

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of

Electronic Proposed Acquisition of Waste-)
water System Facilities by Bluegrass)
Water Utility Operating Company, LLC)
)

No. 2021-00265

**Verified Application for Approval for
Acquisition of Wastewater System’s Facilities**

The Applicant, Bluegrass Water Utility Operating Company, LLC (“Bluegrass Water”), applies to the Commission for the necessary approvals pursuant to KRS 278.020 and 278.030 and all other applicable laws and regulations to acquire the facilities of a wastewater system which is not subject to the Commission’s jurisdiction. Bluegrass Water requests and supports herein Commission approval of its acquisition of assets used or useful in providing wastewater service to at least 89 residential users in an area of Campbell County, Kentucky. The verification of this Application on behalf of Bluegrass Water is included as page 15 hereto.

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I. Transaction Parties

A. Acquirer: Bluegrass Water Utility Operating Company, LLC

1. Bluegrass Water Utility Operating Company, LLC (“Bluegrass Water” or “Applicant”) is a class B sewer utility, PSC ID# 9004000. It is a limited liability company organized and existing under the laws of the Commonwealth of Kentucky, with its principal office and place of business at 1650 Des Peres Road, Suite 303, St. Louis, Missouri 63131. Bluegrass Water’s addresses to be used for service in this case are: (a) postal mail: 1650 Des Peres Road, Suite 303, St. Louis, Missouri 63131; and (b) electronic mail: rmitten@cswrgroup.com and regulatory@cswrgroup.com.

2. Bluegrass Water was organized as an LLC on March 21, 2019, and is in good standing in Kentucky. Its sole member is Bluegrass Water Utility Holding Company, LLC, which is a limited liability company organized and existing under the laws of the Commonwealth of Kentucky. Bluegrass Water is a manager-managed company. Its manager is Central States Water Resources, Inc (“Central States”), which is a corporation organized on January 27, 2014, and existing under the laws of the State of Missouri.

3. Bluegrass Water currently owns, controls, operates, and manages sewer facilities in Bullitt, Franklin, Garrard, Graves, Hardin, Jessamine, Madison, Marshall, McCracken, Oldham, Scott, and Shelby Counties, Kentucky, and provides collection, transmission, and treatment

of wastewater through those facilities.¹ Bluegrass Water also currently owns, controls, operates, and manages a water system in Calloway County, Kentucky.² Bluegrass Water provides service to more than 2500 customers in Kentucky.

B. System to be Acquired: Darlington Creek

4. The owner/operator of the wastewater system assets proposed to be acquired is not among the KRS 278.010(3) “utilities” regulated by the Commission and regularly reporting information to and being inspected by the Commission. This part of the Application thus provides background information about the system assets and operation.

5. Darlington Creek Homeowner’s Association, Inc. (“the HOA”) is a non-stock, non-profit corporation incorporated in Kentucky on January 13, 2006. Its principal office is located at 500 Thomas More Parkway, Crestview Hills, KY 41017. Its Articles of Incorporation and By-Laws are attached hereto as Exhibit A. The HOA was formed to provide for the maintenance, preservation, and control of the Darlington Creek Subdivision in Campbell County, Kentucky. These functions include the operation, maintenance, and billing for a wastewater disposal system to serve lots in the subdivision. The HOA holds the title to the treatment plant and other facilities which Bluegrass Water is seeking approval to acquire.

6. The HOA has represented that it has a current sewer service fee of \$45.00 per month. A letter sent out to homeowners toward the end of each year lets them know what the

¹ Bluegrass Water acquired these sewer system facilities in accordance with the final Orders entered August 14, 2019 in Case No. 2019-00104; February 17, 2020 in Case No. 2019-00360; June 19, 2020 in Case No. 2020-00028; and, January 14, 2021 in Case No. 2020-00297.

² By the final Order entered on February 17, 2020 in Case No. 2019-00360, Bluegrass Water acquired the facilities of Center Ridge Water District, Inc.

next year's fees will be. *See* Exhibit B (11/20/20 Darlington Creek HOA letter).³ After the annual letter is sent, any new owner is sent a welcome letter that includes a statement about the sewer service fee. The HOA has represented that the monthly sewer service fee is kept at \$45.00 for the convenience of the residents. It does not receive or keep any deposits from sewer customers.

