

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF BLUEGRASS)	
WATER UTILITY OPERATING COMPANY, LLC)	CASE NO.
FOR AN ADJUSTMENT OF RATES AND)	2020-00290
APPROVAL OF CONSTRUCTION)	

ORDER

This matter is before the Commission on six motions for confidential treatment filed by Bluegrass Water Utility (Bluegrass Water). These motions are individually addressed below.

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.”¹ 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.² The party requesting that materials be treated confidentially has the burden of establishing that one of the exceptions is applicable.³

¹ KRS 61.872(1).

² See KRS 61.871.

³ 807 KAR 5:001, Section 13(2)(c).

SEPTEMBER 30, 2020 MOTION FOR CONFIDENTIAL TREATMENT

On September 30, 2020, Bluegrass Water filed a motion, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(c)(1), requesting that the Commission grant confidential treatment for five years for information redacted from Exhibits 7 and 18 attached to its application.⁴

Exhibit 7 to Application

Exhibit 7 to Bluegrass Water's application consists of financial information in the Consolidated Financial Statements of Central States Water Resources, Inc. (CSWR) and its subsidiaries for 2019. CSWR is the parent company of Bluegrass Water, but the information in the financial statement for which confidential treatment is sought is not broken out as between Bluegrass Water and affiliates. Bluegrass Water argued that this data is sensitive information regarding the internal financial ability and workings of CSWR, a nonparty who is not a utility nor is subject to regulation by the Commission. It further states that public disclosure of the information may cause competitive harm under KRS 61.878(1)(c)(1) to CSWR in anticipated future acquisitions by causing a lessening of competition in subsequent bidding processes.

Exhibit 18 to Application

Bluegrass Water also requested confidential treatment for redacted portions of Exhibit 18 to its application, which consist of Bluegrass UHC's tax returns. Bluegrass

⁴ Bluegrass Water's Motion for Confidential Treatment of Information, at 1 and 4, refers to Bluegrass UHC tax returns as Exhibit 19. However, the application contains no Exhibit 19. Exhibit 18 to the application is Bluegrass Water Utility Holding Company, LLC's (Bluegrass UHC) tax return. The unredacted version of this document is labeled Exhibit 7. However, this document is the redacted version of Exhibit 18, Bluegrass UHC's tax return. All references to Exhibit 18 herein will reference Bluegrass UHC's tax return.

Water argued that this information is also commercially sensitive information of a non-party, meriting protection under KRS 61.878(1)(c)(1).

Findings

The CSWR's 2019 Consolidated Financial Statement includes information pertaining to all CSWR entities, including out of state entities, and release of this consolidated information could be used to CSWR and Bluegrass Water's detriment in financing, purchasing systems, or obtaining contractors. The information therein is also so broad that it would have little benefit to customers seeking to understand how Bluegrass Water's rates were determined in this matter. Therefore, the Commission finds that CSWR's 2019 Consolidated Financial Statement meets the criteria for confidential treatment.

Regarding the tax return provided in Exhibit 18 to Bluegrass Water's application, pursuant to KRS 61.878(1)(k), information exempted from disclosure includes "[a]ll public records or information the disclosure of which is prohibited by federal law or regulation or state law." The Commission previously held that tax returns and schedules should be held confidential for an indefinite period under KRS 61.878(1)(k) because they are prohibited from release pursuant to 26 U.S.C. § 6103(a), and KRS 131.190(1).⁵ Tax returns are prohibited from disclosure under state and federal law.

Having considered the motion and the material at issue, the Commission finds that Bluegrass Water's September 30, 2020 motion is granted. The Commission finds that the designated material redacted from Exhibits 7 and 18 attached to Bluegrass Water's application meet the criteria for confidential treatment and are exempted from public

⁵ Case No. 2018-00041, *In the Matter of: Electronic Investigation of the Impact of the Tax Cuts and Job Act on the Rates of Columbia Gas of Kentucky, Inc.* (Ky. PSC June 6, 2018), Order at 2.

disclosure pursuant to KRS 61.878(1)(c)(1), KRS 61.878(1)(k), and 807 KAR 5:001, Section 13, for five years for Exhibit 7 and an indefinite period for Exhibit 18.

