

**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 Second Supplemental Responses to the Attorney General’s first requests for information (“OAG 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. Portions of Supplemental **Exhibit OAG 1-6** (“Vendor Information”);
 - b. **Exhibit OAG 1-6A** (“Compensation and Benefits Information”); and
 - c. A portion of **Exhibit OAG 1-46** (“Employee Names”).

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. Supplemental Exhibit OAG 1-6 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). Bluegrass Water previously sought confidential treatment for portions of Exhibit OAG 1-6 in a motion for confidential treatment filed on May 26, 2023. Bluegrass Water respectfully incorporates that motion as if fully set forth here. Portions of Exhibit OAG 1-6 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.”). The disclosure of this information could place Bluegrass Water and third-party CSWR at a competitive disadvantage as it would disclose the amounts CSWR is willing to pay for certain services and/or products. This could result in higher costs to CSWR, resulting in more costs being allocated to Bluegrass Water.

6. These effects were recognized in PSC Case No. 2002-00054, 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 (Aug. 4, 2003).

7. Exhibit OAG 1-46 contains the names of individual employees involved in business development (“Employee Names”). Bluegrass Water respectfully requests that the names of those employees, who are not executives, be kept confidential. Bluegrass Water previously moved for confidential treatment on a similar issue, in its April 21 motion for confidential treatment. Bluegrass Water respectfully incorporates that motion as if fully set forth here. In that motion, Bluegrass Water submitted that the salary 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). Here, Bluegrass Water respectfully submits that it is a “clearly unwarranted invasion of personal privacy” to disclose the names of non-executive employees. 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).

8. In the same vein, Bluegrass Water respectfully asks for confidentiality for the Compensation and Benefits Information contained in Exhibit OAG 1-6A. Bluegrass Water previously moved for confidential treatment for the executive compensation and aggregate salary information in its April 21 motion for confidential treatment. Bluegrass Water respectfully incorporates that motion as if fully set forth here. That exhibit, like Exhibit OAG 1-6A, contains individual employee names as a part of Bluegrass Water’s detailed explanation of its employee payroll expense allocation and should be kept confidential as set forth above.

9. Moreover, disclosing the information that underlies and contributes to Bluegrass Water’s executive compensation structure could lead to CSWR’s competitors using its aggregate

salary and benefits information to its detriment as the 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 (Aug. 4, 2003).

10. 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.

11. Accordingly, the Commission should grant confidential treatment to portions of Supplemental Exhibit OAG 1-6, portions of Exhibit OAG 1-46, and all of Exhibit OAG 1-6A.

II. The Confidential Information.

12. 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.

13. If the Commission grants the relief sought in this Motion, Bluegrass Water requests that the names and personal identifiers of Bluegrass Water employees contained within Supplemental Exhibit OAG 1-6, Exhibit OAG 1-46, and Exhibit OAG 1-6A remain confidential for an indefinite period of time to avoid an unwarranted invasion of the personal privacy of the named employees.

14. If the Commission grants the relief sought in this Motion, Bluegrass Water requests that all other Confidential Information 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).

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 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 Second Supplemental Responses to the Attorney General's First Request for Information.

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 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 requested above.

This the 6th day of July, 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
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