

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of

*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.;) No. 2019-00104
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.)*

Request for Extension re Condition #5

Bluegrass Water Utility Operating Company, LLC (“Bluegrass”) hereby requests an extension of the deadline for Condition #5 in the Appendix to the Order entered August 14, 2019 (“the 8/14/19 Order”), which specifies: “Within 60 days of the closing of the transaction, Bluegrass Water shall post a guaranteed financial instrument that is the equivalent of two-months of the cost of its third-party contractors.” Sixty (60) days from September 30, 2019 (which is deemed to be the date of “the closing of the transaction”) is Friday, November 29, 2019. Bluegrass requests an extension of the deadline, such that on or before December 11, 2019, it is to file details of the financial instrument it proposes to satisfy this condition and request Commission approval thereof. In support of this requested extension, Bluegrass states as follows:

1. The 8/14/19 Order conditionally approved proposed acquisitions of utility assets by Bluegrass, subject to acceptance of conditions set forth in the Appendix. In an 8/30/19 filing, the conditions were accepted in writing.
2. Condition #5, which requires posting a guaranteed financial instrument, addresses the KRS 278.020(10) requirement regarding financial integrity to ensure continuity of service, 8/14/19 Order p.15; the condition will be “terminated by further order of the Commission, upon

... confirmation that Bluegrass Water's condition is sufficiently strong to ensure the continued operation of sewer service." *Id.* p.16.

3. Guidelines for the "guaranteed financial instrument" were a subject of discussion at the informal conference held September 4, 2019, at which members of the Commission Staff, representatives for Bluegrass, and Kent Chandler for the Attorney General's Office were present and participated. Letters of credit, advance payments, or escrow arrangements were mentioned as possibilities during the 9/4/19 informal conference.

4. Implementing any option for a guaranteed financial instrument will involve costs that will not be fully recoverable if it is later deemed to be insufficient or non-complying in some way. For example, a financial institution will charge Bluegrass administrative expenses and a fee (usually a percentage of the face amount) to issue a standby letter of credit, and an advance-payment or escrow arrangement will impose the opportunity cost of forgoing more productive use of the cash involved. In addition, there are choices to be made, for example, about (a) the documentation required and the role for the respective contractor, the Commission, or both as beneficiaries of a letter of credit or with respect to an escrow or advance payment arrangement, (b) accommodating possible acquisition of additional systems, and (c) how to treat replacement, assignment, or succession of the third-party contractors or changes to the respective contracts. Furthermore, the contractual obligation between the applicant (Bluegrass) and the issuer of a letter of credit often takes the form of a loan agreement and promissory note, which at least raises the possibility that prior approval for the transaction might be necessary under KRS 278.300.

5. In the light of these questions and to avoid incurring unnecessary costs, Bluegrass requests leave to make a filing in this case on or before December 11, 2019, requesting approval of the "guaranteed financial instrument" (or instruments) that it proposes to post in compliance

with Condition #5. This procedure will allow the parties and the Commission to consider issues discussed at the 9/4/05 informal conference in the concrete context of a specific proposal, and for the Commission to establish additional guidelines with respect to the instrument(s), grant any necessary approvals, or simply order that the proposed instrument(s) be posted.

WHEREFORE, Bluegrass respectfully requests an extension of the deadline for Condition #5, such that on or before December 11, 2019, it is to file details of the financial instrument(s) it proposes to post and to request Commission approval thereof.

Respectfully submitted,

/s/ *Katherine K. Yunker* _____

Katherine K. Yunker kyunker@mcbryerfirm.com
Kathryn A. Eckert keckert@mcbryerfirm.com
MCBRYER PLLC
201 East Main Street; Suite 900
Lexington, KY 40507-1310
859-231-8780
fax: 859-231-1175

Attorneys for Bluegrass Water Utility Operating Company, LLC