COMMONWEALTH OF KENTUCKY BEFORE THE PUBLIC SERVICE COMMISSION

))

)

In the Matter of

No. 2019-00104

Bluegrass Water's Motion for Confidential Treatment of Information

Applicant Bluegrass Water Utility Operating Company, LLC ("Bluegrass Water") respectfully submits this Motion pursuant to 807 KAR 5:001, Section 13, for confidential treatment of certain information responsive to the Attorney General's Post-Hearing Data Requests in this case. In support of this Motion, Bluegrass Water states as follows:

1. On this date, the Joint Applicants filed their Responses to the Attorney General's

Post-Hearing Data Requests for Information ("AG Post-Hearing Request _")

2. The Attorney General's Post-Hearing Data Request No. 5 seeks the Balance Sheet and Income Statement previously provided as JA Exhibit L, except with amounts as of June 30, 2019. This consolidated balance sheet and income statement contains confidential and proprietary information relating to the business of CSWR, LLC (f/k/a First Round CSWR LLC) and its CSWR Group affiliates. Confidential treatment is sought for the dollar amounts in this Balance Sheet and Income Statement as of June 30, 2019, and Bluegrass Water hereby adopts in full the arguments supporting confidential treatment for JA Exhibit L from its initial Motion for Confidential Treatment filed April 16, 2019. The 6/30/19 Balance Sheet and Income Statement has been redacted in the publicly-filed copies and the material for which confidential treatment is sought has been highlighted in the unredacted copy filed under seal.

3. The Attorney General's Post-Hearing Request No. 7 requested copies of the capital investment worksheets that accompanied the engineering memos already provided in the record that support amounts presented in JA Exhibit N. These construction estimates were made for each of the nine systems to be transferred as part of Bluegrass Water's due diligence for purposes of the proposed acquisition. As represented in paragraph 55 of the Joint Application, Bluegrass Water engaged an independent engineer to assess each system and provide a detailed evaluation of the status of each system as well as any deficits or needed improvements. The construction estimates accompanied the respective engineering memos provided as part of the response to 1 PSC 13. The totals shown on each attached estimate support the engineering portion of the Construction Work in Progress amount shown for each corresponding system on JA Exhibit N (confidential) page 1.

4. Confidential treatment is sought for these construction estimates, and Bluegrass Water hereby adopts in full the arguments supporting confidential treatment for the engineering memos (JA_00163-197) from its Motion for Confidential Treatment filed May 31, 2019, as well as JA Exhibit N. The construction itemization and dollar estimates have been redacted in the publicly-filed response; the material for which confidential treatment is sought has been highlighted in the unredacted copy filed under seal. Redacted copies of these estimates are attached to this Motion.

5. The information in the construction estimates for which Bluegrass Water seeks confidential treatment is not publicly disseminated and public disclosure of this information would harm Bluegrass Water. The estimates reveal information regarding the internal ability and

- 2 -

workings of Bluegrass Water and its affiliates; specifically, how they evaluate potential systems for acquisition and the internal processes by which they respond to various issues that arise in similar wastewater systems to develop Construction Work in Progress amounts. Such processes are "trade secrets" as defined by KRS 365.880(4) and fall within the scope of the trade secret exemption from disclosure pursuant to KRS 61.878(c). If these trade secrets contained within the construction estimates do not receive confidential treatment, the risk of harm would be unnecessarily increased that Bluegrass Water and its affiliates would suffer a serious business injury and these trade secrets would be misappropriated by other competitors in the wastewater industry.

6. Bluegrass Water further seeks confidential treatment for the construction estimates because these are also proprietary. Bluegrass Water expended funds with a third party as part of its due diligence in investigating these systems. Bluegrass Water therefore should not be forced to share this information publicly to its possible detriment. If this information were shared publicly, and especially in the event that the Application is denied, Bluegrass Water would suffer harm because it would give other potential purchasers and competitors a "leg-up" with the systems discussed in the report and lessen competition in a subsequent bidding process. Such disclosure would also be costly in the future when attempts to acquire similarly distressed systems are made and Bluegrass Water's ability to negotiate terms specific to a particular utility and its circumstances has been compromised.