7. Darlington Creek Subdivision is located off US 27 and Highway 154 in Alexandria, Campbell County, Kentucky. The wastewater treatment facility is an extended aeration treatment plant consisting of screening, nitrification/denitrification, activated sludge, sedimentation, anaerobic digestion, chlorine disinfection, dechlorination, and post aeration. The treatment facility is located on Sycamore Creek Drive within the subdivision, among the residences served. *See* plat attached to Exhibit C.

8. There are currently 89 residences/lots served by the Darlington Creek system. The subdivision is platted for a total of 117 lots. The remaining 28 lots have been sold and, as of the end of September 2021, the residences for 24 of those lots are under construction. It is anticipated that most of the residences will be completed early in 2022.

9. The HOA refers to its sewer-service functions as “the Darlington Creek Sewer District.” Despite this nickname and that it owns facilities that provide wastewater service, the HOA is not a utility providing service “for the public” within the meaning of KRS 278.010(3)(f), but only to Darlington Creek Subdivision properties.⁴

³ As noted in the same letter, the HOA also charged a \$269.50 annual fee from the homeowners for 2021.

⁴ *See, e.g.,* Case No. 2020-00028, *Application by Bluegrass Water Utility Operating Company, LLC of Wastewater System Facilities and Subsequent Tariffed Service to Users Presently Served By Those Facilities*, 6/19/20 Order p.13: “All of the systems to be acquired provide service to a specific subdivision and receipt of service is predicated upon living within that specific subdivision. The Commission has held that such systems are not public utilities subject to the Commission’s jurisdiction.”

10. The HOA has no employees. It has a third-party professional manager. The HOA uses third-party contractor Crone Environmental Solutions (“CES”) for operation and maintenance of the wastewater treatment plant.

11. Darlington Creek has a current Kentucky Department of Environmental Protection discharge permit effective from July 1, 2019, through June 30, 2024, attached hereto as Exhibit D. In June 2020, the Division of Water issued a Notice of Violation to the HoA, indicating a number of operational and associated reporting violations. By letter dated July 24, 2020, DoW informed the HOA that the responsive actions taken “were considered sufficient at this time.” The Notice of Violation and 7/24/20 letter are attached hereto as Exhibit E.

II. Proposed Acquisitions

A. Agreements

12. Central States entered into an Agreement for Sale of Utility System with the system’s facilities owner (the HOA), attached as redacted Exhibit F hereto,⁵ on October 7, 2020.

13. The Agreement provides for the sale of all of the assets owned by the seller pertaining to operation of Darlington Creek. The sale includes all assets used or useful to operate the system, including real property interests, service machinery and equipment, other tangible fixtures or personalty, franchises, contract rights, accounts receivable, and other intangibles. The Agreement (¶5) also provides for the buyer to become responsible at the Closing “for all obligations in connection with the Assets going forward, excepting responsibility for any liabilities and/or obligations of Seller in connection with the Assets that existed prior to the date of the Closing.”

⁵ Applicant requests confidential treatment of the redacted material in a Motion for Confidential Treatment submitted concurrently with this Application.

14. Among the assets expressly excluded from the transfer are accounts receivable accruing prior to the Closing (Agreement ¶1.E). The Agreement also expressly states that the buyer was not entitled to receive tap fees for the additional 28 homes to be built on the remaining lots in the subdivision. (Agreement ¶ 29)

B. Post-Closing

15. If the Commission approves the proposed transaction, Bluegrass Water's acquisition of Darlington Creek's assets will be funded with equity capital from affiliate CSWR, LLC.

16. From and after the Closing of the acquisition, Bluegrass Water will assume operations responsibility for Darlington Creek, to ensure continuity of service to existing users. Bluegrass Water anticipates that these customers will be served under the general terms and conditions for residential sewer service in Bluegrass Water's current sewer tariff, with initial rates requested to be those currently in effect for Darlington Creek customers.

17. The system acquired will be operated by a qualified, experienced, third-party operations and maintenance ("O&M") firm engaged by Bluegrass Water. Bluegrass will request bids and proposals from numerous operators to provide O&M for the Darlington Creek system. Going forward, the plan is for the majority of its systems to be bid out based on geography, to allow more operator contracts to take advantage of economies of scale or regional benefits when bidding the contracts.