JANUARY 29, 2021 MOTION FOR CONFIDENTIAL TREATMENT

On January 29, 2021, Bluegrass Water filed a motion, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(c)(1), requesting that the Commission grant confidential treatment for five years for items and information provided in response to Commission Staff's First Request for Information (Staff's First Request), Items 14-2(h) and 18, and the Attorney General of the Commonwealth of Kentucky, by and through the Office of Rate Intervention's (Attorney General), First Data Requests (Attorney General's First Request), Item 39.

Staff's First Request, Item 14-2(h)

Bluegrass Water requested confidential treatment for a systems contract⁶ between software vendor Starnik Systems, Inc. (Starnik) and CSWR provided in response to Staff's First Request, Item 14-2(h). The contract has a three-year term and provides for various utility tracking software, including document management and payment tracking software. The contract also contains pricing information. Bluegrass Water requested confidential treatment pursuant to KRS 61.878(1)(c)(1) based on the argument that disclosure would place them at a competitive disadvantage.

Staff's First Request, Item 18

⁶ Labeled and referred to in Bluegrass Water's Motion for Confidential Treatment (February 29, 2021) at 1 as redacted KY2020-00290_BW_0011-KY2020-00290_BW_0014.

Bluegrass Water also sought confidential treatment for redacted CSWR executive officer compensation and aggregate employment compensation information⁷ provided in the response to Staff's First Request, Item 18. Its argument was that CSWR is not a party or a utility and the data in question contains sensitive personal information regarding the compensation of employees.

Attorney General's First Request, Item 39

This confidential treatment request involves another redacted CSWR employee compensation report,⁸ provided in response to Attorney General's First Request, Item 39. However, this document includes both executive and non-executive employee salaries as well as aggregate totals.

Findings

Regarding the Starnik contract, the Commission has applied KRS 61.878(1)(c)(1) to vendor contracts to maintain vendor relationships⁹ and for vendor pricing terms because disclosure would allow other vendors to use the info to manipulate the bidding process to their advantage.¹⁰ Therefore, the redacted portions of contract should remain confidential as requested.

⁷ Labeled and referred to in Motion at 2 as redacted KY2020-00290_BW_0078.

⁸ Labeled and referred to in Motion at 2 as redacted KY2020-00290_BW_0407.

⁹ Case No. 2019-00271, *Electronic Application of Duke Energy Kentucky, Inc. for 1) An Adjustment of the Electric Rates; 2) Approval of New Tariffs; 3) Approval of Accounting Practices to Establish Regulatory Assets and Liabilities; and 4) All Other Required Approvals and Relief* (Ky. PSC Apr. 29, 2020), Order at 3, 5.

¹⁰ Case No. 2020-00309, *Electronic Purchased Gas Adjustment Filing of Louisville Gas and Electric Company* (Ky. PSC Aug. 20, 2021), Order at 3.

Regarding documents provided by Bluegrass Water in response to Staff's First Request, Item 18 and Attorney General's First Request, Item 39, the Commission will grant confidential treatment for specific information regarding the compensation of individual employees pursuant to KRS 61.878(1)(a) based on a finding that the individualized information is a personal nature and disclosure would be an unwarranted invasion of personal privacy.¹¹ However, absent some other specific basis, the Commission has not generally granted confidential treatment for aggregate compensation information, such as information regarding the total 401(k) contributions for all Exempt employees. Similarly, the Commission has not generally granted confidential treatment to the compensation of high-level executives and officers, the reasonableness of which are often a matter of significant public concern in public utility rate cases.¹² The Commission does not believe that disclosure of the individualized compensation information regarding high-level officers or executives that a utility is asking customers to pay, results in an unwarranted invasion of privacy. Thus, the Commission finds Bluegrass Water's motion for confidential treatment should be granted with respect to the employee specific compensation information for any employee other than officers, but that Bluegrass Water failed to establish that confidential treatment was justified pursuant to KRS 61.878(1)(a) for aggregate employee compensation information and specific employee compensation information for any employees designated as officers.

Bluegrass Water argues that all the information for which confidential treatment is sought qualifies for confidential treatment pursuant to KRS 61.878(1)(c)(1). However,

¹¹ Case No. 2020-00160, *Electronic Application of Water Service Corporation of Kentucky for a General Adjustment in Existing Rates* (Ky. PSC Dec. 22, 2020), Order at 2.

¹² See footnote 11.