7. The Balance Sheet and Income Statement produced in response to Attorney General Post-Hearing Data Request No. 5 for which Bluegrass Water seeks confidential treatment is not publicly disseminated and public disclosure of this information would harm Bluegrass Water and its affiliates. Bluegrass Water's responses reveal information regarding internal

- 3 -

financial ability and workings of the CSWR Group. The sensitive, commercially-valuable, financial and inter-affiliate transaction information contained in the Balance Sheet and Income Statement is not publicly distributed or disseminated outside of the CSWR Group. An example of potential harm if this information is disclosed is that consolidated financials would give competitors sensitive information about Bluegrass Water and CSWR Group's acquisition strategy and capability and its valuation of systems, their problems, and potential.

8. Under KRS 61.878(1)(c)(1), commercial information generally recognized as confidential is protected if disclosure would cause competitive injury and give competitors an unfair commercial advantage. The Commission has previously recognized this exact situation regarding confidential treatment as it did, for example, in Ky. PSC Case No. 2017-00383 in an Order granting confidential treatment filed on February 8, 2018. In the February 8, 2018 Order, the Commission recognized that Kentucky-American Water Company was entitled to confidential treatment for its confidential and proprietary documents due to the danger of unfair commercial advantage to competitors if disclosed. As in the Kentucky American case, public disclosure of the information in the identified construction estimates and updated balance sheet may cause competitive harm to Bluegrass Water and its affiliates as well as the transferring utilities and could cause a lessening of competition in subsequent bidding processes in the event the Commission denies the Joint Application or the proposed acquisition otherwise fails to close.

9. If the Commission disagrees with Bluegrass Water that the materials for which this Motion seeks confidential treatment are exempt from disclosure, it must hold an evidentiary hearing to protect the due process rights of Bluegrass Water and permit the opportunity to supply the Commission with a complete record to enable it to reach a decision with regard to this confidentiality request.

- 4 -

10. Pursuant and subject to a previously executed confidentiality agreement with the Attorney General's Office, Bluegrass Water will disclose the unredacted construction estimates and other confidential information identified above to the Attorney General's Office.

11. In compliance with 807 KAR 5:001, Section 8(3) and 13(2)(3), Bluegrass Water is filing with the Commission one paper copy of the construction estimates and Updated Balance Sheet and Income Statement, entirely unredacted and with highlighting of the material for which confidential treatment is sought. The unredacted paper copy is filed under seal; redacted pages of the subject reports are being publicly filed with the electronic copy of this Motion.

12. 807 KAR 5:001, Section 13(2)(a)(2) provides that a motion for confidential treatment shall state the time period in which the material should be treated as confidential and the reasons for this time period. Movants respectfully submit that five years from the date of the filing of the Joint Application is a reasonable period of time for the material to be treated as confidential in light of the competitive conditions in the water and wastewater industries.

WHEREFORE, Bluegrass Water respectfully requests that the Commission grant confidential treatment of the information described herein and shown as redacted on the attached publicly-filed documents and responses to Attorney General's Post-Hearing Data Requests.

Respectfully submitted,

/s/ Kathryn A. Eckert

Katherine K. Yunker <u>kyunker@mcbrayerfirm.com</u> Kathryn A. Eckert <u>keckert@mcbrayerfirm.com</u> MCBRAYER PLLC 201 East Main Street; Suite 900 Lexington, KY 40507-1310 859-231-8780 fax: 859-231-1175 Attorneys for Movant

MOTION ATTACHMENTS

(redacted versions are filed herewith; unredacted, highlighted versions are filed under seal)

Updated Balance Sheet and Income Statement through June 30, 2019

Construction Estimates

Balance Sheet

Current Assets

Cash Accounts Receivable Other Current Assets Total Current Assets

Property, Plant & Equipment, Net

Misc Long-Term Assets Pre-Survey Investment Unamortized Debt Expense Other Long-Term Assets Total Misc Long-Term Assets

Deferred Income Tax Asset, Net

Total Assets

Current Liabilities

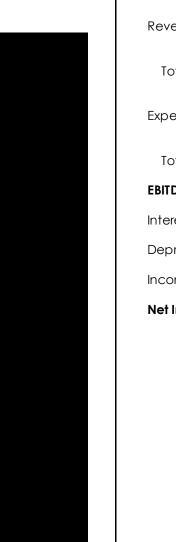
Accounts Payable Other Current Liabilities Total Current Liabilities

