

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)	
OWNERSHIP AND CONTROL OF ASSETS BY:)	CASE NO.
DELAPLAIN DISPOSAL COMPANY;)	2020-00297
HERRINGTON HAVEN WASTEWATER)	
COMPANY, INC.; SPRINGCREST SEWER)	
COMPANY, INC; AND WOODLAND ACRES)	
UTILITIES, LLC.)	

ORDER

On September 16, 2020, Bluegrass Water Utility Operating Company, LLC (Bluegrass Water) filed a motion, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, requesting that the Commission grant confidential protection for five years for redacted exhibits to its application for approval of transfer of utilities Delaplain Disposal Company; Herrington Haven Wastewater Company, Inc.; Springcrest Sewer Company, Inc.; and Woodland Acres Utilities, LLC to Bluegrass Water.

On November 5, 2020, Bluegrass Water filed a motion pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, requesting that the Commission grant confidential protection for five years for information redacted from Commission Staff's First Request for Information (Staff's First Request), Items 2, 8, 16, 17, and 23.

On December 2, 2020, Bluegrass Water filed a motion pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, requesting that the Commission grant confidential

protection for five years for information redacted from Commission Staff's Second Request for Information (Staff's Second Request), Item 8.

The Commission approved the transfer of these utilities to Bluegrass Water on January 14, 2021.¹ Bluegrass Water subsequently filed notice of the closing of the transfers and accounting entries including purchase prices and acquisition costs.²

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."³ KRS 61.878(1)(c)(1) provides an exception to the requirement for public disclosure for records that are "generally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records." Exceptions to the free and open examination of public records contained in KRS 61.878 should be strictly construed.⁴ The party requesting that materials be treated confidentially has the burden of establishing that one of the exceptions is applicable.⁵

¹ Order (Ky. PSC Jan. 14, 2021) at 16.

² Notice of 2/23/21 Acquisition Date for assets of Delaplain, Herrington Haven, and Springcrest (filed Feb. 24, 2021); Notice of 3/9/21 Acquisition Date for assets of Woodland Acres (filed Mar. 11, 2021); Bluegrass Water's journal entries for Delaplain, Herrington Haven and Springcrest (filed Mar. 25, 2021); Bluegrass Water journal entries for 3-9-21 acquisition of Woodland Acres assets (filed Apr. 1, 2021).

³ KRS 61.872(1).

⁴ See KRS 61.871.

⁵ 807 KAR 5:001, Section 13(2)(c).

SEPTEMBER 16, 2020 MOTION

Bluegrass Water sought confidential treatment for several exhibits to its application for transfer. This information included purchase prices redacted from transfer agreements,⁶ redacted figures from 2020 consolidated financials⁷ for Bluegrass Water affiliate company CSWR, LLC (CSWR), text redacted from engineering reports⁸ for transferred facilities and equipment prepared by third-party 21 Design, and figures redacted from Bluegrass Water's balance sheet⁹ (specifically prices, costs of planned repairs and improvements, and the most recently reported annual operating expenses and revenues of the individual transferring utilities).

Bluegrass Water argued that public disclosure of the acquisition sums could create incentives for other potential purchasers to undercut efforts by the parties to successfully close this transaction.

Regarding CSWR's financials, Bluegrass Water asserted that CSWR is not a utility and its financial data would not otherwise be subject to disclosure to a regulatory body in the usual course of business.

Bluegrass Water sought confidential treatment for engineering reports because they included information regarding the internal ability and workings of Bluegrass Water and its affiliates; specifically, how they evaluate potential systems for acquisition and the internal processes by which they respond to various issues that arise in similar

⁶ Application, Exhibits G, H, I, and J.

⁷ *Id.*, Exhibit K.

⁸ *Id.*, Exhibit C.

⁹ *Id.*, Exhibit N.

wastewater systems and proprietary technology and processes developed through experience and used by Bluegrass Water and its affiliates to renovate wastewater systems. Bluegrass Water also argued that the reports are proprietary to the third-party engineering firm.

Regarding balance sheet information, Bluegrass Water argued that this information reflects innovative and proprietary technology and processes developed through experience and used to renovate wastewater systems.