Bluegrass Water makes no specific argument regarding how aggregate or executive compensation information, which is a cost that is passed on to customers through rates, would permit an unfair commercial advantage to competitors of the entity that disclosed the records. The Commission also sees no basis for finding that disclosure of information regarding aggregate compensation, and officer compensation at issue here would permit an unfair commercial advantage to competitors. The Commission has also previously held that executive compensation information is not entitled to confidential protection because the salaries are included as an expense in base rate calculations.¹³ Thus, the Commission finds that Bluegrass Water failed to establish that confidential treatment was justified pursuant to KRS 61.878(1)(c)(1) for aggregate compensation information, i.e. information that is not tied to a specific employee and the compensation information for executive officers.

Having considered the motion and the material at issue, the Commission finds that Bluegrass Water's January 29, 2021 motion is granted in part and denied in part. The Commission finds that the designated material redacted from the document provided in response to Staff's First Request, Item 14-2(h), and line items containing individual non-executive officer employee compensation information in the document provided in

¹³ Case No. 2017-00321, *Electronic Application of Duke Energy Kentucky, Inc. For: 1) An Adjustment of the Electric Rates; 2) Approval of an Environmental Compliance Plan and Surcharge Mechanism; 3) Approval of New Tariffs; 4) Approval of Accounting Practices to Establish Regulatory Assets and Liabilities and 5) All Other Required Approvals and Relief* (Ky. PSC May 3, 2018), Order at 4-5; see also Case No. 2019-00271, *Electronic Application of Duke Energy Kentucky, Inc. for 1) An Adjustment of the Electric Rates; 2) Approval of New Tariffs; 3) Approval of Accounting Practices to Establish Regulatory Assets and Liabilities; and 4) All Other Required Approvals and Relief* (Ky. PSC May 4, 2020), Order. (The Commission has generally held that executive officer salary and compensation does not meet the criteria for confidential treatment); see also Case No. 2018-00294, *Electronic Application of Kentucky Utilities Company for an Adjustment of its Electric Rates* (Ky. PSC Oct. 8, 2019), Order (denying confidential treatment for officer compensation).

response to Attorney General's First Request, Item 39, are meet the criteria for confidential treatment and are exempted from public disclosure pursuant to KRS 61.878(1)(a), KRS 61.878(1)(c)(1), and 807 KAR 5:001, Section 13, for five years. The Commission finds that Bluegrass Water's January 29, 2021 motion is denied for the remainder of the document provided in response to Attorney General's First Request, Item 39, and for the document provided in response to Staff's First Request, Item 18.

FEBRUARY 26, 2021 MOTION FOR CONFIDENTIAL TREATMENT

On February 26, 2021, Bluegrass Water filed a motion, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(c)(1), requesting that the Commission grant confidential treatment for five years for items and information provided in response to Commission Staff's Second Request for Information (Staff's Second Request), Items 1(f-g), 11(g), and 14, the Attorney General's Supplemental Data Requests (Attorney General's Supplemental Request), Items 10 and 13(b), and Joint Intervenors' Initial Data Requests (Joint Intervenors' First Request), Item 7.

Staff's Second Request, Item 1(f-g)

Bluegrass Water indicated that the spreadsheet¹⁴ provided in response to Staff's Second Request, Item 1(f-g), supplied actual and projected Utility Plant in Service, Revenue, and Direct Labor for each of its utility affiliates.

Bluegrass Water describes the information for which confidential treatment is sought as sensitive, commercially valuable, and financial information that is only disseminated internally to certain personnel with permission or a business reason. Bluegrass Water contends its affiliate, CSWR, would be harmed by public disclosure of

¹⁴ Referred to in Bluegrass Water's Motion for Confidential Treatment (filed Feb. 29, 2021) at 1 as 2 PSC 1 f-g.xlsx.

the information. Bluegrass Water argues that disclosure of the information would reveal trade secrets and business practices, affecting CSWR ability to negotiate; and that the information could otherwise be used to its detriment. Accordingly, Bluegrass Water argues that the information is confidential or proprietary and should receive confidential treatment under KRS 61.878(1)(c)(1).

Staff's Second Request, Item 11(g)

Bluegrass Water sought confidential treatment for a spreadsheet¹⁵ provided in response to Staff's Second Request, Item 11(g), containing the amounts CSWR paid for 401(k) Profit Share, a subcategory of the 401(k) ER matching category in the spreadsheet in 2018, 2019, 2020, and the forecast period broken out by three named officers and then by category for the remainder of the employees, i.e., Director, Manager, Exempt, and Non-Exempt and the total 401(k) Profit Share in each year.

