

**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 supplemental request for information (“OAG Responses”) and the Commission Staff’s third request 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). *See* 807 KAR 5:001, Section 13(2)(a)(1).

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

a. **Bid and Acquisition Information:**

- **Exhibit OAG 2-3 – “RFPS”;** and
- **Exhibit OAG 2-47 – “2023-00181 Confidential Application Exhibits”;**

b. **Insurance Policy Information:** Exhibit OAG 2-69 – “**Insurance Policies**” – Refers to Confidential Response to OAG 1-119;

c. **Loan Agreement:** Exhibit PSC 3-1 – “**Bluegrass CoBank Loan Agreement Loan**”;

- d. **Allocation Detail** – Exhibit PSC 3-18 – “CSWR GL Exclusions - BGUOC”; and
- e. **Financial Statements:** Exhibit PSC 3-27(a) – “CSWR 2022 Audited Financials.”

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. 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. Bid, Vendor, and Acquisition Information.

6. First, Bluegrass Water seeks confidential treatment for Exhibit OAG 2-3 and Exhibit OAG 2-47, which contain competitively-sensitive bid and acquisition information.

7. Exhibit OAG 2-3 includes confidential bid information pertaining to certain Bluegrass Water Requests for Proposals (“RFPs”) and responses received. Exhibit OAG 2-3 contains information similar to that in Exhibit PSC 1-12, for which Bluegrass Water previously sought confidential treatment in its April 21, 2023 motion for confidential treatment. Bluegrass Water respectfully incorporates that motion as if fully set forth here. Exhibit PSC 1-12 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.”). As the Commission has recognized, if bids 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 (Aug. 4, 2003).

8. Exhibit OAG 2-47 contains the confidential exhibits from Bluegrass Water's recently-filed case (Case No. 2023-00181) seeking permission to acquire three independent wastewater systems located within the Commonwealth. Exhibit OAG 2-47 contains 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. Bluegrass Water respectfully incorporates that motion as if fully set forth here. 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."). The information in Exhibit OAG 2-47 is also currently subject to a pending motion for confidential treatment in Case No. 2023-00181, and the Company hereby incorporates herein by reference, as if fully set forth, its motion with respect to the same information provided in that matter.

9. Accordingly, the Commission should grant confidential treatment to the above bid and acquisition-related information.

C. Insurance Policy Information.

10. Second, Bluegrass Water seeks confidential treatment for Exhibit OAG 2-69, which contains detailed and competitively-sensitive information pertaining to its insurance policies.

11. The Insurance Policy Information contains much of the same information as found in Confidential Response to OAG 1-119 and Application Exhibit 22, for which Bluegrass Water sought confidential treatment in its May 12, 2023 and February 27, 2023 motions for confidential

treatment, respectively. Bluegrass Water respectfully incorporates those motions as if fully set forth here. Response to OAG 1-119 and Exhibit 22 are currently treated confidentially and are 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.”).

12. Accordingly, the Commission should grant confidential treatment to the Insurance Policy Information.

D. Loan Agreement

13. Third, Bluegrass Water seeks confidential treatment for its Exhibit PSC 3-1, its loan agreement with CoBank. Bluegrass Water acknowledges that the Commission has denied confidential treatment to “rates or fees actually paid ... because they affect the revenue requirement.”¹ *In the Matter of: Electronic Application of Bluegrass Water Utility Operating Company, LLC for Issuance of Evidence of Indebtedness*, Case No. 2022-00217, Order at *3 (Feb. 10, 2023). However, the terms of the Loan Agreement do not “affect the revenue requirement.” *Id.* The Commission has granted confidential treatment to loan agreements, which competitors could use “to gain a competitive advantage.” *See, e.g., In the Matter of the Application of Alpha Cellular Telephone Company, a Florida General Partnership, for the Issuance of a Certificate of Public Convenience and Necessity to Provide Domestic Public Cellular Radio Telecommunications Service to the Public in Kentucky Rural Service Area Which Includes Elliott, Lawrence, Morgan, Magoffin, Johnson, Martin, Floyd and Pike Counties in Kentucky, for Approval of Financing, and for Establishment of Initial Rates*, Case No. 91-377, Order (Jan. 9,

¹ The Company has publicly provided this specific information in its March 9, 2023, filing, available at: <https://psc.ky.gov/Case/ViewCaseFilings/2022-00217/Post>.

1992). Here, Bluegrass Water’s competitors could use the loan terms to gain a competitive advantage over Bluegrass Water, and the Loan Agreement is therefore entitled to confidential protection.

14. Accordingly, the Commission should grant confidential treatment to the loan agreement.

E. Allocation Detail

15. Fourth, Exhibit PSC 2-18 contains information related to the amounts paid to outside vendors and contractors by CSWR, LLC, including insurance costs, portions of which are allocated to Bluegrass Water (unless excluded from the allocation methodology). The portion of Exhibit PSC 2-18 for which Bluegrass Water seeks confidential treatment are the same as in Exhibit OAG 1-6, for which it previously sought confidential treatment in its May 26, 2023 motion for confidential treatment. Bluegrass Water respectfully incorporates that motion as if fully set forth here. Exhibit OAG 1-6 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.”). Disclosing this information could result in higher costs to CSWR, resulting in more costs being allocated to Bluegrass Water.

16. Accordingly, the Commission should grant confidential treatment to the allocation details contained in Exhibit PSC 2-18.

F. Financial Statements

17. Fifth, Bluegrass Water seeks confidential treatment for Exhibit PSC 3-27(a), the audited, consolidated financial statements of its parent, CSWR, LLC, as of December 31, 2022. Bluegrass Water acknowledges that its own balance sheet and income statement are not

confidential. *See* Case No. 2022-00217, Order (Feb. 10, 2023) (“Bluegrass Water, as a utility regulated by the PSC, is required to file an Annual Report which contains a balance sheet and income statement.”). However, CSWR, LLC is not a utility regulated by the Commission. Its consolidated financial statements have previously been held to be entitled to confidential treatment. *See In the Matter of: Electronic Application of Bluegrass Water Utility Operating Company, LLC for an Adjustment of Rates and Approval of Construction*, Case No. 2020-00290, Order at *3 (Dec. 27, 2021) (“Therefore, the Commission finds that CSWR’s 2019 Consolidated Financial Statement meets the criteria for confidential treatment.”); *see id.* at *18 (“Regarding CSWR’s 2020 Consolidated Financial Statement, the Commission finds that confidential treatment should be granted for the same [reasons] discussed above with respect to CSWR’s 2019 Consolidated Financial Statement.”). Here, the information in Exhibit PSC 3-27(a) “could be used to CSWR and Bluegrass Water’s detriment in financing, purchasing systems, or obtaining contractors. *Id.* at *3. In addition, the information in Exhibit PSC 3-27(a) “is also so broad that it would have little benefit to customers seeking to understand how Bluegrass Water’s rates were determined in this matter.” *Id.*

18. Accordingly, the Commission should grant confidential treatment to CSWR’s Financial Statements.

II. The Confidential Information.

19. 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 is not disseminated to others without a legitimate need to know and act upon the information.

20. If the Commission grants the relief sought in this Motion, Bluegrass Water requests that the Bid and Acquisition Information, Insurance Policy Information, Loan Agreement, and CSWR's Financial Statements 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).

21. 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).

22. 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.

23. 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.

24. 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 requested above.

This the 16th day of June, 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.

/s/Edward T. Depp

Counsel to Bluegrass Water