

**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 Commission’s Post-Hearing Data Requests. 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 KRS 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. Portions of CONFIDENTIAL EXHIBIT PSC PH-1;
- b. CONFIDENTIAL EXHIBIT PSC PH-7 (Parts 1 and 2);
- c. Portions of CONFIDENTIAL EXHIBIT PSC PH-8;
- d. CONFIDENTIAL EXHIBIT PSC PH-10;
- e. Portions of Response to PSC PH-13;
- f. Portions of CONFIDENTIAL EXHIBIT PSC PH-13; and
- g. CONFIDENTIAL EXHIBIT OAG PH-1.

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. Portions of CONFIDENTIAL EXHIBIT PSC PH-1, portions of CONFIDENTIAL EXHIBIT PSC PH-8, portions of the Response to PSC PH-13, and portions of CONFIDENTIAL EXHIBIT PSC PH-13 contain pricing information related to outside vendors and contractors by CSWR, LLC (“Outside Vendor Information”). PSC Post-Hearing Request 8 specifically refers to Confidential Exhibit PSC 3-18, which is currently confidentially maintained due to containing similar Outside Vendor Information. The disclosure of this Outside Vendor 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. Furthermore, disclosure of the Outside Vendor Information would undermine competition and Bluegrass water’s ability to create cost savings for its customers. Additionally, the competitors of the service providers would have keen insight into the pricing structure of these vendors as they compete for future business.

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. The Outside Vendor Information for which Bluegrass Water seeks confidential treatment is nearly identical to that information contained in Application Exhibit 22, for which it previously sought confidential treatment in its February 27, 2023 Motion for Confidential Treatment. In addition, the Outside Vendor Information for which Bluegrass Water seeks confidential treatment is similar to the vendor information in Exhibits PSC 1-12, Exhibit PSC 1-16, Exhibit OAG 2-3, Exhibit OAG 2-47, and Exhibit PSC 3-18 for which it sought confidential treatment in its April 21 and June 16, 2023 Motions for Confidential Treatment, respectively. Bluegrass Water respectfully incorporates those motions as if fully set forth here. Application Exhibit 22, Exhibit PSC 1-12, Exhibit PSC 1-16, Exhibit OAG 2-3, Exhibit OAG 2-47, and Exhibit PSC 3-18 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.”). Disclosing the Outside Vendor Information could result in higher costs to CSWR, resulting in more costs being allocated to Bluegrass Water. *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).

8. In addition to containing the Outside Vendor Information, CONFIDENTIAL EXHIBIT PSC PH-13 also contains the confidential and proprietary information of a third party, Ansira (“Third-Party Confidential Information”). Specifically, page 15 of CSWR’s contract with Ansira has a confidentiality provision prohibiting CSWR from disclosing the agreement without Ansira’s prior written authorization. Public disclosure of third-party proprietary and confidential

information would also cause competitive harm to Bluegrass Water. In PSC Case No. 2003-00054, the Commission additionally implicitly accepted ULH&P's argument that the bidding contractors would not want their bid information publicly disclosed, and that disclosure would reduce the contractor pool available to ULH&P, which would drive up ULH&P's costs, hurting its ability to compete with other gas suppliers. 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). Similarly, in *Hoy v. Kentucky Indus. Revitalization Authority*, the Kentucky Supreme Court found that without protection for confidential information provided to a public agency, "companies would be reluctant to apply for investment tax credits for fear the confidentiality of financial information would be compromised." *Hoy v. Kentucky Revitalization Authority*, 907 S.W.2d 766, 769 (Ky. 1995).

9. Third-party companies like Ansira that provide their proprietary and confidential information to Bluegrass Water would also not want their proprietary information publicly disclosed. Ansira made clear that it did not want its contract with CSWR disclosed by prohibiting disclosure through a confidentiality provision. Moreover, public disclosure of that information would limit the number of third parties willing to provide such information to Bluegrass Water, which would prevent Bluegrass Water from having access to valuable communication tools upon which it relies to communicate with its customers, especially in emergency situations, as well as with the broader public. Accordingly, public disclosure of this information that Bluegrass Water seeks to protect pursuant to KRS 61.878(1)(c)(1) would provide Bluegrass Water's competitors with an unfair commercial advantage.

