

**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)**

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

1. Bluegrass Water Utility Operating Company, LLC (“Bluegrass Water”) pursuant to 807 KAR 5:001 Section 13 and KRS 61.878, hereby moves the Kentucky Public Service Commission (the “Commission”) to grant confidential treatment to certain information (the “Confidential Information”) contained in its Responses to the Attorney General’s first requests for information (“AG Responses”) submitted contemporaneously herewith. In support of this Motion, Bluegrass Water states as follows.

2. As discussed below, the Confidential Information is entitled to confidential treatment based upon KRS 61.878(1)(c)(1) and 61.878(1)(a). *See* 807 KAR 5:001, Section 13(2)(a)(1).

3. Specifically, Bluegrass Water seeks to keep the following information confidential:

- a. Exhibit OAG 1-53, Exhibit OAG 1-55, OAG Exhibit 1-103, and OAG Exhibit 1-115 (“Salary and Compensation Information”).

I. KRS 61.878 – Confidential or Proprietary Information and Invasion of Personal Privacy.

4. KRS 61.878(1)(c)(1) protects “records confidentially disclosed to an agency or required by an agency to be disclosed to it, generally recognized as confidential or proprietary,

which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records.”

5. In addition, KRS 61.878(1)(a) protects “information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy[.]” KRS 61.878(1)(a).

A. Salary and Compensation Information

6. Bluegrass Water seeks confidential treatment for the entirety of the Salary and Compensation Information filed in response to the AG Requests and identified above. The Salary and Compensation Information is confidential and proprietary information regarding Bluegrass Water’s business.

7. Bluegrass Water previously sought confidential treatment for salary and benefits information of Bluegrass Water’s employees, in its April 21, 2023 motion for confidential treatment of the salary and benefits information contained in its response to the Commission’s first set of data requests. Bluegrass Water respectfully incorporates that motion for confidential treatment as if fully set forth here. Accordingly, the Commission should grant confidential treatment to the Salary and Compensation Information.

8. The Confidential Information in the Salary and Compensation Information contained in the exhibits identified above for which confidential treatment is sought is not publicly disseminated, and public disclosure of this information would harm Bluegrass Water. Indeed, the Salary and Compensation Information regarding CSWR employees is not available to the vast majority of CSWR employees. As detailed in Response to PSC Request No. 1-17, CSWR, LLC has worked to attract top talent to the company. Part of that strategy entails offering a benefits package that competes favorably with benefits offered by larger water and wastewater utilities.

Contribution rates were consequently determined with that goal in mind. The Commission has previously recognized that salary information of non-executive employees is entitled to confidential protection. *In the Matter of: Electronic Application of Duke Energy Kentucky, Inc. for (1) An Adjustment of Electric Rates; (2) Approval of New Tariffs; (3) Approval of Accounting Practices to Establish Regulatory Assets and Liabilities; and (4) All Other Required Approvals and Relief*, PSC Case No. 2022-00372, Order (Feb. 10, 2023). Although the Commission has not historically afforded executive compensation and aggregate salary information confidential status, Bluegrass Water respectfully submits that it is appropriate in this limited circumstance. *See id.*

9. Specifically, CSWR provides a level of experience and expertise that is not usually available to utilities the size of Bluegrass Water. If information regarding all levels of CSWR's employee base is made available to the public, competitors could use CSWR's aggregate salary and benefits information to its detriment as they compete for top talent at all levels. *See, e.g., In the Matter of: Electronic Application of Water Service Corporation of Kentucky for a General Adjustment of Existing Rates*, Case No. 2018-00208, Order (Mar. 8, 2019) (granting confidential treatment where "confidential employee compensation information, if disclosed, would enable competitors to attempt to recruit key personnel, and would compromise the Company's position in negotiating employee compensation terms."). In other words, CSWR's competitors could use this information to recruit CSWR's current employees, including its executives, away from CSWR, to the detriment of Bluegrass Water and its customers. Competitor use of this data could, therefore, consequently result in additional pressure for CSWR to increase compensation in order to more favorably compete in the attraction and retention of skillful employees and executives. Prospective employees and executives could also use this information in seeking to negotiate higher salaries by having access to the salaries CSWR currently pays, much like a contractor for

future work could use prior bids to Bluegrass Water's detriment. *See In the Matter of: Application of the Union Light, Heat and Power Company for Confidential Treatment*, PSC Case No. 2003-00054, Order (Aug. 4, 2003).