Staff's Second Request, Item 14

Bluegrass Water sought confidential treatment for a spreadsheet¹⁶ provided in response to Staff's Second Request, Item 14, containing the historic and projected compensation information for each CSWR officer and employee in Fiscal Year (FY) 2018, FY 2019, FY, 2020, and the forecasted period broken down by the following categories: Salary, Auto Allowance, Healthcare-ER portion, Healthcare-EE portion, Dental-ER portion, Dental-EE portion, Vision-ER portion, Vision-EE portion, Life/STD/LTD, 401(k) ER matching, Total Company Expense, and Total EE Contribution. Bluegrass Water

¹⁵ Referred to in Motion at 1 as 2-PSC-11g (confidential).xlsx.

¹⁶ Referred to in Motion at 1 as 2-PSC-14 (confidential).xlsx.

argued that this data is sensitive and personal information about employee and officer compensation.

Attorney General's Supplemental Request, Item 10

Bluegrass Water sought confidential treatment for a spreadsheet¹⁷ provided in response to Attorney General's Supplemental Request, Item 10, containing the name of each employee who received an auto allowance, their title, their Function/Department, the amount of the auto-allowance paid to each employee, and the rationale for paying the auto-allowance to each employee. Bluegrass Water argued that this data is sensitive and personal information about employee and officer compensation.

Attorney General's Supplemental Request, Item 13(b)

Bluegrass Water sought confidential treatment for a document¹⁸ provided in response to Attorney General's Supplemental Request, Item 13(b). This document is a bill from CSWR's insurance carrier for showing premium payments for Basic Term Life, Dep Life, LTD, and STD. This bill includes names of individual employees, both executive and non-executive, and premium amounts paid for those employees. Bluegrass Water argued that this data is sensitive and personal information about employee and officer compensation.

Joint Intervenors' First Request, Item 7

Bluegrass Water also sought confidential treatment for a document provided in response to Joint Intervenors' First Request, Item 7, which is a loan proposal containing

¹⁷ Referred to in Motion at 1 as 2-AG-10 (confidential).xlsx.

¹⁸ Referred to in Motion at 1 as 2 AG 13 "Current Premiums" attachment KY2020-00290_BW_0660 to BW_0661

potential terms for a loan offer. Bluegrass Water asserted that this proposal contains sensitive financial information including the identity of the proposing bank.

Engineering Reports

Bluegrass Water confidentially filed several engineering reports provided in response to Staff's Second Request, Item 27. However, Bluegrass Water did not ask for confidential treatment of these documents. The engineering reports at issue are specific to each system and describe the third-party engineers' opinions regarding the condition of the systems, work that needs to be completed on the systems, and the estimated cost of the proposed work. The documents are stamped as being filed under seal with a request for confidential treatment and the documents are the same or similar to engineering reports that were treated as confidential in cases in which Bluegrass Water sought approval to purchase the systems at issue.

Findings

The information in the spreadsheet provided in response to Staff's Second Request, Item 1(f–g) for which Bluegrass Water is seeking confidential treatment is the actual or projected,¹⁹ depending on the period, Direct Labor Costs, Plant in Service, and Revenue of Bluegrass Water and affiliated utilities for each month in 2020, the 2nd and 3rd Quarters of 2021, and the 1st Quarter of 2022. Notably, Bluegrass Water proposed to use this information to allocate costs from CSWR to Bluegrass Water and does use that information to allocate costs in other states. Further, in Schedule OHA1, Bluegrass Water provided the same Direct Labor Costs, Plant in Service, and Revenue information

¹⁹ This information appears to be annualized, though it is difficult to tell, because Bluegrass Water acknowledged that at some of the information is incorrect in response to Commission Staff's Third Request for Information.

for the 3rd Quarter of 2020 and the 4th Quarter of 2021 in a public document. Bluegrass Water also provided the similar information in this case and a case in Missouri for the 1st Quarter 2020, and provided a pared down version of the information in this case and in a case in Louisiana for the 4th Quarter of 2021.²⁰ Given the extent to which Bluegrass Water has already publicly disclosed information regarding Direct Labor Costs, Plant in Service, and Revenue for it and its affiliates, the evidence does not support a finding that the information is generally recognized as confidential or proprietary or that its disclosure would permit an unfair commercial advantage to competitors. Thus, the Commission finds that Bluegrass Water failed to establish that this information should receive confidential treatment under KRS 61.878(1)(c)(1).

