

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of

Electronic Proposed Acquisition of Wastewater)
System Facilities by Bluegrass Water Utility) No. 2021-00265
Operating Company, LLC)
)
)

Bluegrass Water’s Motion for Confidential Treatment of Information

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 initial requests for information in this case. In support of this Motion, Bluegrass Water states as follows:

1. On this date, Bluegrass Water filed with the Commission its Responses to Commission Staff’s First Request for Information (“1 PSC __”).
2. Confidential treatment is sought for the audited CSWR Consolidated 2020 and 2019 Financial Statements (hereinafter “Consolidated Financials”) produced in redacted form in response to 1 PSC 06, and which are bates numbered KY2021-00265_BW_0012 to BW_0034. The Consolidated Financials contain confidential and proprietary information relating to the business of Bluegrass Water. An unredacted copy has been provided under seal.
3. Bluegrass Water is also seeking confidential treatment for the Appraisal Report (bates numbered KY2021-00265_BW_0035 to BW_0089) and the Asset Valuation Report (bates numbered KY2021-00265_BW_0090 to BW_0118), both produced in response to 1 PSC 07. These reports 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. This

report contains confidential and propriety information regarding Darlington Creek and the assets to be acquired.

4. Finally, Bluegrass Water is seeking confidential treatment for its redacted journal entry produced in response to 1 PSC 08 (hereinafter “Journal Entry”), bates numbered KY2021-00265_BW_0119. The Journal Entry 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. The information in the Appraisal Report and Asset Valuation Report for which Bluegrass Water seeks confidential treatment is not publicly disseminated and public disclosure of this information would harm Bluegrass Water. The reports reveal 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. These reports also demonstrate 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.

7. In addition, Bluegrass Water seeks confidential treatment for the Appraisal and Asset Valuation Reports because these are 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.

8. The information in these Reports and the Consolidated Financials 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. The information contained in the reports were included in the proposed journal entry, and would reveal this sensitive business and proprietary information if disclosed.

9. The Consolidated Financials, Appraisal Report, Asset Valuation Report, and Journal Entry 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 valuations 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.

10. 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.

11. The information redacted from these documents 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.

12. 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.

13. In compliance with 807 KAR 5:001, Sections 8(3) and 13(2)(3), Bluegrass Water is filing with the Commission copies of the Consolidated Financials, Appraisal Report, Asset Valuation Report, and Journal Entry, 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 with the Response to Staff's initial data requests.

14. 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 documents 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 Consolidated Financials, Appraisal Report, Asset Valuation Report and Journal Entry.

Respectfully submitted,

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