegrass Water’s ability to negotiate terms specific to a particular system and its circumstances are compromised.

Having carefully considered the motion and the material at issue, the Commission finds that the designated information in Exhibits A-3, B-3, C-3, and D-3, copies of each Sale Agreement between Bluegrass Water and the four selling systems, specifically the dollar amounts contained therein, and Exhibits A-4, B-4, C-4, and D-4, the engineering reports for each system, for which Bluegrass Water seeks 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 A-4, B-4, C-4, and D-4 should not be placed in the public record or made available for public inspection for five years. The Commission finds that the designated information in Exhibits A-3, B-3, C-3, and D-3 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 Bluegrass Water.

IT IS THEREFORE ORDERED that:

1. Bluegrass Water's motion for confidential treatment of information is granted.

2. Bluegrass Water's request to keep the information identified out of the public record and not be subject to public inspection for five years is granted as to Exhibits A-4, B-4, C-4, and D-4.

3. Bluegrass Water'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 A-3, B-3, C-3, and D-3.

4. The designated material in Exhibits A-4, B-4, C-4, and D-4 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 A-3, B-3, C-3, and D-3 shall not be placed in the public record or made available for public inspection until such time as the transactions have closed. Within five days from each of the dates of the closing of the transactions, Bluegrass Water shall submit written notification to the Commission, advising that either 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 Bluegrass Water objects 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. Bluegrass Water 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 paragraph 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 Bluegrass Water 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 Bluegrass Water 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 Bluegrass Water to seek a remedy afforded by law.

By the Commission

ENTERED
APR 16 2020 rcs
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:



Executive Director

Case No. 2020-00028

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