

**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 (“OAG Responses”) and the Commission Staff’s second requests for information (“Commission 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/or 61.878(1)(m)(1). *See* 807 KAR 5:001, Section 13(2)(a)(1).

3. Specifically, Bluegrass Water seeks to keep the following information confidential:
- a. Portions of Exhibit OAG 1-67; Exhibit OAG 1-70(b); Exhibit OAG 1-71(b); Exhibit OAG 1-72(b); Exhibit OAG 1-73(b); Exhibit OAG 1-74(b); Exhibit OAG 1-75(b); Exhibit OAG 1-76(b); Exhibit OAG 1-77(b); Exhibit OAG 1-78(a); Exhibit OAG 1-79(b); Exhibit OAG 1-80(b); Exhibit OAG 1-81(b); Exhibit OAG 1-82(b); Exhibit OAG 1-83(a); Exhibit OAG 1-

84(b); Exhibit OAG 1-85(a); Exhibit OAG 1-86(a); Exhibit OAG 1-87(a);
and Exhibit OAG 1-88(b);(together, “*Engineering Reports*”);

- b. Exhibit OAG 1-79(d) (“*Bid Documents*”);
- c. Exhibit PSC 2-17 and Exhibit OAG 1-41 (together, “*Acquisition Documents*”);
- d. Exhibit OAG 1-57 (“*Customer Information*”);
- e. Exhibit OAG 1-59 (“*Bluegrass Water’s 2020 Tax Return*”);
- f. Page 3 of Exhibit OAG 1-77(d) (“*Critical Infrastructure Page*”); and
- g. Exhibit OAG 1-119 (“*Insurance Policies*”)

I. KRS § 61.878 – Confidential or Proprietary Information.

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. KRS § 61.878(1)(m)(1) protects “records the disclosure of which would have a reasonable likelihood of threatening the public safety by exposing a vulnerability in preventing, protecting against, mitigating, or responding to a terrorist act and limited to ... (f) [i]nfrastructure records that expose a vulnerability referred to in this subparagraph through the disclosure of the location, configuration, or security of critical systems, including public utility critical systems ... [including but not limited to] information technology, communication, electrical, fire suppression, ventilation, water, wastewater, sewage, and gas systems[.]”

6. The Confidential Information identified above for which Bluegrass Water seeks confidential treatment is not publicly disseminated and public disclosure of this information would harm Bluegrass Water, CSWR and its affiliates, and potentially the public.

A. The Engineering Reports.

7. First, Bluegrass Water seeks confidential treatment for the Engineering Reports filed in response to the OAG Requests and identified above. These Engineering Reports have been redacted in the publicly-filed Responses. The material for which confidential treatment is sought has been highlighted in the unredacted copies filed under seal. These Engineering Reports contain confidential and proprietary information regarding Bluegrass Water's systems and the assets.¹

8. The Confidential Information in the Engineering Reports 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. The Engineering Reports reveal information regarding the internal ability and workings of Bluegrass Water and its affiliates, including specifically, how they evaluate potential systems for acquisition and the internal processes by which they respond to various issues that arise in similar wastewater systems. These documents also demonstrate innovative and proprietary technology and processes developed through experience and used by Bluegrass Water and its affiliates and its affiliates to renovate wastewater systems.² Such processes are "trade secrets" as defined by KRS 365.880(4) and fall within the scope of the trade secret exemption from disclosure pursuant to KRS 61.878(c). If these trade secrets contained within the Engineering Reports do not receive confidential treatment during

¹ The Commission has previously granted confidential treatment to the same and similar information in Case No. 2020-00028, *Proposed Acquisition by Bluegrass Water of Wastewater System Facilities* (Ky. PSC Apr. 16, 2020), Order at 3; Case No. 2021-00265, *Proposed Acquisition of Wastewater System Facilities by Bluegrass Water Utility Operating Company, LLC* (Ky. PSC Apr. 26, 2022), Order at 3.

² *See id.*

the pendency of this proceeding, the risk would be unnecessarily increased that Bluegrass Water and its affiliates would suffer a serious business injury and these trade secrets would be misappropriated by other competitors in the wastewater industry.

9. Exhibit OAG 1-67 is Bluegrass Water's agreed order with the Division of Water in DOW Case No. 19-3-0152. Exhibit A to that document, which is not a public record and is what Bluegrass Water asks to be kept confidential, are Engineering Reports that are confidential to Bluegrass Water and should be treated confidentially like the rest of the Engineering Reports.

B. Bid Documents.

10. Second, Bluegrass Water seeks confidential treatment of Exhibit OAG 1-79(d), which contains bid documents received from vendors, contractual terms resulting from said bids, and depictions of critical wastewater infrastructure.

11. The Commission has previously recognized that such documents should be afforded confidential treatment. In PSC Case No. 2003-00054, 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). A similar injury could be incurred by Bluegrass Water if Exhibit OAG 1-79(d) were publicly disclosed.

12. Further, public disclosure of the contract terms upon which Bluegrass Water is willing to agree would put Bluegrass Water at a competitive disadvantage because potential future

contractors could similarly use the contract terms as a benchmark, leading to less favorable contract terms for Bluegrass Water.

13. In addition to bid documents and placing Bluegrass Water at a negotiating disadvantage, Exhibit OAG 1-79(d) contains diagrams and schematics of critical infrastructure. *See* KRS 68.878(1)(m). The Commission has previously granted confidential treatment to “maps, diagrams, and schematics for infrastructure.” *See* Case Nos. 2020-00349; 2020-00350, Dec. 7, 2021 Order (granting the Jan. 22, 2021 Motion for Confidential treatment).

14. Bluegrass Water respectfully requests that the portions of Exhibit OAG 1-79(d) that do not depict critical infrastructure be granted confidential treatment for five years, and the portions of Exhibit OAG 1-79(d) that depict critical infrastructure be granted confidential treatment indefinitely.

