

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF BLUEGRASS)	
WATER UTILITY OPERATING COMPANY, LLC)	CASE NO.
FOR ISSUANCE OF EVIDENCE OF)	2022-00217
INDEBTEDNESS)	

ORDER

The matter arises on two motions filed by Bluegrass Water Utility Operating Company, LLC (Bluegrass Water). On August 19, 2022, Bluegrass Water filed a motion, pursuant to 807 KAR 5:001E, Section 13, and KRS 61.878, requesting that the Commission grant confidential treatment for five years for redactions from Exhibits 15(b) and 17 to its application for approval of financing.

On September 16, 2022, Bluegrass Water filed a motion, pursuant to 807 KAR 5:001E, Section 13, and KRS 61.878, requesting that the Commission grant confidential treatment for five years for redactions from its response to Commission Staff's First Request for Information (Staff's First Request), Items 1 and 2. In accordance with the Commission's September 28, 2022 Order, Bluegrass Water also filed a letter on December 19, 2022, reporting the terms of the closed loan agreement that was the subject of this case, redacting the interest rate, fees, and expenses pursuant to 807 KAR 5:001E Section 13(4) pending the Commission's findings on the two previous motions.

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

Exhibit 15(b) to Bluegrass Water’s application included an income statement and balance sheet. Bluegrass Water sought confidential treatment for redacted figures from these documents, arguing that under KRS 61.878(1)(c)(1), public disclosure of this information might cause it competitive harm in future acquisitions or operations affecting subsequent bidding processes, and might reveal sensitive information about Bluegrass Water’s capabilities and valuation of sewer systems. Exhibit 17 is a term sheet for a potential loan from CoBank that was the subject of this case, and contained fee amounts and the method for calculating the interest rate.

Bluegrass Water’s redactions from Staff’s First Request, Items 1 and 2 consisted of potential variable interest rate and fee calculations. The letter filed on December 19, 2022, included redacted final interest rate and fees after the loan had closed.

Having considered the motions and the material at issue, the Commission finds that Bluegrass Water’s motions are denied. The Commission has not treated financial

¹ KRS 61.872(1).

² See KRS 61.871.

³ 807 KAR 5:001, Section 13(2)(c).

information as confidential when it has been or is required to be otherwise disclosed.⁴ Bluegrass Water, as a utility regulated by the PSC, is required to file an Annual Report which contains a balance sheet and income statement.⁵ Although this information may change regularly, this information is intended to and is made publicly available for all utilities. In addition, although the loan terms were prospective at the time the confidentiality motions were filed, the loan has now closed. The Commission has determined that rates or fees actually paid should be public because they affect revenue requirement.⁶ Although the actual rate in the data request responses and the letter differed, the method of calculating the rate did not change, nor did the method of fee calculation. The designated material do not meet the criteria for confidential treatment and are not exempted from public disclosure pursuant to KRS 61.878(1)(c)(1) and 807 KAR 5:001E, Section 13.

IT IS THEREFORE ORDERED that:

1. Bluegrass Water's motions for confidential treatment are denied.
2. 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.

⁴ See Case No. 2020-00297, *Electronic Proposed Acquisition by Bluegrass Water Utility Operating Company, LLC and the Transfer of Ownership and Control of Assets by: Delaplain Disposal Company; Herrington Haven Wastewater Company, Inc.; Springcrest Sewer Company, Inc; and Woodland Acres Utilities, LLC*, (Ky. PSC Feb. 25, 2022), Order at 7.

⁵ 807 KAR 5:006, Section 4; *Annual Report of Bluegrass Water Utility Operating Company, LLC to the Public Service Commission for the Year Ending December 31, 2021* at 12-14, 25-26.

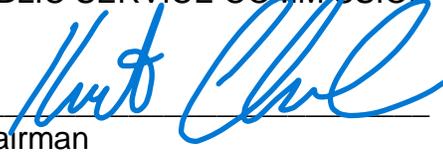
⁶ Case No. 2019-00109, *Electronic Application Of Citipower, LLC for (1) An Adjustment of Rates Pursuant to 807 KAR 5:076; (2) Approval for a Certificate of Public Convenience and Necessity to Purchase Pipeline and Other Related Assets; and (3) Approval of Financing* (Ky. PSC Aug. 14, 2019), Order at 4.

3. 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.

4. 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.

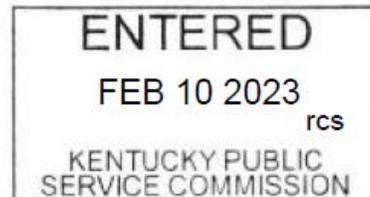
5. The designated material for which Bluegrass Water's request for confidential treatment has been denied shall neither be placed in the public record nor made available for inspection for 30 days from the date of service of this Order in order to allow Bluegrass Water to seek a remedy afforded by law.

PUBLIC SERVICE COMMISSION

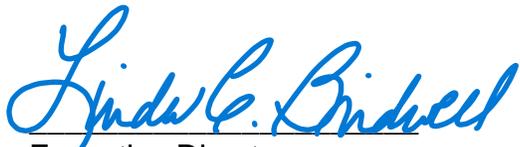

Chairman

Vice Chairman


Commissioner



ATTEST:


Executive Director

*Aaron Silas
Central States Water Resources
1650 Des Peres Road
Suite 303
St. Louis, MISSOURI 63131

*Edward T Depp
Dinsmore & Shohl, LLP
101 South Fifth Street
Suite 2500
Louisville, KENTUCKY 40202

*Dave Woodsmall
Central States Water Resources
1650 Des Peres Road
Suite 303
St. Louis, MISSOURI 63131

*Honorable John E Selent
Attorney at Law
Dinsmore & Shohl, LLP
101 South Fifth Street
Suite 2500
Louisville, KENTUCKY 40202

*Honorable Kerry E Ingle
Attorney at Law
Dinsmore & Shohl, LLP
1400 PNC Plaza
500 West Jefferson Street
Louisville, KENTUCKY 40202

*Bluegrass Water Utility Operating Company, LLC
1630 Des Peres Road, Suite 140
St. Louis, MO 63131

*Russ Mitten
Central States Water Resources
1650 Des Peres Road
Suite 303
St. Louis, MISSOURI 63131

*Sarah D. Reddick
Dinsmore & Shohl, LLP
101 South Fifth Street
Suite 2500
Louisville, KENTUCKY 40202