

**COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION**

**In the Matter of:**

**ELECTRONIC APPLICATION OF )  
BLUEGRASS WATER UTILITY )  
OPERATING COMPANY, LLC FOR AN ) Case No. 2022-00432  
ADJUSTMENT OF SEWAGE RATES )**

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**MOTION OF BLUEGRASS WATER UTILITY OPERATING COMPANY, LLC  
FOR CONFIDENTIAL TREATMENT**

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Bluegrass Water Utility Operating Company, LLC (“Bluegrass Water” or the “Company”), by counsel, and pursuant to 807 KAR 5:001 Section 13 and KRS 61.878, respectfully submits this motion for confidential treatment of certain information provided in its Exhibits filed in support of its Application for Adjustment of Sewage Rates. The information for which Bluegrass Water seeks confidential treatment is hereinafter referred to as the “Confidential Information.” In support of its Motion, Bluegrass Water states as follows.

1. Contemporaneously with the filing of this motion, Bluegrass Water has filed its Application and supporting Exhibits and Schedules in the above-referenced matter.
2. Within those Exhibits and Schedules, Bluegrass Water has provided Certain Confidential Information, which includes:
  - a. Schedule BT-13 to the Direct Testimony of Brent Thies;
  - b. Exhibit 22 to the Application, Bluegrass Water’s service contracts with third parties; and
  - c. Exhibit 24 to the Application, Bluegrass Water’s federal and state tax returns.

## **I. SCHEDULE BT-13 TO THE DIRECT TESTIMONY OF BRENT THIES**

3. Pursuant to KRS 61.687(1)(c)(1), commercial information generally recognized as confidential is protected if disclosure would cause competitive injury and permit competitors to obtain an unfair commercial advantage.

4. The Confidential Information contained in Schedule BT-13 to the Testimony of Brent Thies pertains to acquisition-related costs. The information for which Bluegrass Water seeks confidential treatment in Schedule BT-13 are the individual purchase prices Bluegrass Water paid to acquire its individual wastewater systems. Bluegrass Water does not seek to keep confidential the total of the purchase prices, upon which Bluegrass Water requests the Commission set a fair, just and reasonable, unified sewage rate across all systems.

5. Bluegrass Water acknowledges that the Commission has previously denied confidential treatment to this information. However, Bluegrass Water respectfully submits that based upon Bluegrass Water's business of purchasing small, distressed water and wastewater systems, Bluegrass Water is in a unique position to other utilities as it pertains to the purchase of additional utilities.

6. As Bluegrass Water continuously seeks to identify additional systems for purchase, public disclosure of the amounts Bluegrass Water has previously paid for similar systems puts Bluegrass Water at a commercial disadvantage in negotiating with current owners of the systems, as it discloses the amounts Bluegrass Water may be willing to pay. Ultimately, demands for inflated purchase prices could negatively affect the ratepayers.<sup>1</sup>

7. These effects are no different than those that have previously been recognized by the Commission in contracts with service providers. In Case No. 2003-00054, the Commission

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<sup>1</sup> These negative effects could be borne through either continued operation of distressed systems by the current operators or an increased rate base upon which Bluegrass Water seeks to set its unified rate across Kentucky.

granted confidential treatment to bids submitted to Union Light, Heat & Power (“ULH&P”). ULH&P argued, and the Commission implicitly accepted, that if the bids it received were publicly disclosed, contractors on future work could use the bids as a benchmark, which could likely lead to the submission of higher bids. *In the Matter of: Application of the Union Light, Heat and Power Company for Confidential Treatment*, Order, PSC Case No. 2003-00054 (August 4, 2003).

8. Similarly, here, disclosure of Bluegrass Water’s purchase price of individual systems could lead to potential sellers demanding higher prices, as they will have access to the prices previously paid by Bluegrass Water for similar systems.

9. However, Bluegrass Water does not seek to maintain as confidential the total purchase price for all of the wastewater systems. As Bluegrass Water seeks to move all of its wastewater customers to a unified rate in this proceeding, this will strike an appropriate balance of allowing the Commission to fully and specifically address the total cost impact, likewise allowing the ratepayers to know the evidence upon which the Commission relied, while simultaneously protecting Bluegrass Water from an unfair competitive advantage because the individual prices of the systems will not be disclosed. *See In the Matter of: Application of East Kentucky Power Cooperative, Inc. for Approval of the Acquisition of Existing Combustion Turbine Facilities from Bluegrass Generation Company, LLC at the Bluegrass Generating Station in LaGrange, Oldham County, Kentucky and for Approval of the Assumption of Certain Evidences of Indebtedness*, Case No. 2015-00267, Order, at 2-3 (Nov. 24, 2015) (denying confidential treatment to the purchase price of certain facilities “given the Commission’s need to be able to fully and specifically address the cost impact in its final determination of this matter, and given that EKPC’s members and their respective retail customers have a right to know the evidence upon which the Commission relied

in determining the costs of the proposed acquisition and operation of Bluegrass Station are fair, just and reasonable”).

