

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF BLUEGRASS	)	
WATER UTILITY OPERATING COMPANY, LLC	)	CASE NO.
FOR CERTIFICATES OF CONVENIENCE AND	)	2022-00104
NECESSITY FOR PROJECTS AT THE	)	
DELAPLAIN SITE	)	

ORDER

On April 15, 2024, 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 treatment for five years for Bluegrass Water's responses to Commission Staff's Fifth Request for Information (Staff's Fifth Request), Items 1, 2(a), and 2(b).

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> Bluegrass Water sought application of KRS 61.878(1)(c)(1), which exempts records that are "[g]enerally 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

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

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>

Bluegrass Water's response to Staff's Fifth Request, Item 1, included a spreadsheet consisting of bid evaluations for the proposed projects. Bluegrass Water's response to Staff's Fifth Request, Item 2, included cost estimate and cost-benefit analysis spreadsheets for all project alternatives. Bluegrass Water argued that this information should remain confidential because contractors on future work could use the bids as a benchmark, which would likely lead to the submission of higher bids.<sup>4</sup> Bluegrass Water sought confidential treatment for the total amount of the selected bid only until construction commences.

Having considered the motion and the material at issue, the Commission finds that Bluegrass Water's motion should be granted. Non-selected bids have been deemed confidential to prevent vendors from using these bids to manipulate any future bidding.<sup>5</sup> Cost estimates and cost-benefit analyses could also be used by contractors for the same purpose, disadvantaging Bluegrass Water compared to its competitors. The Commission shall also grant confidential treatment for the selected bid until construction begins, so that in the event bid selection does not result in a consummated contract and commencement of performance, the subsequent bidding process cannot be manipulated. Therefore, the designated material denied confidential treatment in this matter should not

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

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

<sup>4</sup> Motion for Confidential Treatment (filed Apr. 15, 2024) at 2-3.

<sup>5</sup> Case No. 2022-00350, *Electronic Application of Inter-County Energy Cooperative Corporation for a Certificate of Public Convenience and Necessity Authorizing the Installation of a New Advanced Metering Infrastructure (AMI) System* (Ky. PSC Feb. 24, 2023), Order.

be 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 April 15, 2024 motion for confidential treatment is 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, except for the total amount of the selected bid, which shall not be placed in the public record or made available for public inspection until construction begins. Bluegrass Water shall file a notice of commencement of construction within 20 days of commencement.

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. If the designated material granted confidential treatment by this Order becomes publicly available or no longer qualifies for confidential treatment, Bluegrass Water shall inform the Commission and file with the Commission an unredacted copy of the designated material.

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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