Having considered the motion and the material at issue, the Commission finds that Bluegrass Water's motion is granted in part and denied in part. The Commission previously granted confidential treatment for affiliate CSWR's 2019 consolidated financials because this information included information pertaining to all CSWR entities, including out of state entities and non-utilities, and release of this information could be used to CSWR and Bluegrass Water's detriment in financing, purchasing systems, or obtaining contractors.¹⁰ The Commission finds that the designated material redacted from Exhibit K to Bluegrass Water's application is a record that meets the criteria for confidential treatment and is exempted from public disclosure for five years from the date of the motion pursuant to KRS 61.878(1)(c)(1) and 807 KAR 5:001, Section 13.

The Commission further finds that the request for confidential treatment is denied for Exhibits C, G, H, I, J, and N to Bluegrass Water's application. Since the transfers have closed and the purchase prices and acquisition costs have been disclosed, the reasons for keeping this information confidential no longer apply. Regarding engineering

¹⁰ Case No. 2020-00290, *Electronic Application of Bluegrass Water Utility Operating Company, LLC for an Adjustment of Rates and Approval of Construction* (Ky. PSC Dec. 27, 2021), Order at 3.

reports, the Commission previously denied confidential treatment for engineering reports related to Bluegrass Water transfers that had already closed.¹¹ The information in the engineering reports is specific to these transfer projects, and are therefore of no use to competitors now that the transfers have closed. Any general information about Bluegrass Water's decision-making process derived from these reports has already been made part of public record. Therefore, material redacted from Exhibits C, G, H, I, J, and N to Bluegrass Water's application 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.

NOVEMBER 5, 2020 MOTION

Bluegrass Water sought confidential treatment for information redacted from its responses to Staff's First Request, Items 2, 8, 16, 17, and 23. Item 2 asked for an itemized breakdown of acquisition costs incurred to date and expected to incur up to closing. Staff's First Request, Item 8 asked for an itemized breakdown of the annual operation and maintenance expenses Bluegrass Water expected to incur for each transferring system. Bluegrass Water provided redacted figures for total transfer costs, past and forecasted, for each utility to be transferred, and forecasted operations and maintenance costs. Bluegrass Water argued that these figures should stay confidential because public disclosure could provide competitors with sensitive information about acquisition strategy, capability, and valuation of systems, their problems, and potential.

¹¹ *Id.* at 13, denying confidential because Bluegrass Water failed to ask for confidential treatment, revealed this information in hearing and responses to requests for information, and because this information was used to justify transfers.

Bluegrass Water provided redacted information in response to Items 16 and 17, which asked for capital structure as of September 30, 2020 for Bluegrass Water and affiliate CSWR, respectively. Bluegrass Water stated that disclosure could create incentives for other potential purchasers to undercut efforts by the parties to successfully close this transaction and noted that CSWR is not a utility and its capital structure is not otherwise subject to regulatory disclosure.

In response to Item 23, Bluegrass Water provided redacted figures from its most recent balance sheets and balance sheets of affiliate Kentucky CSWR, LLC (Kentucky CSWR). Bluegrass Water stated that public disclosure of its balance sheets and balance sheets for affiliates could lessen competition in a subsequent bidding process and would be costly in the future when attempts to acquire similarly distressed systems are made if CSWR's ability to negotiate terms specific to a particular utility and its circumstances has been compromised. Bluegrass Water further argued that all the information identified in the balance sheets contains future plans and financial information that would give competitors sensitive information about CSWR's acquisition strategy, capabilities and valuation of systems, their problems, and potential. Lastly, Bluegrass Water asserted that cost estimates in the balance sheets reflect innovative and proprietary technology and processes developed through experience and used by CSWR and its affiliates to renovate wastewater systems.

Having considered the motion and the material at issue, the Commission finds that Bluegrass Water's motion is granted in part and denied in part. Estimated operations and maintenance costs shall remain confidential because this information could be used by

operator contractors to Bluegrass Water's detriment when bidding contracts.¹² CSWR's capital structure and Kentucky CSWR's balance sheet shall also remain confidential. These affiliates are not utilities and are not subject to other regulatory disclosure and release of this information could be used to Bluegrass Water's detriment in financing, purchasing systems, or obtaining contractors.¹³ The Commission finds that the designated material redacted from Bluegrass Water's response to Staff's First Request, Items 8, 17, and Kentucky CSWR's balance sheet provided in response to Item 23 meets the criteria for confidential treatment and is exempted from public disclosure for five years pursuant to KRS 61.878(1)(c)(1) and 807 KAR 5:001, Section 13.