C. Acquisition Documents.

15. Third, Bluegrass Water seeks confidential treatment for Exhibit PSC 2-17 and Exhibit OAG 1-41, the Acquisition Documents. The Acquisition Documents contain much of the same information as Schedule BT-13 to the Application, for which Bluegrass Water previously sought confidential treatment in its February 27, 2023 motion for confidential treatment. Schedule BT-13 is currently treated confidentially and is not publicly available. *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.”).

16. Bluegrass Water respectfully incorporates that motion for confidential treatment as if fully set forth here. Accordingly, the Commission should grant confidential treatment to the Acquisition Documents.

D. Customer Information

17. Exhibit OAG 1-57 contains information related to individual customers, including individual customer usage data. Disclosing the details of Exhibit OAG 1-57 would allow Bluegrass Water's competitors, as well as the competitors of Bluegrass Water customers, information that could be used to negotiate more favorable terms and to develop marketing strategies. Additionally, providing individual customer usage data would invade the privacy rights of the Bluegrass Water customers identified in Exhibit OAG 1-57.

18. The Commission has previously granted confidential treatment of such information pursuant to KRS 61.878(1) for an indefinite period of time. *See In the Matter of: Application of Atmos Energy Corporation for an Adjustment of Rates and Tariff Modifications*, Case No. 2013-00148, Dec. 3, 2013 Order; *In the Matter of: Filing of Agreement for the Purchase and Sale of Firm Capacity and Energy Between Big Rivers Electric Corporation and the Kentucky Municipal Energy Agency*, Order, P.S.C. Case No. 2016-00306 (Jan. 2, 2019); *In the Matter of: Application of Kentucky Utilities Company for an Adjustment of its Electric Rates*, Order, P.S.C. Case No. 2012-00221 (July 25, 2013) (holding customer names, account numbers, and usage information exempt from disclosure under KRS 61.878(1)(a)).

19. Accordingly, Bluegrass Water respectfully requests that the Commission grant confidential treatment to Exhibit OAG 1-57 for an indefinite period of time.

E. Bluegrass Water's 2020 Tax Return.

20. Fourth, Bluegrass Water seeks confidential treatment for Exhibit OAG 1-59, Bluegrass Water's 2020 Tax Return. Bluegrass Water previously sought confidential treatment for Exhibit 24 to the Application, its federal and state tax returns, in its February 27, 2023 motion for confidential treatment. Those returns are treated confidentially. *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.”). Bluegrass Water respectfully incorporates that motion for confidential treatment as if fully set forth here. Accordingly, the Commission should grant confidential treatment to Exhibit OAG 1-59.

F. Critical Infrastructure.

21. Fifth, Bluegrass Water seeks confidential treatment for page three of Exhibit OAG 1-77(d). That exhibit depicts critical infrastructure, including pump stations, gas lines, and water mains, etc., and which is readily identifiable as a part of the Brocklyn system. *See* KRS 61.878(1)(m)(1). The Commission has previously treated similar critical infrastructure confidentially. *See, e.g., In Re Electronic Application of Kentucky Utilities*, Case No. 2020-00349 (Ky. PSC Dec. 7, 2021) (“public disclosure of the material could result in competitive harm to LG&E/KU; KRS 61.878(1)(m), which prohibits public disclosure of critical infrastructure systems; and 807 KAR 5:001 Section 13.”). Bluegrass Water respectfully asks that the Commission treat page 3 of Exhibit OAG 1-77(d) confidentially in accordance with KRS 61.878(1)(m)(1).

G. Insurance Policies.

22. Finally, Bluegrass Water seeks confidential treatment for its Insurance Policies provided as Exhibit OAG 1-119. Disclosure of Bluegrass Water’s insurance policies and insurance premiums could affect Bluegrass Water’s ability to negotiate for insurance policies in the future. *See* KRS 61.878(1)(c)(1).

23. The Commission has previously granted confidential treatment to similar insurance policy information under KRS 61.878(1)(c)(1). *See* Case No. 2014-00396, Sept. 16, 2015 Order

(granting confidential treatment to “insurance coverage and premiums” for a period of five years); Case No. 2018-00281, Feb. 3, 2021 Order (granting confidential treatment to “insurance premium rates”).

24. Accordingly, Bluegrass Water respectfully requests that Exhibit OAG 1-119 be granted confidential treatment for a period of five years.

II. The Confidential Information.

25. 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.

26. If the Commission grants the relief sought in this Motion, Bluegrass Water requests that the Engineering Reports, Bid Documents (that do not disclose critical infrastructure), Acquisition Documents, and Insurance Policies identified above remain confidential for a period of five (5) years from the date of this Motion, at which time the Confidential Information should be sufficiently outdated so that it could not be used to competitively disadvantage Bluegrass Water. 807 KAR 5:001, Section 13(2)(a)(2).

27. If the Commission grants the relief sought in this Motion, Bluegrass Water requests that the Bid Documents that contain critical infrastructure and the Critical Infrastructure Page remain confidential indefinitely, as it reveals critical infrastructure information, the disclosure of which could be harmful to the public. 807 KAR 5:001, Section 13(2)(a)(2).

28. Bluegrass Water requests that Bluegrass Water’s 2020 Tax Return remain confidential indefinitely, consistent with prior Commission precedent.³

³ 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 (June 6, 2018); *see also* Case No. 2020-000290.

29. 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).

30. 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 highlighted in yellow is being filed with this motion by electronic mail. A copy of those pages, with the Confidential Information redacted, is being electronically filed with the OAG Responses.

31. 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 through electronic mail.

32. 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 12th day of May, 2023.

Respectfully submitted,

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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.

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