18. In addition to service obligations during normal business hours, the O&M firm engaged will be required to have a 24-hour emergency service line on which customers may report any service disruption; notice of service disruption calls would be forwarded to Josiah Cox, the president of Central States.

19. A qualified, experienced, third-party firm engaged by Bluegrass Water will send out bills and handle service-related billing questions for the acquired systems. In Bluegrass Water's other Kentucky systems, that firm currently is Nitor Billing Services, LLC ("Nitor"), and it is anticipated that Nitor will have this role for the systems proposed to be acquired. Nitor has in place an online billing system to receive credit cards and e-checks from customers and a Bluegrass Water specific customer service email account to handle customer inquiries and other interactions. The customer service representatives are to be available during normal business hours, and to take messages 24 hours a day. In addition, all electronic or paper correspondence is recorded and logged to the respective customer's account.

20. Bluegrass Water maintains (a) a toll-free phone number and (b) a website that contains a summary of customers' rights, tariff (or links to the tariff), contact information for emergencies during regular and after-hours to report service issues, links to any tariff filed in the future with the Commission, and links to maps of Bluegrass Water's facilities on the Kentucky Infrastructure Authority Wastewater Mapping website.

21. While day-to-day operations, billing, and customer service functions are expected to be provided by third-party contractors for Bluegrass Water's systems, all management, financial reporting, underground utility safety and locations services, Commission and environmental regulatory reporting and management, record keeping, and final customer dispute management would be performed by personnel at Central States' corporate office.

22. Bluegrass Water's arrangements will assure continuity of service to current customers of Darlington Creek and that customers in this area are provided with a quality of service equal to or better than that currently being provided. These arrangements include implementa-

tion of a computerized maintenance management system for utility facilities, on-line bill-pay options, up-to-date website bulletins about current service status and service initiation/discontinuation procedures.

23. Central States has conducted site visits on this system, identified potential and existing issues, and outlined a plan for repairs and improvements. Through its site visits, Central States found that the facility is aging and much of the equipment is in need of repair or replacement to ensure continued compliance with environmental and Commission regulations. In order to ensure the longevity and performance of the system, Bluegrass Water plans to make improvements to the system. *See* redacted Exhibit G⁶ (Engineering Report).

24. The following tasks are currently planned for the system. Equipment in rusting or deteriorating condition will be repaired and replaced as necessary. Sludge must be removed from the plant to ensure full treatment capacity is available. Several trees overhang the plant and drop debris into the treatment basins, and must be removed to prevent interruption of normal treatment. The fence and gate surrounding the plant are extensively damaged and will need repair as a result.

III. Applicable Standards

25. The proposed acquisition of Darlington Creek assets and continued service to the Darlington Creek subdivision by Bluegrass Water meet the relevant standards of KRS 278.020 and KRS 278.030. In its Final Order entered June 19, 2020, in Case No. 2020-00028 (“the 00028 final Order”), the Commission concluded that certain approvals are necessary when a non-jurisdictional system is brought under the jurisdiction of the Commission through acquisition and

⁶ Applicant requests confidential treatment of the redacted material in a Motion for Confidential Treatment submitted concurrently with this Application.

continued service by a utility service provider. The Commission-enunciated requirements are met by Bluegrass Water with respect to the Darlington Creek system as follows.

A. Bluegrass Water’s acquisition of the Darlington Creek system will not impair its ability to provide reasonable and adequate service to its new and existing customers throughout Kentucky and should be granted a certificate of public convenience and necessity.

26. Darlington Creek is not a utility within the meaning of the statute, and thus does not provide utility service as defined in KRS 278.010. However, after approval and upon closing of this proposed acquisition, Bluegrass Water will be providing wastewater utility service “for the public, for compensation” in the Darlington Creek service area. In the Commission’s view, expressed in the 00028 final Order at p. 14, this constitutes a situation in which Bluegrass Water will “commence providing utility service to or for the public” in the Darlington Creek service area, necessitating a KRS 278.020(1)(a) certificate of public convenience and necessity.

27. Under KRS 278.020(1)(a), the Commission shall grant an applicant a certificate to “commence providing utility service to or for the public” if public convenience and necessity require the service. In the 00028 Order, the Commission applied this standard to a utility’s acquisition of non-jurisdictional facilities and subsequent service to the existing customers to require that an applicant show that its commencement of service to those persons will not impair its ability to provide reasonable and adequate service, to either the new customers or its current customers.

