

**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**

---

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 an exhibit filed in support of its responses to the Commission’s first set of data requests (the “Requests”). 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.

**I. EXHIBIT PSC 1-12 & EXHIBIT PSC 1-16**

1. Contemporaneously with the filing of this motion, Bluegrass Water has filed its Responses to the Requests and supporting Exhibits. Exhibit PSC 1-12 is Bluegrass Water’s contract with Muni-Link, which contains Confidential Information, as explained below.

2. 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.

3. 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.

4. 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). This could result in competitive injury to Bluegrass Water.

5. 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 Exhibit PSC 1-12.

6. For similar reasons, Bluegrass Water respectfully seeks confidentiality of Exhibit PSC 1-16. That exhibit contains salary and benefits information for Bluegrass Water’s 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*, 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.*

7. 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*, Order, PSC Case No. 2003-00054 (August 4, 2003).

8. Finally, 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 benefits of both its executives and nonexecutives. Ultimately, “disclosure would be an unwarranted invasion of personal privacy.” *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*, Case No. 2022-00372, Order (Feb. 10, 2023).

9. Accordingly, Bluegrass Water respectfully requests that the Commission grant its Motion to keep as confidential, indefinitely, the compensation information provided in Exhibit PSC 1-16.

## **II. REQUEST FOR RELIEF**

10. 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).

11. 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.”).

12. 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.

13. 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.

14. 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).

15. 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.

16. 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 21st day of April, 2023.

Respectfully submitted,

/s/Edward T. Depp

John E. Selent

Edward T. Depp

R. Brooks Herrick

Sarah D. Reddick

DINSMORE & SHOHL LLP

101 South Fifth Street

Suite 2500

Louisville, KY 40202

502.540.2300

502.540.2529 (fax)

[John.selent@dinsmore.com](mailto:John.selent@dinsmore.com)

[Tip.depp@dinsmore.com](mailto:Tip.depp@dinsmore.com)

[Brooks.herrick@dinsmore.com](mailto:Brooks.herrick@dinsmore.com)

[Sarah.reddick@dinsmore.com](mailto:Sarah.reddick@dinsmore.com)

*Counsel to Bluegrass Water Operating  
Company, LLC*

### **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

*Counsel to Bluegrass Water Utility*

*Operating Company, LLC*