10. Furthermore, CONFIDENTIAL EXHIBIT PSC PH-7 (Parts 1 and 2) and CONFIDENTIAL EXHIBIT OAG PH-1 contain information related to Bluegrass Water's

insurance policies and insurance premiums or information about insurance costs, portions of which are allocated to Bluegrass Water (“Insurance Information”). Disclosure of Bluegrass Water’s Insurance Information could adversely affect Bluegrass Water’s ability to effectively negotiate for insurance policies in the future. *See* KRS 61.878(1)(c)(1).

11. 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”).

12. CONFIDENTIAL EXHIBIT PSC PH-7 and CONFIDENTIAL EXHIBIT OAG PH-1 contain the Insurance Information, which relates to insurance premiums, portions of which are allocated to Bluegrass Water (unless excluded from the allocation methodology). The Insurance Information for which Bluegrass Water seeks confidential treatment is similar to that information in Confidential Exhibit OAG 1-119, Exhibit OAG 1-6, Exhibit PSC 3-18, and Exhibit OAG 2-69, for which it previously sought confidential treatment in its May 12, May 26, and June 16, 2023 Motions for Confidential Treatment, respectively. Bluegrass Water respectfully incorporates those motions as if fully set forth here. Exhibit OAG 1-119, Exhibit OAG 1-6, Exhibit PSC 3-18, and Exhibit OAG 2-69 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.”). Disclosing the Insurance Information could result in higher costs to CSWR, resulting in more costs being

allocated to Bluegrass Water. *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).

13. In addition, CONFIDENTIAL EXHIBIT PSC PH-10 contains information related to salaries (“Salary Information”). The Commission’s Post-Hearing Request 10 refers to Confidential Exhibit OAG 1-53. Disclosure of the Salary Information could adversely affect Bluegrass Water by “permit[ting] an unfair commercial advantage to competitors” of Bluegrass Water. KRS 61.878(1)(c)(1).

14. 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.*

15. CONFIDENTIAL EXHIBIT PSC PH-10 contains the Salary Information. The Salary Information for which Bluegrass Water seeks confidential treatment is similar to the salary information in Exhibit OAG 1-53, Exhibit OAG 1-55, Exhibit OAG 1-103, and Exhibit OAG 1-115, for which it sought confidential treatment in its May 16, 2023 Motion for Confidential Treatment. Bluegrass Water respectfully incorporates that motion as if fully set forth here. Exhibit OAG 1-53, Exhibit OAG 1-55, Exhibit OAG 1-103, and Exhibit OAG 1-115 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.”). Disclosing the Salary Information could result in competitors using the 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 the Salary Information 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 Union Light, Heat and Power Company for Confidential Treatment*, PSC Case No. 2003-00054 (Aug. 4, 2003).

16. Furthermore, the Salary Information of CSWR’s employees “contain[s] 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 Information. Ultimately, “disclosure would be an unwarranted invasion of personal privacy.” KRS 61.878(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). Finally, the Office of 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 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, the employee initials in the Salary Information could 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).

17. 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.

18. Accordingly, the Commission should grant confidential treatment to CONFIDENTIAL EXHIBIT PSC PH-1; CONFIDENTIAL EXHIBIT PSC PH-7; CONFIDENTIAL EXHIBIT PSC PH-8; CONFIDENTIAL EXHIBIT PSC PH-10; Response to PSC PH-13; CONFIDENTIAL EXHIBIT PSC PH-13; and CONFIDENTIAL EXHIBIT OAG PH-1, as requested herein.

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 names and personal identifiers of Bluegrass Water employees contained within CONFIDENTIAL EXHIBIT PSC PH-10, including their initials, remain confidential for an indefinite period of time to avoid an unwarranted invasion of the personal privacy of the employees.

21. 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).

22. 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).

23. 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 Bluegrass Water's Responses to the Post-Hearing Data Requests.

24. 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.

25. 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 October, 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