Long-Term Liabilities Notes Payable CIAC Other Long-Term Liabilities Total Long-Term Liabilities

Capitalization

Paid-In Capital **Retained Earnings** Net Income Total Capitalization

Total Liabilities and Capitalization



Statement of Income

Revenue

Operating Revenue Other Revenue Total Revenue

Expense

Operations & Maintenance General & Admin Total Expense

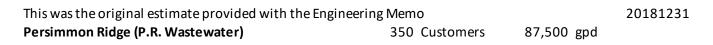
EBITDA

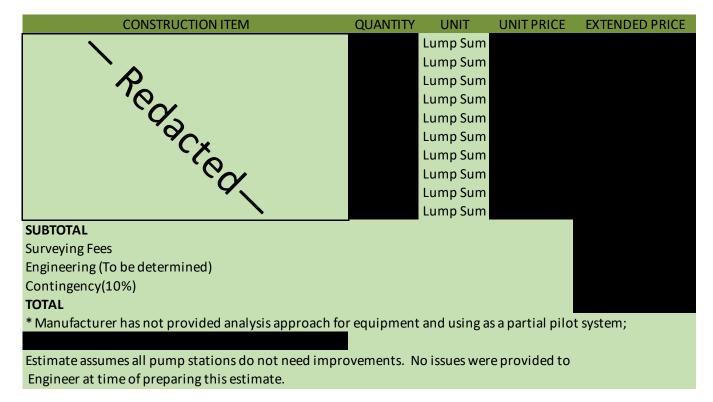
Interest

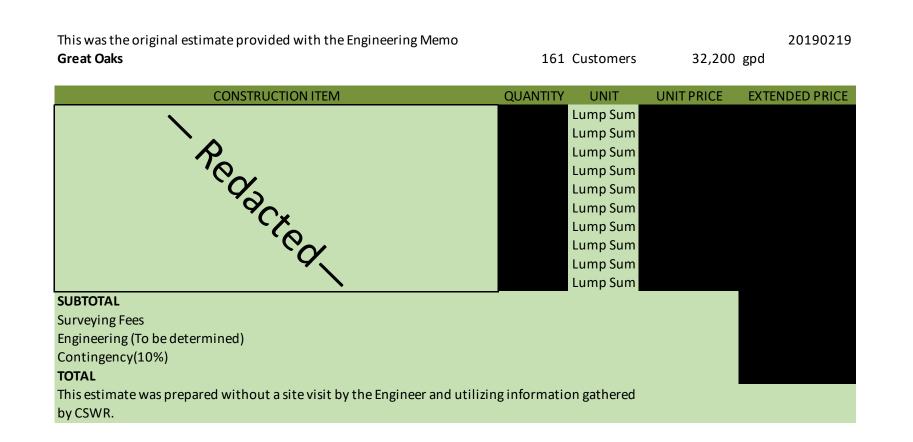
Depreciation & Amortization

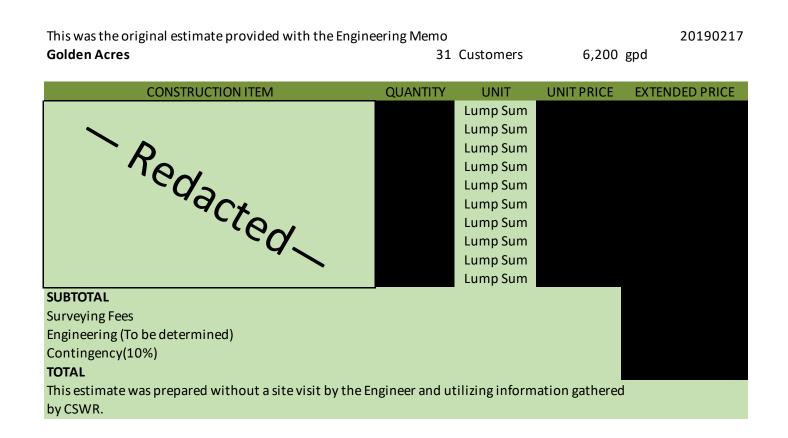
Income Taxes

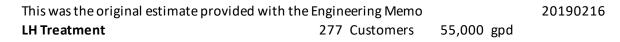
Net Income (Loss)











