

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of

Electronic Application of Bluegrass Water Utility)
Operating Company, LLC for Certificates of)
Convenience and Necessity for Projects at the)
Woodland Acres Site)

Case No. 2022-00015

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 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 Certificates of Convenience and Necessity for projects at the Woodland Acres site.
2. Bluegrass Water provided the financial exhibit required under the applicable regulations (hereinafter “Financial Exhibit”) as redacted Exhibit B to the Application. The Financial Exhibit includes the required detailed income statement and balance sheet, and is redacted in the publicly-filed version and unredacted and highlighted in the version provided to the Commission under seal. The Financial Exhibit contains confidential and proprietary information relating to the business of Bluegrass Water.
3. Bluegrass Water also provided the latest tax returns of its member-parent company Bluegrass Water Utility Holding Company, LLC (“Bluegrass UHC”) attached as redacted Exhibit H to the Application. These tax returns are being submitted to the Commission under seal. Bluegrass Water does not file tax returns on behalf of itself, the operating company, but rather these are consolidated and filed by Bluegrass UHC.

4. The Financial Exhibit and tax returns contain sensitive and commercially valuable financial information which is not publicly distributed or disseminated outside of Bluegrass Water. The redacted information in the Financial Exhibit for which confidential treatment is sought is treated as confidential by Bluegrass Water and its affiliates. Only personnel with a business reason to use it are permitted to view this business information. It is provided with the Application to show Bluegrass Water's financial status and ability as required by the statutes and regulations related to the Application.

5. Under KRS 61.878(1)(c)(1), commercial information generally recognized as confidential is protected if disclosure would cause competitive injury and permits competitors an unfair commercial advantage. Public disclosure of the information in the Financial Exhibit may cause competitive harm to Bluegrass Water and its affiliates in anticipated future acquisitions and operations in Kentucky by causing a lessening of competition in subsequent bidding processes for any future negotiations by Bluegrass Water, as well as revealing sensitive information about Bluegrass Water's capability and valuation of systems.

6. Pursuant to KRS 61.878(1)(k), information exempted from disclosure includes “[a]ll public records or information the disclosure of which is prohibited by federal law or regulation or state law.” The Commission previously held that tax returns and schedules should be held confidential for an indefinite period under KRS 61.878(1)(k) because they are prohibited from release pursuant to 26 U.S.C. § 6103(a), and KRS 131.190(1). *See* Ky. PSC Case No. 2018-00041, *In the Matter of: Electronic Investigation of the Impact of the Tax Cuts and Job Act on the Rates of Columbia Gas of Kentucky, Inc.* (Ky. PSC June 6, 2018), Order p. 2. Therefore, tax returns are prohibited from disclosure under state and federal law.

7. 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 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.

8. In compliance with 807 KAR 5:001, Sections 8(3) and 13(2)(3), Bluegrass Water is filing with the Commission a copy of the Financial Exhibit and the tax returns, 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 to the Application.

9. Bluegrass Water would not object to the disclosure of the confidential information pursuant to a confidentiality agreement with any intervenor who can demonstrate a legitimate interest in reviewing the confidential information for the purpose of participating in this proceeding.

10. 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. Movant respectfully submits that five years from the date of the filing of this Motion is a reasonable period of time for the Financial Exhibit to be treated as confidential in light of the competitive conditions in the water and wastewater industry. The tax returns should be treated as confidential indefinitely for the reasons described above in paragraph 6.

WHEREFORE, Bluegrass Water respectfully requests that the Commission grant confidential treatment of the information described herein.

Respectfully submitted,

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