Regarding documents provided by Bluegrass Water in response to Staff's Second Request, Items 11(g) and 14, and Attorney General's Supplemental Request, Items 10 and 13(b), the Commission finds, for the same reasons discussed above with respect to Staff's First Request, Item 18, and the Attorney General's First Request, Item 39, that Bluegrass Water's motion for confidential treatment should be granted with respect to the employee specific compensation information for any employee other than officers, but that Bluegrass Water failed to establish that confidential treatment was justified pursuant to KRS 61.878(1)(a) or KRS 61.878(1)(c)(1) for aggregate employee compensation information and specific employee compensation information for any employees designated as officers.

Regarding the loan proposal provided in response to Joint Intervenors' First Request, Item 7, the Commission has generally found that such preliminary financing

²⁰ See Responses to Staff's Second Request, Item 1(h) and 2-PSC-01h.xlsx.

terms qualify for confidential treatment because disclosure would place a utility at a disadvantage in obtaining financing from other institutions.²¹ Thus, the Commission finds that confidential treatment should be granted for the loan proposal as requested by Bluegrass Water.

Since Bluegrass Water did not ask for confidential treatment for the engineering reports provided in response to Staff's Second Request, Item 27, it failed to establish that confidential treatment for the engineering reports is justified in this matter pursuant to KRS 61.878(1)(c)(1). Further, the reasons the same and similar engineering reports were treated as confidential in the transfer cases do not justify confidential treatment in this matter. The Commission has generally allowed some due diligence performed in the course of a utility purchasing a system or assets to be treated as confidential to prevent a competitor from using it to undercut the utility in the purchase of the assets.²² However, that reason no longer justifies granting confidential treatment to the engineering reports Bluegrass Water filed in response to Staff's Second Request, Item 27, because Bluegrass Water already owns the systems, Bluegrass Water used the engineering reports in this matter to justify projects it was requesting approval to complete herein, and Bluegrass Water has already provided similar information public in its testimony and responses to

²¹ See, e.g., Case No. 2019-00109, *Electronic Application of CitiPower, LLC for (1) An Adjustment of Rates Pursuant to 807 KAR 5:076; (2) Approval for a Certificate of Public Convenience and Necessity to Purchase Pipeline and Other Related Assets, and (3) Approval of Financing* (Ky. PSC Aug. 14, 2019), Order.

²² See, e.g., 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.

request for information.²³ Thus, the Commission finds that there is no basis for continuing to treat the engineering reports as confidential.

Having considered the motion and the material at issue, the Commission finds that Bluegrass Water's February 26, 2021 motion is granted in part and denied in part. The Commission finds that the designated material filed in response to Joint Intervenors' First Request, Item 7, and the redacted lines containing individual non-executive officer compensation information in the documents provided in response to Staff's Second Request, Items 11(g) and 14, and Attorney General's Supplemental Request, Items 10 and 13(b),²⁴ meet the criteria for confidential treatment and are exempted from public disclosure pursuant to KRS 61.878(1)(a), KRS 61.878(1)(c)(1), and 807 KAR 5:001, Section 13 for five years. The Commission finds that Bluegrass Water's February 26, 2021 motion is denied for the documents provided in Staff's Second Request, Item 1(f–g), Staff's Second Request, Item 11(g), the remainder of the information in the documents provided in response to Staff's Second Request, Item 14, Attorney General's Supplemental Request, Items 10 and 13(b), and engineering reports provided in response to Staff's Second Request, Item 27.

MARCH 22, 2021 MOTION FOR CONFIDENTIAL TREATMENT

On March 22, 2021, Bluegrass Water filed a motion, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(c)(1), requesting that the Commission grant confidential

²³ See Responses to Staff's Second Request, Item 27 (in which Bluegrass Water provided the engineering reports in support of the need for the projects proposed in testimony); Application, Exhibit 8 (containing direct testimony discussion the projects and the expected cost); Responses to Staff's Second Request, Item 3 (providing corrective action plans and correspondence with the EEC discussing the condition of the systems and plans to correct them).

