

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC JOINT APPLICATION OF	)	
BLUEGRASS WATER UTILITY OPERATING	)	
COMPANY, LLC FOR APPROVAL OF	)	CASE NO.
ACQUISITION AND TRANSFER OF OWNERSHIP	)	2023-00218
AND CONTROL OF ASSETS OF MAGRUDER	)	
VILLAGE WATER COMPANY	)	

ORDER

This matter comes before the Commission on two motions for confidential treatment filed by Bluegrass Water Utility Operating Company, LLC (Bluegrass Water). On June 29, 2023, 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 portions of its joint application with Magruder Village Water Company (Magruder Village Water) for transfer of a wastewater treatment facility to Bluegrass Water.

On August 11, 2023, 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 portions of its responses to Commission Staff's First Request for Information (Staff's First Request), Items 2(a) and 3(a).

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.”<sup>1</sup> Exceptions to the free and open examination of public records contained in KRS 61.878 should be strictly construed.<sup>2</sup> The party requesting that materials be treated confidentially has the burden of establishing that one of the exceptions is applicable.<sup>3</sup>

In support of its motion, Bluegrass Water argued for the application of KRS 61.878(1)(c)(1), which 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.”

#### JUNE 29, 2023 MOTION

Bluegrass Water sought confidential treatment for redactions from Exhibit 3 to its application, which consisted of an engineering report from 21 Design. The report included remedial recommendations for the Magruder Village wastewater treatment plant that Bluegrass Water sought to acquire, and construction cost estimates for those recommended improvements. Bluegrass Water argued that public disclosure of this information would harm it during the pendency of this case because the report reveals information regarding the internal ability and workings of Bluegrass Water and its affiliates, including specifically, how they evaluate potential systems for acquisition, and could be misappropriated by competitors.

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<sup>1</sup> KRS 61.872(1).

<sup>2</sup> See KRS 61.871.

<sup>3</sup> 807 KAR 5:001, Section 13(2)(c).

Bluegrass Water also sought confidential treatment for redactions from Exhibit 4 to its application, which was its acquisition agreement with Magruder Village Water. Specifically, the contract sum was redacted. Bluegrass Water argued that disclosing the price terms of the agreement could place the joint applicants at a competitive disadvantage in negotiating future agreements.

Lastly, Bluegrass Water sought confidential treatment for the redacted Consolidated Balance Sheet and Income Statement of CSWR, LLC (CSWR), Bluegrass Water's parent company, filed as Exhibit 6 to the application. Bluegrass Water asserted that disclosure reveals information regarding the internal financial status and workings of CSWR, which is not a utility and would not otherwise be subject to disclosure to a regulatory body.

Having considered the motion and the material at issue, the Commission finds that Bluegrass Water's June 29, 2023 motion for confidential treatment should be granted. The Commission previously granted confidential treatment to Bluegrass Water's engineering report in an acquisition case to prevent any competitors from using it to undercut the utility in the purchase of the assets.<sup>4</sup> However, with the exception of the estimated costs, confidentiality should only be granted until the transfer closes. Once the transfer is complete, there is no longer a risk of being undercut by a competitor, and the engineering recommendations will become part of the record in Bluegrass Water's

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<sup>4</sup> Case No. 2019-00104, *Electronic Proposed Acquisition by Bluegrass Water Utility Operating Company, LLC and the Transfer of Ownership and Control of Assets by P.R. Wastewater Management, Inc., Marshall County Environmental Services, LLC, LH Treatment Company, LLC, Kingswood Development Inc., Airview Utilities, LLC, Brocklyn Utilities, LLC, Fox Run Utilities, LLC, and Lake Columbia Utilities, Inc.* (Ky. PSC Feb. 25, 2021), Order.