CONSTRUCTION ITEM	QUANTITY	UNIT	UNIT PRICE	EXTENDED PRICE			
		Lump Sum					
~ Redacted~		Lump Sum					
160-		Lump Sum					
acted		Lump Sum					
-cq_		Lump Sum					
		Lump Sum					
SUBTOTAL							
Surveying Fees							
Engineering (To be determined)							
Contingency(10%)							
TOTAL							
This estimate was prepared without a site visit by the Engineer and utilizing information gathered							
by CSWR.							

This was the original estimate provided with the Engineering Memo Kingswood

20190402

124 Customers 24,800 gpd

CONSTRUCTION ITEM	QUANTITY	UNIT	UNIT PRICE	EXTENDED PRICE
		Lump Sum		
- Redacted		Lump Sum		
nedad		Lump Sum		
halle		Lump Sum		
		Lump Sum		
SUBTOTAL		Lump Sum		
Surveying Fees				
Engineering (To be determined)				
Contingency(10%)				
TOTAL				
This estimate was prepared without a site visit by the Engineer and utilizing infor	mation gathe	ered		
by CSWR. More information is needed prior to finalizing this estimate.				

This was the original estimate provided with the Engineering Memo	
Airview	

20181222

203 Customers 50,750 gpd

CONSTRUCTION ITEM	QUANTITY	UNIT	UNIT PRICE	EXTENDED PRICE
Redacted		Lump Sum Lump Sum		
SUBTOTALSurveying FeesEngineering (To be determined)Contingency(10%)TOTALDesign will need to evaluate actual size of facility. The loading appears to exceeding the aeration tank capacity.) be			

This was the original estimate provided with the Brocklyn	was the original estimate provided with the Engineering Memo klyn 168 Customers 4			2018122 42,000 gpd	
CONSTRUCTION ITEM	QUANTITY	UNIT Lump Sum Lump Sum	UNIT PRICE	EXTENDED PRICE	
SUBTOTAL Surveying Fees Engineering (To be determined) Contingency(10%) TOTAL Design will need to evaluate actual size of facility borderline in regards to capacity to service this o		Lump Sum Lump Sum n tank size a	ppears to be		

This was th	he original estimate provided wi	th the Engineering	Memo		20181231
Fox Run		34	Customers	8,500	gpd
	CONSTRUCTION ITEM	QUANTITY	UNIT	UNIT PRICE	EXTENDED PRICE
			Lump Sum		
			Lump Sum Lump Sum		
	\mathbf{A}		Lump Sum		

	Lump Sum
	Lump Sum
\wedge	Lump Sum
\ ∕	Lump Sum
Ň.	Lump Sum
~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~	Lump Sum
Cx	Lump Sum
(O)	Lump Sum
C C C C C C C C C C C C C C C C C C C	Lump Sum
~	Lump Sum
	Lump Sum
	Lump Sum
SUBTOTAL	
Surveying Fees	
Engineering (To be determined)	
Contingency(10%)	
TOTAL	
Design will need to evaluate actual size of facility	
borderline in regards to capacity to service this c	ommunity.
Creek appeared to be clean of any sludge at site v	isit. No cost included for remediation

This was the original estimate provided wit . <b>ake Columbia</b>	th the Engineering Memo 33 Custom	ers 8,250	201812
	55 Custom	613 8,230	gha
CONSTRUCTION ITEM	QUANTITY UNIT	UNIT PRICE	EXTENDED PRIC
	Lump Su		
	Lump Su		
<b>、</b>	Lump Su		
	Lump Su		
`	Lump Su	ım	
70	Lump Su		
Redacted	Lump Su		
<b>V</b>	Lump Su		
Ч <u>С</u> ,	Lump Su		
	Lump Su	ım	
	Lump Su		
V,	Lump Su		
	Lump Su		
•			
	Lump Su		
	Lump Su		
	Lump Su	ım	
UBTOTAL			
urveying Fees			
ngineering (To be determined)			
Contingency(10%)			
OTAL			
Design will incorporate new concept that	needs to be evaluated for op	timal performance	ce.
Cleanup creek is not in			