

**COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION**

In the Matter of:

ELECTRONIC JOINT APPLICATION OF)	
BLUEGRASS WATER UTILITY OPERATING)	
COMPANY, LLC FOR APPROVAL OF ACQUISITION)	
AND TRANSFER OF OWNERSHIP AND)	
CONTROL OF ASSETS OF COMMONWEALTH)	Case No.
WASTEWATER SYSTEMS, LLC, YUNG FARM)	2023-00181
ESTATES HOMEOWNERS' ASSOCIATION, INC.,)	
AND MOON RIVER MARINA & RESORT LLC)	
)	
)	

**VERIFIED JOINT APPLICATION FOR APPROVAL OF ACQUISITION AND
TRANSFER OF OWNERSHIP AND CONTROL OF UTILITY ASSETS**

Applicant, Bluegrass Water Utility Operating Company, LLC (“Bluegrass Water”) seeks approval from the Kentucky Public Service Commission (the “Commission”) of three transactions involving the acquisition and transfer of ownership and control of three wastewater systems in the Commonwealth.

One wastewater system, owned and operated by Joint Applicant, Commonwealth Wastewater Systems, LLC (“Commonwealth Wastewater”), is a jurisdictional utility that is presently regulated by the Commission. The remaining two wastewater systems, owned and operated, respectively, by Joint Applicants, Yung Farm Estates Homeowners’ Association, Inc. (“Yung Farm”) and Moon River Marina & Resort LLC (“Moon River”), are not jurisdictional utilities and are not regulated by the Commission. (Each of the previously identified entities is sometimes referred to as a “Transferring Entity” and collectively as the “Transferring Entities.”)

Upon Commission approval and completion of the proposed transactions, (1) Bluegrass Water proposes to adopt Commonwealth Wastewater’s existing tariff, and (2) provide continuing service to the non-jurisdictional systems’ customers at the same rates currently charged to them by their respective system operators and under all other general terms and conditions of Bluegrass Water’s tariff.

Because Kentucky law prescribes different standards applicable to the acquisition and transfer of jurisdictional and non-jurisdictional systems, this application is bifurcated accordingly, below. Following an identification of the parties and a description of the proposed acquisitions, this application sequentially addresses the differing legal standards for: (i) acquisition and transfer of the jurisdictional Commonwealth Wastewater system; and (ii) acquisition of the non-jurisdictional Yung Farms and Moon River systems.

I. PARTIES

A. Acquirer: Bluegrass Water

1. Bluegrass Water’s full name is Bluegrass Water Utility Operating Company, LLC. Its mailing address is 1630 Des Peres Road, Suite 140, St. Louis, Missouri 63131. Its email address for purposes of this proceeding is regulatory@cswrgroup.com.

2. Bluegrass Water is a limited liability company which was organized under Kentucky law on March 21, 2019. It is currently in good standing with the Kentucky Secretary of State.

3. Bluegrass Water is a member-managed company. Its manager is Central States Water Resources, Inc., (“Central States”) which is an affiliate entity incorporated under Missouri law.

4. As reflected on the attached Corporate Entity Organizational Chart (*see* Exhibit 1), Bluegrass Water's sole member is Bluegrass Water Utility Holdings Company, LLC, whose sole member is Kentucky Central States Water Resources, LLC, which are organized under Kentucky law. The sole member of Kentucky Central States Water Resources, LLC is CSWR, LLC ("CSWR").

5. Bluegrass Water provides water and wastewater services in communities across the Commonwealth. It owns and operates wastewater utilities in Bullitt, Franklin, Garrard, Graves, Hardin, Jessamine, Madison, Marshall, McCracken, Oldham, Scott, and Shelby counties and a water utility in Calloway County.

6. Bluegrass Water currently serves 3,573 total water and wastewater customers in Kentucky.

7. Bluegrass Water now seeks to acquire the wastewater utility assets of Commonwealth Wastewater, as well as the wastewater assets of Yung Farm and Moon River. Bluegrass Water will thereafter provide continuity of service to their respective customers under the jurisdiction of the Commission.