Agreed Order and Corrective Action Plan with the Division of Water.<sup>5</sup> Construction cost estimates should remain confidential for the requested five-year period to prevent potential construction bidders from using this information to manipulate bidding.<sup>6</sup>

The transfer agreement price should remain confidential for five years because disclosure would both risk competitor undercutting before closing the transaction and also affect Bluegrass Water's future negotiations for potential treatment plant purchases.<sup>7</sup>

Regarding CSWR's financial information, its Consolidated Balance Sheet and Income Statement were previously granted confidential treatment because release of this information could be used to CSWR and Bluegrass Water's detriment in financing, purchasing systems, or obtaining contractors.<sup>8</sup> Therefore, the designated material is generally recognized as confidential or proprietary and meets the criteria for confidential treatment. The information should be exempted from public disclosure for five years pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(c)(1), with the exception of Application Exhibit 3, which should remain confidential until closing of the transfer transaction. Estimated construction costs in Exhibit 3 should remain confidential for five years.

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<sup>5</sup> Bluegrass Water's Response to Staff's First Request (filed Aug. 11, 2023), Item 3(c).

<sup>6</sup> See Case No. 2020-00309, *Electronic Purchased Gas Adjustment Filing of Louisville Gas and Electric Company* (Ky. PSC Aug. 20, 2021), Order at 3.

<sup>7</sup> See Case No. 2020-00028, *Electronic Proposed Acquisition by Bluegrass Water Utility Operating Company, LLC of Wastewater System Facilities and Subsequent Tariffed Service to Users Presently Served by Those Facilities* (Ky. PSC Apr. 16, 2020), Order at 3.

<sup>8</sup> 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.

## AUGUST 11, 2023 MOTION

Bluegrass Water's response to Staff's First Request, Item 2(a), includes redacted contract prices from Bluegrass Water's service contract with Midwest Water Operations, LLC, an operator that Bluegrass Water has contracted with previously.<sup>9</sup> Bluegrass Water argued that disclosure would put it at a competitive disadvantage in negotiating future operator agreements.

Bluegrass Water's response to Staff's First Request, Item 3(a), includes redacted estimated costs of improvements recommended in 21 Design's engineering report. Bluegrass Water asserted that disclosing these cost estimates could place Bluegrass Water at a competitive disadvantage in negotiating future contracts.

Having considered the motion and the material at issue, the Commission finds that Bluegrass Water's August 11, 2023 motion for confidential treatment should be granted. Bluegrass Water indicated that its operator contract will be subject to a bidding process.<sup>10</sup> Revealing existing contract pricing terms would allow potential bidders to manipulate the bidding process to Bluegrass Water's disadvantage.<sup>11</sup> Likewise, construction cost estimates should remain confidential to prevent potential bidders from using this information to manipulate bidding. Therefore, the designated material is generally recognized as confidential or proprietary and meets the criteria for confidential treatment.

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<sup>9</sup> Bluegrass Water's Response to Staff's First Request, Item 2(a), indicates that its current operations service contract is with Clearwater Solutions. It is unclear whether this is an assumed name or affiliate of Midwest Water Operations, LLC or Bluegrass Water submitted the wrong contract.

<sup>10</sup> Bluegrass Water's Response to Staff's First Request, Item 2(a).

<sup>11</sup> See Case No. 2020-00309, Aug. 20, 2021 Order at 3.

The information should be exempted from public disclosure for five years pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(c)(1).

IT IS THEREFORE ORDERED that:

1. Bluegrass Water's June 29, 2023 and August 11, 2023 motions for confidential treatment are granted.

2. 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, with the exception of engineering report remedial recommendations redacted from Application Exhibit 3, which shall not be placed in the public record or made available for public inspection until closing of the transfer transaction or until further Order of this Commission.

3. 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).

4. 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.

5. 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.

6. 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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Chairman

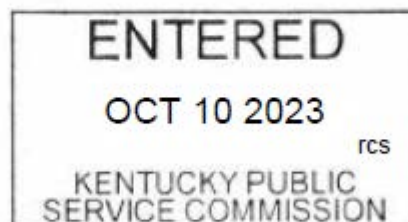
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