The Commission further finds that the request for confidential treatment should be denied for Bluegrass Water's redacted responses to Staff's First Requests, Items 2, 16 and Bluegrass Water's balance sheet provided in response to Item 23. Since the transfers have closed and the purchase prices and acquisition costs have been disclosed, the reasons for keeping acquisition costs confidential information confidential no longer apply. Regarding Bluegrass Water's 2020 capital structure, this information has already been publicly disclosed.¹⁴ Confidential treatment shall also be denied for Bluegrass Water's balance sheet because Bluegrass Water is the utility operating company and the information in that document is an updated version of the balance sheet Bluegrass Water filed with its application.¹⁵ The Commission has determined (above) that this information

¹² See Case No. 2020-00309, *Electronic Purchased Gas Adjustment Filing of Louisville Gas and Electric Company* (Ky. PSC Aug. 20, 2021), Order at 3.

¹³ See footnote 10.

¹⁴ Case No. 2020-00290, *Bluegrass Water Utility Operating Company* (filed Mar. 22, 2021), Response to Joint Intervenors' Second Request for Information, Item 14, at unnumbered page 40.

¹⁵ Application, Exhibit N.

no longer needs confidential treatment due to the closing of the transfers. Therefore, material redacted from Bluegrass Water's responses to Staff's First Requests, Items 2, 16 and Bluegrass Water's balance sheet provided in response to Item 23 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.

DECEMBER 2, 2020 MOTION

Bluegrass Water sought confidential treatment for a document produced in response to Staff's Second Request, Item 8. This document is an appraisal report generated by a third party pertaining to Delaplain Disposal Company real property. Bluegrass Water argued that the appraisal is a third-party proprietary report and potential purchasers could undercut efforts by the parties to successfully close this transaction using the information contained in the report. The third-party appraiser, Valbridge Property Advisors, has signified on the report that it is copyrighted material.

Having considered the motion and the material at issue, the Commission finds that Bluegrass Water's motion shall be granted. Although the usefulness of this information to competitors is no longer at issue due to the closing of the transfer of this property, the appraisal report contains valuation analysis proprietary to the third-party appraiser and Bluegrass Water may violate copyright law if it discloses the contents of the report.¹⁶ The Commission finds that the designated material redacted from Bluegrass Water's response to Staff's Second Request, Item 8, is a record that meets the criteria for

¹⁶ See Case No. 2018-00358, *Electronic Application of Kentucky American Water Company for an Adjustment of Rates* (Ky. PSC Mar. 14, 2019), Order at 2.

confidential treatment and are exempted from public disclosure pursuant to KRS 61.878(1)(c)(1) and 807 KAR 5:001, Section 13.

IT IS THEREFORE ORDERED that:

1. Bluegrass Water's motions for confidential treatment for information redacted from its application and responses to Staff's First Request, Items 2, 8, 16, 17, and 23, and responses to Staff's Second Request, Item 8 are granted in part and denied in part.

2. Bluegrass Water's motions for confidential treatment for information redacted from Exhibit K to its application, responses to Staff's First Request, Items 8, 17, and Kentucky CSWR's balance sheet in response to Item 23, and Staff's Second Request, Item 8 are granted.

3. Bluegrass Water's motions for confidential treatment for information redacted from Exhibits C, G, H, I, J, and N to its application, responses to Staff's First Request, Items 2, 16, and Bluegrass Water's balance sheet in response to Item 23 are 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 from the dates of Bluegrass Water's motions 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. Bluegrass Water 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, 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 Bluegrass Water 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 Bluegrass Water 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 Bluegrass Water 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 should be granted confidential treatment.

11. Within 30 days of the date of service of this Order, Bluegrass Water 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 Bluegrass Water'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 Bluegrass Water to seek a remedy afforded by law.

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By the Commission

ENTERED
FEB 25 2022
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KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:


Executive Director

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