10. Furthermore, the salaries and benefits of CSWR's employees "contain[] information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy[.]" KRS 61.878(1)(a). Bluegrass Water respectfully submits that it is a "clearly unwarranted invasion of personal privacy" to disclose the Salary and Compensation Information. Ultimately, "disclosure would be an unwarranted invasion of personal privacy." *In the Matter of: (1) An Adjustment of Electric Rates; (2) Approval of New Tariffs; (3) Approval of Accounting Practices to Establish Regulatory Assets and Liabilities; and (4) All Other Required Approvals and Relief*, PSC Case No. 2022-00372, Order (Feb. 10, 2023).

11. Finally, the Attorney General's Request for Information No. 1-51 asked Bluegrass Water to "provide an organizational chart identifying each employee, by department, whose costs are included as a component of the proposed revenue requirement." Exhibit OAG 1-51 includes this information, identifying each employee by name and applicable job title, as requested by the Attorney General. Accordingly, when looking at the requested information as a whole, if the Salary and Compensation Information is made public, the salary and benefits offered to the CSWR employees identified in Exhibit OAG 1-51 would become public, as job titles could simply be cross-referenced to salaries. This would result in an invasion of the personal privacy of each of these employees. *See KRS 68.878(1)(a); In the Matter of: Electronic Application of Duke Energy Kentucky, Inc. for (1) An Adjustment of Electric Rates; (2) Approval of New Tariffs; (3) Approval of Accounting Practices to Establish Regulatory Assets and Liabilities; and (4) All Other Required Approvals and Relief*, PSC Case No. 2022-00372, Order (Feb. 10, 2023).

12. Accordingly, Bluegrass Water respectfully requests that the Commission grant its Motion to keep as confidential the Salary and Compensation Information identified in Exhibit OAG 1-53, Exhibit OAG 1-55, OAG Exhibit 1-103, and OAG Exhibit 1-115.

II. The Confidential Information.

13. The 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 are not disseminated to others without a legitimate need to know and act upon the information.

14. If the Commission grants the relief sought in this Motion, Bluegrass Water requests that the Salary and Compensation Information identified above remain confidential indefinitely to avoid an unwarranted invasion of personal privacy.

15. Based on the foregoing, the Confidential Information is entitled to confidential protection. If the Commission disagrees, then the Commission should allow Bluegrass Water to request an evidentiary hearing to protect its due process rights and to supply the Commission with a complete record to enable it to reach a decision with regard to this filing. *See Util. Reg. Comm'n v. Ky. Water Serv. Co., Inc.*, 642 S.W.2d 591 (Ky. App. 1982).

16. Pursuant to the Commission's March 24, 2020 Order *In the Matter of: Electronic Emergency Docket Related to the Novel Coronavirus COVID-19*, Case No. 2020-00085 ("Case No. 2020-00085"), one (1) copy of the confidential information is being filed with this motion by electronic mail. A copy of those Exhibits, with the Confidential Information redacted, is being electronically filed with the AG Responses.

17. A copy of this motion with the Confidential Information redacted has been served on all parties to this proceeding through the use of electronic filing. *See* 807 KAR 5:001, Section

13(b). A copy of the Confidential Information has been served on all parties to this proceeding that have executed a confidentiality agreement through electronic mail.

18. If and to the extent any of the Confidential Information becomes publicly available because it is no longer competitively sensitive, Bluegrass Water will inform the Commission in writing and have its confidential status removed. 807 KAR 5:001 Section 13(10)(b).

WHEREFORE, Bluegrass Water respectfully requests that the Commission classify and protect the Confidential Information as confidential for the period(s) requested above.

This the 16th day of May, 2023.

Respectfully submitted,

/s/Edward T. Depp

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Certification

I hereby certify that a copy of this Motion 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 _____
Counsel to Bluegrass Water