²⁴ For the purpose of these motions, the Commission will consider officers to be those whose type is listed as officer in PSC 2-14.xlsx.

treatment for five years for items and information provided in response to Commission Staff's Third Request for Information (Staff's Third Request), Item 20, and Joint Intervenors' Supplemental Data Requests (Joint Intervenors' Supplemental Request), Item 12.

Staff's Third Request, Item 20

Bluegrass Water asked for confidential treatment for redacted portions of a document²⁵ provided in response to Staff's Third Request, Item 20, consisting of requests for proposals (RFPs) to contractors to act as operators on Bluegrass Water's systems and responses to the RFPs from contractors that did not win the contracts. Only the redacted bid amounts are sought to be exempt from disclosure. Bluegrass Water argued that disclosure of bids for operations and maintenance could be used by competitors to the business injury of Bluegrass Water, including giving sensitive information about Bluegrass Water and CSWR Group's capability and its valuation of systems and their potential.

Joint Intervenors' Supplemental Request, Item 12

Bluegrass Water also sought confidential treatment for documents²⁶ provided in response to Joint Intervenors' Supplemental Request, Item 12, which were the 2020 Audited Consolidated Financial Statements of CSWR. Bluegrass Water argued that these documents reveal sensitive information regarding the internal financial ability and workings of CSWR, a non-party who is not a utility, and should not be disclosed.

²⁵ Labeled as and referred to in Bluegrass Water's Motion for Confidential Treatment of Information (March 22, 2021) at 1 as KY2020-00290_BW_0749 to KY2020-00290_BW_0752.

²⁶ Labeled as and referred to in Motion at 1 as KY2020-00290_BW_0749 to KY2020-00290_BW_0662 to KY2020-00290_BW_0684.

Findings

Bid amounts redacted from Bluegrass Water's response to Staff's Third Request, Item 20, should be kept confidential because of the potential negative impact on future bidding situations. The Commission has previously granted confidential treatment to estimates and bids due to the possibility of bid manipulation resulting from disclosure.²⁷ Bid manipulation would commercially disadvantage Bluegrass Water. Regarding CSWR's 2020 Consolidated Financial Statement, the Commission finds that confidential treatment should be granted for the same reason's discussed above with respect to CSWR's 2019 Consolidated Financial Statement. Thus, having considered the motion and the material at issue, the Commission finds that Bluegrass Water's March 22, 2021 motion is granted.

MARCH 26, 2021 MOTION FOR CONFIDENTIAL TREATMENT

On March 26, 2021, Bluegrass Water filed a motion, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(c)(1), requesting that the Commission grant confidential treatment for five years for items and information provided in response to Commission Staff's Third Request for Information (Staff's Third Request), Items 3, 13(a), and 14(b).

Staff's Third Request, Item 3

Bluegrass Water asked for confidential treatment for redacted portions of documents²⁸ and a spreadsheet²⁹ provided in response to Staff's Third Request, Item 3. The redacted portions of the documents are rates and dollar amounts in vendor contracts

²⁷ See footnote 10.

²⁸ Labeled as and referred to in Bluegrass Water's Motion for Confidential Treatment of Information (March 26, 2021) at 1 as KY2020-00290_BW_0827 to KY2020-00290_BW_0833.

²⁹ Referred to in Motion at 1 as Starnik-19555-19578-Allocation_CONFIDENTIAL.xlsx.

and invoices. The spreadsheet includes pricing details for the contract between Starnik Systems and CSWR discussed above. It also shows how these amounts are allocated to Bluegrass Water and other affiliates. Bluegrass Water argues that this information is commercially sensitive information of non-utility, non-party CWSR and should not be publicly disclosed.

Staff's Third Request, Item 13(a)

Bluegrass Water also asked for confidential treatment for a spreadsheet³⁰ provided in response to Staff's Third Request, Item 13(a). This spreadsheet is a corrected version of the spreadsheet supplied in response to Staff's Second Request, Item 1(f-g) for which Bluegrass Water sought confidential treatment in its February 26, 2021 motion.

Staff's Third Request, Item 14(b)

Bluegrass Water also sought confidential treatment for a spreadsheet³¹ provided in response to Staff's Third Request, Item 14(b), consisting of projected Direct Labor Costs, Plant in Service, and Revenue for Bluegrass Water and affiliated utilities for each month in the Forecasted Period (April 2021–April 2022). Bluegrass Water argued that this information is commercially sensitive information of non-utility, non-party CWSR and should not be publicly disclosed.