10. Therefore, Bluegrass Water submits that granting confidential treatment to the information contained in Exhibit BT-13 attached to the Direct Testimony of Brent Thies will best serve the ratepayers because (1) the ratepayers may fully understand the rate base upon which the unified rate is set, and (2) will further protect the ratepayers because if future sellers are able to demand higher purchase prices based on disclosure of prior purchase prices, the requested rate base for the unified rate will be higher than it otherwise would have been.<sup>2</sup>

11. Accordingly, while Bluegrass Water recognizes that the Commission has previously denied confidential treatment to this information, Bluegrass Water respectfully respects that the Commission allow Bluegrass Water to keep the price of individual systems confidential for a period of (5) years.

## **II. EXHIBIT 22 – SERVICE CONTRACTS**

12. Pursuant to KRS 61.687(1)(c)(1), commercial information generally recognized as confidential is protected if disclosure would cause competitive injury and permit competitors to obtain an unfair commercial advantage.

13. Bluegrass Water seeks to keep confidential the pricing provisions of its service contracts with third-party service providers. As is outlined in the Direct Testimony of Todd Thomas (Application Exhibit 23), the third-party service contracts are the result of a competitive bidding process. Further, for similar service contracts Bluegrass Water will engage in an RFP process to award future contracts. Accordingly, public disclosure of the current pricing could lead to higher bids in future public bidding procedures.

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<sup>2</sup> Alternatively, Bluegrass Water may not purchase the system and the operation of the distressed systems will continue without remedy.

14. These effects were recognized in PSC Case No. 2003-00054, in which the Commission granted confidential treatment to bids submitted to Union Light, Heat & Power (“ULH&P”). ULH&P argued, and the Commission implicitly accepted, that if the bids it received were publicly disclosed, contractors on future work could use the bids as a benchmark, which would likely lead to the submission of higher bids. *In the Matter of: Application of the Union Light, Heat and Power Company for Confidential Treatment*, Order, PSC Case No. 2003-00054 (August 4, 2003).

15. Accordingly, Bluegrass Water respectfully requests that the Commission grant its Motion to keep as confidential for a period of five (5) years the pricing provisions of the service contracts attached to the Application as Exhibit 22.

### **III. EXHIBIT 24 - FEDERAL AND STATE TAX RETURNS**

16. The Confidential Information in Exhibit 24 is Bluegrass Water’s federal and state income tax returns. The Commission considers tax returns confidential and exempt from public disclosure for an indefinite period of time.<sup>3</sup>

### **IV. TIME PERIOD**

17. 807 KAR 5:001 Section 13(2)(a)(2) provides that a motion for confidential treatment shall state the time period for which the material should be treated as confidential and the reasons for this time period.

- a. Bluegrass Water respectfully submits that the tax returns should be accorded confidential treatment for an “indefinite” period of time, consistent with the Commission’s Order in 2018-00041 (“The material set forth in the attachments to

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<sup>3</sup> 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.*, Order at 2 (Jun. 6, 2018); Case No. 2020-00290.

Columbia's Response to Staff's Third Request, Item 1, Attachment B shall not be placed in the public record or made available for public inspection for an indefinite period, or until further Orders of this Commission.'').

- b. The remaining exhibits for which confidential treatment is sought may remain confidential for 5 years from the date of the filing of this Motion, which Bluegrass Water submits is a reasonable period of time for confidentiality in light of competitive conditions in the sewage industry.

## **V. REQUEST FOR RELIEF**

18. If and to the extent the Confidential Information becomes generally available to the public, whether through filings required by other agencies or otherwise, Bluegrass Water will notify the Commission in writing. 807 KAR 5:001 Section 13(10)(b).

19. Because this Confidential Information is subject to a pending motion for confidential treatment, the Confidential Information remains confidential until the Commission acts on that motion. *See* 807 KAR 5:001 Section 13(4) ("Pending action by the commission on a motion for confidential treatment or by its executive director on a request for confidential treatment, the material specifically identified shall be accorded confidential treatment.'').

20. This Confidential Information is not publicly available, is not disseminated within Bluegrass Water except to those employees and professionals with a legitimate business need to know and act upon the information, and is not disseminated to others without a legitimate need to know and act upon the information.

21. If disclosed, the Confidential Information would allow Bluegrass Water's competitors to discover, and use, Confidential Information concerning Bluegrass Water's financial

condition, negotiation tactics, and business strategies, to the unfair competitive advantage of Bluegrass Water.

22. If and to the extent the Confidential Information becomes generally available to the public, whether through filings required by other agencies or otherwise, Bluegrass Water will notify the Commission in writing. 807 KAR 5:001 Section 13(10)(b).

23. 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.

24. In compliance with 807 KAR Section 8(3) and Section 13(2)(e), Bluegrass Water is filing with the Commission a copy of the Confidential Information, 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 March 24, 2020 Order issued in Case No. 2020-00085; redacted pages of the subject documents are being publicly filed.

WHEREFORE, Bluegrass Water respectfully requests that the Commission classify and protect the Confidential Information as confidential as requested herein.

Submitted this the 27th day of February, 2023.

Respectfully submitted,

/s/Edward T. Depp

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### **Certification**

I hereby certify that a copy of this filing has been served electronically on all parties of record through the use of the Commission's electronic filing system, and there are currently no parties that the Commission has excused from participation by electronic means. Pursuant to the Commission's July 22, 2021 Order in Case No. 2020-00085, a paper copy of this filing has not been transmitted to the Commission.

/s/Edward T. Depp

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*Operating Company, LLC*