

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of

*Electronic* Proposed Acquisition of Wastewater )  
System Facilities by Bluegrass Water Utility )  
Operating Company, LLC )  
)  
)

No. 2021-00265

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**Bluegrass Water’s Motion for Confidential Treatment of Information**

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Bluegrass Water Utility Operating Company, LLC (“Bluegrass Water”) respectfully submits this Motion pursuant to 807 KAR 5:001, § 13, for confidential treatment of certain information relating to the Application in this case. In support of this Motion, Bluegrass Water states as follows:

1. On this date, Bluegrass Water filed with the Commission its Application for any approvals necessary (a) to acquire the facility of a certain wastewater system which is not subject to the Commission’s jurisdiction and (b) to thereafter provide service to that system’s present users.

2. The proposed acquisition will occur under the terms of Sale Agreement between Bluegrass Water and Darlington Creek Homeowners Association, Inc (hereinafter the “HOA”). A redacted copy of the Agreement is an exhibit to the Application as Exhibit F. Confidential treatment is sought for certain material in this Agreement – specifically the dollar amounts contained therein. The dollar amounts in the Agreement are highlighted in the unredacted copy filed under seal.

3. Bluegrass Water is also seeking confidential treatment for the engineering report attached to the Application as Exhibit G. This report has been redacted in the publicly-filed Application; the material for which confidential treatment is sought has been highlighted in the unredacted copy

filed under seal. This report contains confidential and propriety information regarding the system and the assets to be acquired.

4. Finally, Bluegrass Water is seeking confidential treatment for redacted portion of Exhibit H of the Application, the Bluegrass Water consolidated financial statements through July 31, 2021 (hereinafter “Consolidated Financials”). The Consolidated Financials contains confidential and proprietary information relating to the business of Bluegrass Water. An unredacted copy has been provided under seal.

5. The information in these exhibits for which Bluegrass Water seeks confidential treatment is not publicly disseminated, and public disclosure of this information would harm Bluegrass Water and the HOA. The subject system to be acquired is not regulated by the Commission and the redacted information in these exhibits would not be disclosed to a regulatory body in the usual course of business.

6. There is a risk of harm if the sale amount contained in Exhibit F is disclosed. Such disclosure could create incentives for other potential purchasers to undercut efforts by Bluegrass Water to successfully close this acquisition. In the event that the Commission does not approve the Application, or in the event that a proposed traction otherwise does not close, Bluegrass Water and the HOA would suffer harm if this information were made publicly accessible by other potential purchasers, as it could distort competition in a subsequent bidding process. Such disclosure would also be costly in the future when attempts to acquire other Kentucky systems are made and Bluegrass Water’s (or its affiliate’s) ability to negotiate terms specific to a system and its circumstances has been compromised.

7. The information in the engineering report contained in Exhibit G for which Bluegrass Water seeks confidential treatment is not publicly disseminated and public disclosure of this

information would harm Bluegrass Water. The report reveals information regarding the internal ability and workings of Bluegrass Water and its affiliates — in particular, how they evaluate potential acquisitions and respond to various issues that arise in wastewater systems. This document also demonstrates innovative and proprietary technology and processes developed through experience and used by Central States Water Resources, Inc. (“Central States”) and affiliates like Bluegrass Water to renovate small wastewater systems. Such processes are “trade secrets” as defined by KRS 365.880(4) and fall within the scope of the KRS 61.878(1)(c)(1) exemption from disclosure. If the trade secrets contained within the engineering report does 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 competitors in the wastewater industry.

8. In addition, Bluegrass Water seeks confidential treatment for the engineering report in Exhibit G because it is proprietary. Directly or indirectly (through Central States), Bluegrass Water expended funds with a third party as part of the due diligence in investigating this system. Bluegrass Water should not be forced to share this information publicly to its possible detriment. Especially if the Application is denied, public accessibility would cause Bluegrass Water harm because disclosure would give other potential purchasers and competitors a “leg-up” regarding 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 other systems are made and Bluegrass Water’s ability to negotiate terms specific to a particular system and its circumstances has been compromised.

9. The information in Exhibit H is treated as confidential by Bluegrass Water and its affiliates, and it is not widely disseminated even among the employees of these companies. Only personnel

with a business reason to use it are permitted to view this business information. The Consolidated Financials also reveal information regarding the internal ability and workings of Bluegrass Water and its affiliates.

10. The dollar amounts in the Agreement and the information in Exhibits H and G could be used by competitors to the business injury of Bluegrass Water and its affiliates, including Central States, in other ways as well. For example, if disclosed, the purchase price and plans for the future would give competitors sensitive information about, *e.g.*, (a) acquisition strategy and capability and (b) valuation of systems, their problems, and potential.

11. Under KRS 61.878(1)(c)(1), commercial information generally recognized as confidential is protected if disclosure would cause competitive injury and permit competitors an unfair commercial advantage. Public disclosure of the information in the documents for which Bluegrass Water seeks confidential treatment may cause competitive harm to Bluegrass Water and its affiliates in anticipated future acquisitions and operation of its systems in Kentucky.

12. The information redacted from these Exhibits is treated as confidential by Bluegrass Water and its affiliates; even among employees it is not disseminated to those who do not have a business reason to use the information.

13. If the Commission disagrees with Bluegrass Water that the material for which this Motion seeks confidential treatment is exempt from disclosure, it must hold an evidentiary hearing to protect Bluegrass Water's due process rights and permit an opportunity to supply the Commission with a complete record and to address its specific questions to enable it to reach a decision with regard to this confidentiality request.

14. In compliance with 807 KAR 5:001, Sections 8(3) and 13(2)(3), Bluegrass Water is filing with the Commission copies of Exhibits F, G, and H, entirely unredacted and with highlighting of

the material for which confidential treatment is sought. The unredacted copies are filed under seal pursuant to the instructions regarding confidential filings in the 3/24/20 Order issued in Ky. PSC Case No. 2020-00085; redacted pages of the subject documents are being publicly filed as Exhibits F-H to the Application.

15. Section 13(2)(a)(2) of 807 KAR 5:001 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. Bluegrass Water respectfully submits that five (5) years from the date of the filing of the Application is a reasonable period of time for the material in these Exhibits to be treated as confidential in the light of competitive conditions in the wastewater industry.

WHEREFORE, Bluegrass Water respectfully requests that the Commission grant confidential treatment of the information described herein and shown as redacted on the publicly-filed Application Exhibits F-H.

Respectfully submitted,

/s/ Kathryn A. Eckert

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