Findings

The Commission agrees that rates and sums in vendor contracts and invoices provided in response to Staff's Third Request, Item 3, should be kept confidential because disclosure would allow other vendors to use the info to manipulate the bidding process to

³⁰ Referred to in Motion at 1 as 3 PSC 13a CONFIDENTIAL.xlsx.

³¹ Referred to in Motion at 1 as 3 PSC 14b CONFIDENTIAL.xlsx.

their advantage.³² The Commission also finds that the spreadsheet provided in response to this request, Starnik-19555-19578-Allocation Confidential.xlsx, should be exempt from public disclosure, except that the “Total Allocation” to Bluegrass Water should be subject to public disclosure.

The Commission finds that spreadsheets provided in response to Staff’s Third Request, Items 13(a) and 14(b), are not exempt from public disclosure for the same reasons the uncorrected spreadsheet was denied confidential treatment above.³³

Having considered the motion and the material at issue, the Commission finds that Bluegrass Water’s March 26, 2021 motion is granted in part and denied in part. The Commission finds that the designated material filed in response to Staff’s Third Request, Item 3, and all spreadsheet line items, except the one pertaining to Bluegrass Water and column headings³⁴ meet the criteria for confidential treatment and are exempted from public disclosure pursuant to KRS 61.878(1)(c)(1) and 807 KAR 5:001, Section 13 for a period of five years. The Commission finds that Bluegrass Water’s March 26, 2021 motion is denied for the designated material provide in response to Staff’s Third Request, Items 13(a) and 14(b) and the cell providing the “Total Allocation” to Bluegrass Water in the spreadsheet provided in response to Staff’s Third Request, Item 3.

MAY 31, 2021 MOTION FOR CONFIDENTIAL TREATMENT

On May 31, 2021, Bluegrass Water filed a motion, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(c)(1), requesting that the Commission grant confidential

³² See footnote 10.

³³ At 11–12 of this Order.

³⁴ Starnik-19555-19578-Allocation_CONFIDENTIAL.xlsx, Sheet 1, Lines 2-3, 6.

treatment for five years for items and information provided in response to Commission Staff's Fourth Request for Information, Item 6, Commission Staff's Post-Hearing Request for Information (Staff's PH Request), Item 6, and Joint Intervenors' Post-Hearing Data Request for Information (Joint Intervenors' PH Request), Items 10 and 11.

Staff's Fourth Request, Item 6

Bluegrass Water sought confidential treatment for a spreadsheet³⁵ contains individual employee salary information, including both executive officers and non-executive employees. Bluegrass Water asserts that this spreadsheet contains confidential employee salary information.

Staff's PH Request, Item 6

Bluegrass Water sought confidential treatment for a spreadsheet³⁶ that includes the projected cost of Bluegrass Water hiring operators in house as compared to hiring operator contractors. Bluegrass Water asserted that the spreadsheet includes sensitive and proprietary salary information, as well as other competitive information.

Joint Intervenors' Supplemental Request, Items 10 and 11

Bluegrass Water sought confidential treatment for two spreadsheets³⁷ that are updated versions of the spreadsheet³⁸ showing Direct Labor Costs, Plant in Service, and Revenue of Bluegrass Water and affiliated utilities but apparently for the 1st Quarter of 2021 only, supplied in response to Staff's Second Request, Item 1(f–g) for which

³⁵ Referred to in Bluegrass Water's Motion for Confidential Treatment of Information (filed May 31, 2021) at 1 as PSC 4-6 CONFIDENTIAL.xlsx.

³⁶ Referred to in Motion at 1 as Ops Cost Comparison-confidential.xlsx.

³⁷ Referred to in Motion at 1 as INT ph DR 10-confidential.xlsx and INT ph DR 11-confidential.xlsx.

³⁸ See footnote 13.

Bluegrass Water sought confidential treatment in its February 26, 2021 motion. Bluegrass Water argues that this information is commercially sensitive information of non-utility, non-party CWSR and should not be publicly disclosed.

