

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC PROPOSED ACQUISITION OF)	
WASTEWATER SYSTEM FACILITIES BY)	CASE NO.
BLUEGRASS WATER UTILITY OPERATING)	2021-00265
COMPANY, LLC)	

ORDER

This matter arises upon two motions requesting confidential treatment filed by Bluegrass Water Utility Operating Company, LLC (Bluegrass Water). On October 27, 2021, Bluegrass Water filed a motion, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, requesting that the Commission grant confidential treatment for five years for the purchase price of a wastewater system it intended to purchase,¹ the engineering report attached to the application as Exhibit G, and a portion of Exhibit H to its application, consisting of the Bluegrass Water consolidated financial statements through July 31, 2021.

In a motion filed December 6, 2021, Bluegrass Water sought confidential treatment for certain responses to Commission Staff's First Request for Information (Staff's First Request), including the audited Consolidated 2020 and 2019 Financial Statements of affiliate Central States Water Resources (CSWR), produced in response to Staff's First Request, Item 6; the Appraisal Report and the Asset Valuation Report, both produced in response to Staff's First Request, Item 7; and a redacted journal entry produced in

¹ Order (Ky. PSC Feb. 24, 2022), the Commission approved proposed acquisition, a purchase from Darlington Creek Homeowners Association, Inc. of a wastewater system.

response to Staff's First Request, Item 8, which discloses the total closing consideration/acquisition value, and estimated closing costs for the purchased system.

OCTOBER 27, 2021 MOTION

In support of its October 27, 2021 motion, Bluegrass Water argued that the purchase price for the system, financial statements, and processes revealed by the engineering report are exempt from public disclosure by KRS 61.878(1)(c)(1), which exempts “[r]ecords confidentially disclosed to an agency or required by an agency to be disclosed to it, 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.” Bluegrass Water claimed that public disclosure of the purchase price, referenced financial information, and engineering report may cause competitive harm to Bluegrass Water and its affiliates in anticipated future acquisitions and operations in Kentucky by causing a lessening of competition in subsequent bidding processes for any future acquisitions by Bluegrass Water, as well as revealing sensitive information about Bluegrass Water's financial capability and valuation of systems.

Having considered the October 27, 2021 motion and the designated material at issue, the Commission finds that each of the items for which Bluegrass Water seeks protection is generally recognized as confidential or proprietary. Information about the business processes and tools Bluegrass Water may use in evaluating acquisitions is the type of “inner workings” of a business that, if revealed, would give commercial advantage to potential competitors.² Accordingly, the Commission has treated this type of

² See *Hoy v. Kentucky Industrial Revitalization Authority*, 907 S.W. 2d 766, 768 (Ky. 1995) (information submitted to state agency including financial history of the corporation, projected cost of a project, the specific amount and timing of capital investment, copies of financial statements).

information as confidential when it has not been otherwise disclosed, including in a recent case involving Bluegrass Water.³ The requests therefore meet the criteria for confidential treatment and the referenced items are exempted from public disclosure pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(c)(1).

DECEMBER 6, 2021 MOTION

In support of its December 6, 2021 motion submitted in response to Staff's First Request, Bluegrass Water argued that the information concerning its operations identified in the motion is competitively sensitive and should be protected under KRS 61.878(1)(c)(1). Bluegrass Water stated that Financial Statements of Bluegrass Water's affiliate CSWR, the Appraisal Report, and the Asset Valuation Report, the journal entry which discloses the total closing consideration/acquisition value and estimated closing costs for the purchased system are all information an acquirer would not voluntarily share with competitors.

Having considered the December 6, 2021 motion and the designated material at issue, the Commission finds that each of the items for which Bluegrass Water seeks protection is generally recognized as confidential or proprietary.⁴ The requests therefore meet the criteria for confidential treatment and the referenced items are exempted from public disclosure pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(c)(1).

IT IS THEREFORE ORDERED that:

1. Bluegrass Water's October 27, 2021 and December 6, 2021 motions for confidential treatment are granted.

³ See Case No. 2020-00028, *Proposed Acquisition by Bluegrass Water of Wastewater System Facilities* (Ky. PSC Apr. 16, 2020), Order at 3.

⁴ See footnotes 2–3.

2. The material designated for confidential treatment is the purchase price of the wastewater system it intended to purchase; the engineering report attached to the application as Exhibit G; the Bluegrass Water consolidated financial statements through July 31, 2021; the audited Consolidated 2020 and 2019 Financial Statements of affiliate Central States Water Resources; the Appraisal Report and the Asset Valuation Report; a redacted journal entry which discloses the total closing consideration/acquisition value, and estimated closing costs for the purchased system.

3. 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.

4. 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).


5. Bluegrass Water shall inform the Commission if the designated material granted confidential treatment by this Order becomes publicly available or no longer qualifies for confidential treatment.

6. 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, Bluegrass Water 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.

7. 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 Bluegrass Water to seek a remedy afforded by law.

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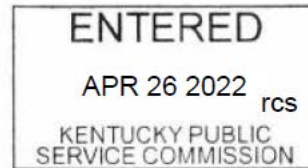
PUBLIC SERVICE COMMISSION



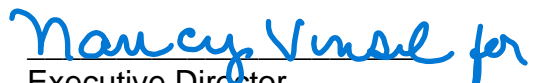
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ATTEST:



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