B. Systems to be Acquired

1. Transferring Utility: Commonwealth Wastewater Systems, LLC

8. Commonwealth Wastewater Systems, LLC is a class D sewer utility in Boyle County, Kentucky, PSC ID# 9002000. Commonwealth Wastewater is a Kentucky limited liability company organized on February 26, 2003. It began operations on June 3, 2004. Its principal office is located at 851 Aviation Parkway, Smyrna Tennessee 37167, and its wastewater treatment plant is located at south of 3026 Jacob Dr, Danville, KY 40422. It is currently in good standing with

the Kentucky Secretary of State. The system currently serves 14 single-family residential customers.

9. Commonwealth Wastewater's current tariff is P.S.C. No. 1. Commonwealth Wastewater serves customers in Boyle County, Kentucky pursuant to that tariff. Monthly charges for residential service are presently \$34.92.

10. Commonwealth Wastewater's existing facility is authorized to treat up to 5,000 gallons per day. The facility consists of 1,500-gallon septic tanks at each of 14 homes where solids are retained, while the liquid phase of wastewater is pumped or gravity fed to the treatment plant. The treatment plant consists of first a media filter, then a recirculating sand filter treatment facility with between 80 and 100% of water recirculating through the facility depending on the current flow to the facility. Discharge wastewater passes through disc filtration and is discharged to a drip irrigation field with a flushing function to clear lines back to the treatment facility. A copy of the third-party engineering analysis describing this system is provided in Exhibit 2¹.

11. Pursuant to 807 KAR 5:001, Section 4(8), copies of all Orders, Pleadings, and other communications related to this proceeding should be directed to:

Bluegrass Water Utility Operating Company, LLC

Russ Mitten
General Counsel
CSWR, LLC.
1630 Des Peres Road, Suite 140
St. Louis, Missouri 63131
regulatory@cswrgroup.com

Edward T. Depp
R. Brooks Herrick
David N. Giesel
DINSMORE & SHOHL LLP
101 S. Fifth St., Ste. 2500

¹ The publicly-filed copies of the third-party engineering reports are redacted. A contemporaneously filed Motion for Confidential Treatment seeks protection of the confidential information contained within them.

Louisville, KY 40202
tip.depp@dinsmore.com
brooks.herrick@dinsmore.com
david.giesel@dinsmore.com
502.540.2300

and

Commonwealth Wastewater Systems, LLC

Jeff Riden
Chief Executive Officer
Commonwealth Wastewater Systems, LLC
Adenus Group, LLC
849 Aviation Parkway
Smyrna, Tennessee 37167
615.220.7171
jeff.riden@adenus.com

2. Non-Utility Systems to be Acquired²

a. Yung Farm Estates Homeowners' Association, Inc.

12. Yung Farm Estates Homeowners' Association, Inc. is a Kentucky corporation organized on October 21, 2002. Its principal office is located at 5600 Cutters Trace, Melbourne, Kentucky 41059. It is currently in good standing with the Kentucky Secretary of State.

13. The Yung Farm wastewater treatment facility is located north of 3089 8 Mile Rd, Melbourne, KY 41059, in Campbell County, Kentucky. It services 21 single-family residences. It operates under NPDES Permit No. KY0092843 and Agency Identification Number 675.

14. Yung Farm is not a utility subject to the Commission's jurisdiction.

15. Yung Farm's current monthly charges for residential service are \$60.

16. Yung Farm's existing facility is authorized to treat up to 8,400 gallons per day. The system consists of a gravity collection system which conveys wastewater from 21 homes to a steel package activated sludge treatment plant where treatment occurs. The facility utilizes chlorine

² The owners/operators of Yung Farm and Moon River are not jurisdictional utilities.

disinfection prior to discharge to receiving water. A copy of the third-party engineering analysis describing this system is provided in Exhibit 3³.

b. Moon River Marina & Resort LLC

17. Moon River Marina & Resort LLC is a Kentucky limited liability company organized on January 31, 2022. Its principal office is located at 6403 Deep Creek Drive, Prospect, Kentucky 40059. It is currently in good standing with the Kentucky Secretary of State.