28. Here, public convenience and necessity for the service is evident from the continuing demand and need for the service, shown by the past and continuing use of the Darlington Creek sewer-service facilities.

29. Bluegrass Water’s acquisition of Darlington Creek should be approved. Bluegrass Water has provided adequate information about its finances and the state of the system it

seeks to acquire, including the known problems with the system and the actions necessary to repair the system. The evidence provided with this application supports a Commission decision that the acquisition of the Darlington Creek system will not impair Bluegrass Water's ability to provide reasonable and adequate service, to either the new customers or its current customers.

30. This ability stems from affiliation with and support by Central States, CSWR, LLC, and Bluegrass Water's other operating utility affiliates. The experience and expertise that Central States currently provides to affiliated systems in other states and that it would bring to the acquired systems is not usually available to small systems like that proposed to be acquired. In the prior acquisition cases for Bluegrass Water, the Commission has found repeatedly that it has sufficient financial ability to acquire and operate the systems acquired and to provide reasonable service.

31. Bluegrass Water has the financial capability necessary to acquire, own, and operate the acquired Darlington Creek assets. CSWR will provide equity financing for the proposed acquisition, as it has for the previously approved acquisitions while Bluegrass Water will continue to work to obtain appropriate debt financing.

32. If the Commission grants approval of the proposed acquisition, the same benefits obtained in the previous acquisition approvals would be brought to this system and the customers it serves. This includes the successful transition of service and compliance with Commission conditions upon the closing of the transactions approved in its prior acquisition applications. It is also shown by the engagement of qualified third-party firms to provide operation and maintenance of the system and customer service and billing, as well as in the oversight of these firms and functions by Central States personnel on behalf of Bluegrass Water.

33. The acquisition will result in the transfer of assets to an entity that will have sufficient capital and operating funds to operate, maintain, and expand the system, while providing continuity of service to the system's users. Aggregation of the assets and operations of the system with others in one Kentucky-focused operating company that has affiliates with substantial experience and expertise in operating wastewater systems is also likely lead to the creation of economies of scale and scope that can sustain and improve existing service.

34. Bluegrass Water has researched the state of the existing system and has concrete plans and the financial wherewithal to improve this system to serve the users and community as a whole. It is in the public interest that these systems be acquired by an entity that will professionalize the operations and has substantial resources, affiliation with experienced sewer-system owner-operators, and a focus on long-term ownership.

35. Bluegrass Water has sufficient assets to ensure the continuity of wastewater service on the system to be acquired. *See* redacted Exhibit H⁷ (Consolidated Financials). Bluegrass Water has posted a guaranteed financial instrument that is the equivalent of two-months of the cost of its third-party contractors with respect to its existing sewer systems. Bluegrass Water filed an Amended and Restated Guaranty on April 21, 2021, in Case Nos. 2020-00104, 2019-00360, and 2020-00297. The current maximum aggregate liability level (\$175,000.00) of that Guaranty is sufficient to satisfy any service-continuity standard with respect to Darlington Creek system.

⁷ Applicant requests confidential treatment of the redacted material in a Motion for Confidential Treatment submitted concurrently with this Application.

B. Bluegrass Water’s proposed initial tariffed rates for post-acquisition service are fair, just, and reasonable.

36. The 00028 final Order (p.28) specified that when a utility is seeking acquisition of a previously non-jurisdictional system, the Commission must approve initial tariffed rates that are fair, just, and reasonable, meeting the KRS 278.030(1) standard. There is no tariff on file with the Commission for the Darlington Creek service area which Bluegrass Water may adopt effective with the Closing. For its post-Closing recurring rate for service to area customers, Bluegrass Water proposes to use the current Darlington Creek rate of \$45.00 per month, along with Bluegrass Water’s general tariff rules and regulations for residential service on file and effective at that time.

37. Bluegrass Water’s wastewater service tariff, PSC Ky. No. 1, provides for service throughout its system, in multiple Kentucky counties. The general terms and conditions in Bluegrass Water’s tariff are uniform for all its systems; these filed-tariff provisions are “reasonable rules governing the conduct of its business and the conditions under which it shall be required to render service” (KRS 278.030(2)).

