

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 March 28, 2022, 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 Exhibit B to its application.

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

¹ KRS 61.872(1).

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

Exhibit 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.

Having considered the motion and the material at issue, the Commission finds that Bluegrass Water's motion is denied. The Commission has not treated financial 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. Therefore, Bluegrass Water's balance sheet and income statement provided in Exhibit B to its application 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 5:001, Section 13.

² See KRS 61.871.

³ 807 KAR 5:001, Section 13(2)(c).

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.


IT IS THEREFORE ORDERED that:

1. Bluegrass Water's motion for confidential treatment is 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.
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

*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

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