18. The Moon River wastewater treatment facility is located at 3025 Rockcastle Rd., Cadiz, KY 42211 in Trigg County, Kentucky. It services a lakeside resort that includes 12 recreational vehicle sites, 15 single-family rental cottages, a food store, a restaurant, and a laundromat. It operates under NPDES Permit No. KY0041122 and Agency Identification Number 4032.

19. Moon River is not a utility subject to the Commission's jurisdiction.

20. Moon River currently does not charge for sewer services. Bluegrass Water proposes to use a fixed monthly sewer rate of \$21.00. The \$21.00 sewer rates proposed by Bluegrass Water are meant to be interim rates charged until Bluegrass Water files for Commission approval of permanent rates. The Company is proposing this interim rate as a way to recoup a small portion of the operating expenses necessary to run this system.

21. Moon River's existing facility is authorized to treat up to 1,000 gallons per day. The facility consists of a combination of gravity collection conveying waste from an RV resort, several cabins, a restaurant, and a laundry facility to the treatment plant. The facility is a very small package activated sludge treatment plant which utilizes chlorine disinfection prior to discharge. Flows are highly variable both seasonally and throughout the week with higher flows

³ The publicly-filed copies of the third-party engineering reports are redacted. A contemporaneously filed Motion for Confidential Treatment seeks protection of the confidential information contained within them.

during weekends with good weather. A copy of the third-party engineering analysis describing this system is provided in Exhibit 4.

II. PROPOSED ACQUISITIONS

A. The Asset Purchase Agreements

22. As part of its ongoing efforts to integrate its Kentucky facilities and to thereby bring operational improvements, economies of scale, and other efficiencies to its Kentucky customers, CSWR has entered into the following Asset Purchase Agreements (“APAs”) for the purchase of the Transferring Entities’ respective wastewater systems:⁴

<u>Seller</u>	<u>Date</u>	<u>Exhibit</u>
Commonwealth Wastewater	3/31/2022	5
Yung Farm	11/10/2021	6
Moon River	6/20/2022	7

23. The APAs are all substantively similar, designating the buyer as Central States or its assign and providing that, at the Closing, the Transferring Entity shall sell, transfer, assign, and deliver its assets to Central States or Central States’ designated affiliate and/or assign.

24. Central States has designated Bluegrass Water, its affiliate, as the buyer for each of these APAs.

25. The APAs provide for the sale of all of the assets owned by each Transferring Entity in connection with their respective operation of certain wastewater utility systems in Boyle County (Commonwealth Wastewater), Campbell County (Yung Farm), and Trigg County (Moon River). The sales include all assets used or useful to operate the wastewater systems, including real

⁴ The publicly-filed copies of the APAs are redacted. A contemporaneously filed Motion for Confidential Treatment seeks protection of the confidential information contained within them.

property interests, service machinery and equipment, other tangible fixtures or personalty, contract rights, customer deposits and accounts receivable, and other intangibles.

26. The APAs each provide for Bluegrass Water to become responsible at the Closing for all obligations in connection with the Property going forward, excepting responsibility for any liabilities and/or obligations of the transferring entity in connection with the Property that existed prior to the date of the Closing.

27. The sale of assets pursuant to the terms specified in the APAs promotes the public interest generally, as well as the interests of each of the Transferring Entities' respective customers, specifically. To that end, Bluegrass Water will provide continuity of rates and service to the current customers of the Transferring Entities. Bluegrass Water will work to make necessary improvements, to seek appropriate approvals for such improvements as necessary, and to improve the quality of service as needed and in furtherance of its ongoing efforts to integrate its Kentucky facilities and to thereby bring operational improvements, economies of scale, and other efficiencies to its Kentucky customers.

28. In connection with the negotiation and execution of the APAs, a third-party engineering firm conducted a site visit to each of the wastewater systems to be acquired, identified potential and existing problems, and outlined a plan for improvements. Redacted copies of the engineering reports are provided as Exhibits 2, 3, and 4.