38. For Darlington Creek, Bluegrass Water proposes to charge its new customers on this system the pre-acquisition recurring rate of \$45.00 per month. This rate is “fair, just and reasonable” in accordance with KRS 278.030(1), because it is the rate currently paid by these customers for service, and is less than the current unified residential sewer rate in effect for Bluegrass Water following the recent final decision in Case No. 2020-00290.

39. The \$45.00 recurring per-month flat fee of the Darlington Creek sewer rate is substantially lower than the initial rate approved in 2016 for a system converting to jurisdictional

status.⁸ The rate proposed for Darlington Creek is also uniform throughout the respective service area and is available to all users, in accordance with KRS 278.030(3).

40. The post-acquisition tariff revisions proposed would be to add Darlington Creek to the list of areas served and a tariff sheet for the rate effective for the Darlington Creek service area; these would be effective simultaneously with the closing on the wastewater service facility so that there will be no gap in service or tariff coverage for the affected users. This date will be no earlier than the 31st day after filing this Application, so that the Commission is given all the notice that may be due under KRS 278.180(1). These revisions would not affect its existing customers' rates or other terms of service, and therefore no notice to them would be required.⁹ It is anticipated that Bluegrass Water would include the Darlington Creek service area in any future application for a general rate adjustment or for statewide uniform rates.

IV. Conclusion

WHEREFORE, the Applicant requests that the Commission issue a final order regarding this Application within 60 days, approving the proposed acquisition of the Darlington Creek system and permitting Bluegrass Water after the acquisition to operate the sewer system assets and provide service in accordance with Darlington Creek's current recurring rate and the general terms and conditions for residential service in the Bluegrass Water sewer tariff on file with the Commission.

⁸ In *Bush Gardens Enterprises, LLC, Application for Approval of Initial Sewer Rate Pursuant to the ARF Procedure for Small Utilities and Tariff*, Case No. 2015-00306, 3/24/16 Order p.2, the PSC approved an initial flat rate of \$123.65 per month for the eight-customer system, to generate the annual revenue requirement of \$11,870.

⁹ 807 KAR 5:011 §8 requires that notice be provided "if a charge, fee, condition of service, or rule regarding the provision of service is changed, revised, or initiated and the change will affect the amount that a customer pays for service or the quality, delivery, or rendering of a customer's service."

Respectfully submitted,

/s/ Kathryn A. Eckert

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EXHIBITS¹⁰

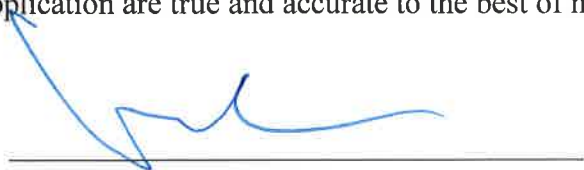
- A. Articles of Incorporation and By-Laws of Darlington Creek Homeowner's Association, Inc.
- B. Darlington Creek Homeowners Association Letter dated November 20, 2020
- C. Darlington Creek Subdivision Plat
- D. Kentucky Department of Environmental Protection Discharge Permit
- E. Kentucky Department of Environmental Protection, Division of Water, Notice of Violation (June 2020) and 7/24/20 follow-up letter
- F. Agreement of Sale of Utility System (redacted)
- G. Engineering memorandum (redacted)
- H. Consolidated Financials (redacted)

¹⁰ Applicant requests confidential treatment of the redacted material in a Motion for Confidential Treatment submitted concurrently with this Application.

Bluegrass Water Utility Operating Company, LLC

Verification

I, **Josiah Cox**, President of Central States Water Resources, Inc., the manager of **Bluegrass Water Utility Operating Company, LLC** ("Bluegrass"), do hereby verify on behalf of Bluegrass that the statements made in this Application are true and accurate to the best of my knowledge.



Josiah Cox

STATE OF FLORIDA)
COUNTY OF LEON)

Sworn to, subscribed, and acknowledged before me by means of physical presence or online notarization, this 27th day of October, 2021 by Josiah Cox who is personally known to me or who has produced a valid driver's license as identification.



Notary Public, State of Florida
Printed Name: Mary S. Turner
My Commission Expires: Nov. 27, 2022