Findings

Non-executive employees have a privacy interest in their compensation information under KRS 61.878(1)(a). However, the Commission finds that the executive officer compensation information does not meet the criteria for confidential treatment for the reasons discussed above.³⁹

The Commission finds that the forecasted operations cost spreadsheet produced in response to Staff's PH Request, Item 6 should be treated as confidential as the information could be used by operator contractors to Bluegrass Water's detriment when bidding contracts.⁴⁰

The Commission finds that spreadsheets provided in response to Joint Intervenors' Supplemental Request, Items 10 and 11 are not exempt from public disclosure for the same reasons as the preceding spreadsheets with the same or similar information were denied confidential treatment.⁴¹

Having considered the motion and the material at issue, the Commission finds that Bluegrass Water's May 31, 2021 motion is granted in part and denied in part. The Commission finds that the designated material provided in response to Staff's Fourth Request, Item 6, and Staff's PH Request, Item 6, except for the line items providing

³⁹ At 5–7 of this Order.

⁴⁰ At 15–16 of this Order.

⁴¹ At 11 of this Order.

information regarding executive officers, are records that meet the criteria for confidential treatment and are exempted from public disclosure pursuant to KRS 61.878(1)(a) and 807 KAR 5:001, Section 13 for five years. The Commission finds that Bluegrass Water's May 31, 2021, motion is denied for the documents provided in response to Joint Intervenors' PH Request, Items 10 and 11 and the information in the lines pertaining to executive officers in the spreadsheet provided in response to Staff's PH Request, Item 6.

IT IS THEREFORE ORDERED that:

1. Bluegrass Water's motions for confidential treatment are granted in part and denied in part.
2. Bluegrass Water's motions for confidential treatment are denied for:
 - a. Lines containing executive officer names and compensation information in the document provided in response to Attorney General's First Request, Item 39;
 - b. The designated material provided in response to Staff's First Request, Item 18;
 - c. The designated material provided in response to Staff's Second Request, Item 1(f-g), Staff's Second Request, Items 11(g);
 - d. Lines containing executive officer names and compensation information in documents provided in response to Staff's Second Request, Item 14, and Attorney General's Supplemental Request, Items 10 and 13(b);
 - e. Engineering reports provided in response to Staff's Second Request, Item 27;

f. The designated material provided in response to Staff's Third Request, Items 13(a) and 14(b);

g. The cell providing the "Total Allocation" to Bluegrass Water in the spreadsheet provided in response to Staff's Third Request, Item 3;

h. Lines containing to executive officer names and compensation information in the spreadsheet provided in response to Staff's Fourth Request, Item 6; and

i. The designated material provided in response to Joint Intervenors' Supplemental Request, Items 10 and 11.

3. Bluegrass Water's motion for confidential treatment is granted with respect to Exhibit 18 of its application for an indefinite period.

4. Except as provided in paragraph numbers 2 and 3, Bluegrass Water's motions for confidential treatment are granted for five years.

5. The designated material granted confidential treatment by this Order shall not be placed in the public record or made available for public inspection for the specified period or until further Order of this Commission.

6. 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).

7. 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.

8. 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.

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 wishes to object 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.

11. 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.

12. 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.

By the Commission



ATTEST:


Executive Director

*L Allyson Honaker
Goss Samford, PLLC
2365 Harrodsburg Road, Suite B325
Lexington, KENTUCKY 40504

*Bluegrass Water Utility Operating Company, LLC
1650 Des Peres Road, Suite 300
St. Louis, MO 63131

*Angela M Goad
Assistant Attorney General
Office of the Attorney General Office of Rate
700 Capitol Avenue
Suite 20
Frankfort, KENTUCKY 40601-8204

*J. Michael West
Office of the Attorney General Office of Rate
700 Capitol Avenue
Suite 20
Frankfort, KENTUCKY 40601-8204

*David S Samford
Goss Samford, PLLC
2365 Harrodsburg Road, Suite B325
Lexington, KENTUCKY 40504

*John G Horne, II
Office of the Attorney General Office of Rate
700 Capitol Avenue
Suite 20
Frankfort, KENTUCKY 40601-8204

*Kathryn A Eckert
McBrayer PLLC
201 East Main Street
Suite 900
Lexington, KENTUCKY 40507

*Katherine Yunker
McBrayer PLLC
201 East Main Street
Suite 900
Lexington, KENTUCKY 40507

*Larry Cook
Assistant Attorney General
Office of the Attorney General Office of Rate
700 Capitol Avenue
Suite 20
Frankfort, KENTUCKY 40601-8204