29. With respect to each of the transactions, CSWR has been funding, and will continue to fund, pre-Closing costs for Bluegrass Water, including due diligence work relating to the Transferring Entities and compliance efforts.

B. The Closing

30. Bluegrass Water's acquisition of the Transferring Entities' assets will be initially funded with equity capital from its affiliate CSWR. This funding involves neither the issuance by Bluegrass Water of securities or evidences of indebtedness, nor the assumption by Bluegrass Water of any obligation or liability in respect to the securities or evidences of indebtedness of any other person.

31. The pre-Closing costs to be funded by CSWR are attached as Exhibit 8. CSWR's consolidated balance sheet and income statement for the years ended December 31, 2021 through 2022 is attached as redacted Exhibit 9.⁵

32. The Transferring Entities' wastewater systems require various improvements and repairs, as indicated in Exhibits 2, 3, and 4. While the identified diagnostic tests, repairs, and improvements will take place post-Closing (and CPCNs will be sought, as appropriate), Bluegrass Water and the Transferring Entities have begun the process of working through these issues to prepare the wastewater utility system for operations post-Closing.

C. Post-Closing

33. From and following the Closing of the acquisition from the Transferring Entities, Bluegrass Water will assume responsibility for the operation of the wastewater utility system to ensure continuity of service to the existing customers of the Transferring Entity.

34. Following the Closing, Bluegrass Water will update its tariff to include each of the three systems and reflect that current rates for customers of each shall remain unchanged. Customers would otherwise be transitioned to all other general terms and conditions of Bluegrass Water's tariff.

⁵ The publicly-filed copy of CWSR, LLC's balance sheet and income statement is redacted. A contemporaneously filed Motion for Confidential Treatment seeks protection of the confidential information contained within CWSR, LLC's balance sheet and income statement.

35. These revisions would be effective simultaneously with the closing on the wastewater systems so that there will be no gap in service or tariff coverage for the affected customers. In order to ensure consistency with the requirements of KRS 278.180, the effective date of these tariff revisions would be no earlier than the 31st day after the issuance of a final order on this Application.

36. These revisions would not affect Bluegrass Water's existing customers' rates or other terms of service, and therefore no notice to them is required.⁶ It is anticipated that Bluegrass Water will include Commonwealth Wastewater, Yung Farm, and Moon River's service areas in any future application for a general rate adjustment.

37. As with Bluegrass Water's other systems, the acquired wastewater systems will be operated by a qualified, experienced, third-party operations and maintenance firm ("O&M") firm engaged by Bluegrass Water. Currently, it is anticipated that Clearwater Solutions, will be the entity to provide O&M service for the acquired wastewater systems, at least until the conclusion of the next vendor bidding process, which is scheduled to occur in the first half of 2024. Clearwater Solutions currently provides O&M service for Bluegrass Water's other Kentucky systems, and its continued use as O&M provider for Bluegrass Water will serve to further integrate Bluegrass Water's Kentucky facilities and provide efficiencies to Bluegrass Water's Kentucky customers. This O&M firm has knowledgeable and experienced personnel who carry the necessary state licenses, and it also has adequate insurance coverage necessary to manage the daily operations of the system. In addition to fulfilling its service obligations during normal business hours, the O&M provider is required to have a 24-hour emergency service line to which customers may report any

⁶ 807 KAR 5:011 §8 requires that notice be provided "if a charge, fee, condition of service, or rule regarding the provision of service is changed, revised, or initiated and the change will affect the amount that a customer pays for service or the quality, delivery, or rendering of a customer's service."

service disruption. Notice of service disruption calls would be forwarded to Josiah Cox, the President of Central States.

38. As with Bluegrass Water's other systems, a qualified, experienced, third-party firm will handle service- and billing-related billing questions for the acquired systems. Bluegrass Water presently uses Nitor Billing Services, LLC ("Nitor") to provide this function, while CSWR provides billing services to Bluegrass Water. In furtherance of Bluegrass Water's ongoing efforts to integrate its Kentucky facilities, bring operational improvements, economies of scale, and other efficiencies to its Kentucky customers, it is anticipated that Nitor will also be engaged in this role for the three systems Bluegrass Water proposes to acquire through this Application. Nitor has a Bluegrass Water-specific customer service email account to handle customer inquiries and other interactions. The customer service representatives are to be available during normal business hours, and to take messages 24 hours a day. In addition, all electronic or paper correspondence is recorded and logged to the respective customer's account to ensure the highest level of service. Bluegrass Water also has in place an online billing system to receive credit card and e-check payments from customers.

39. Bluegrass Water will further maintain a toll-free phone number and a website that contains: (i) a summary of customers' rights, tariffs, or links to the tariffs, for each affected system; (ii) contact information for emergencies during regular and after-hours to report service issues links to any tariffs filed in the future with the Commission; (iii) and links to Bluegrass Water's systems maps on the Kentucky Infrastructure Authority Wastewater Mapping website.

40. Bluegrass Water has also implemented a computerized maintenance management system for its utility assets, including functions that provide up-to-date website bulletins about current service status, and service initiation/discontinuance procedures.

41. Consequently, current customers of the Commonwealth Wastewater, Yung Farm, and Moon River systems will receive a quality of service equal to or better than that currently being provided by the Transferring Entities.

42. While day-to-day operations, billing, and customer service functions would be provided by third-party contractors, all management, financial reporting, underground utility safety and locations services, Commission and environmental regulatory reporting and management, record keeping, and final customer dispute management would be performed by personnel at Central States' corporate office. Proportional costs for those services will be allocated to Bluegrass Water as a single integrated utility. The same Central States personnel responsible for existing systems' operations will also provide oversight of the systems to be acquired.

43. Bluegrass Water will also begin working to fund and implement plans to perform the repair and improvement work needed on the acquired systems (as further identified in the Engineering Reports (Exhibit 2, 3, and 4). Although specific repair and improvement plans have not, at this time, been finalized, Bluegrass Water anticipates funding this work through a combination of debt and equity financing, recognizing the Commission's expressed views regarding an appropriate debt-to-capitalization percentage.⁷

44. From a financial perspective, Bluegrass Water will continue to track expenses, revenues, and assets on a per-system basis. Bluegrass Water anticipates that, as in its previous acquisition cases, it will file its post-closing accounting entries in accordance with the Uniform System of Accounts, within 30 days of the Closing of the transaction.

⁷ See *In the Matter of Electronic Proposed Acquisition by Bluegrass Water Utility Operating Company, LLC*, et al., Case No. 2019-00104, Aug. 14, 2019 Order at 18. Moreover, Bluegrass Water acknowledges that any such financing may be subject to prior regulatory approval, and it will make any such required applications once appropriate financing plans are determined and any necessary certificates of public convenience and necessity are obtained.

45. Joint Applicants further anticipate that the Commission will require Commonwealth Wastewater to file annual reports for any partial year it operated and/or owned the assets to be transferred up until Closing, and Commonwealth Wastewater is amenable to doing the same here, if desired by the Commission.

46. Ultimately, Bluegrass Water anticipates that these acquisitions will bolster its ongoing efforts to integrate its Kentucky facilities, bring operational improvements, economies of scale, and other efficiencies to its Kentucky customers. Additionally, there will be regionalization and other consolidation benefits from its acquisition of the system, especially as it already operates systems within Kentucky. Bluegrass Water will seek to consolidate and regionalize these systems with other systems it has already acquired in order to pool financial, managerial, and technical resources that achieve economies of scale and efficiencies of service.

47. Through CSWR and Central States, Bluegrass Water has access to experienced technical and managerial expertise and experience not usually available to water and wastewater utility systems of the size being acquired. Furthermore, CSWR's business model makes these assets available to its affiliates at a lower cost than otherwise would be available on a stand-alone basis. Moreover, aggregation of these systems with Bluegrass Water's other existing systems creates opportunities to develop additional economies of scale and scope in one Kentucky-focused operating company that is part of a corporate family possessing substantial experience and expertise in the safe, effective, and efficient operation of wastewater systems. With the Commission's regulatory support, these advantages will allow Bluegrass Water to integrate the acquired systems so that regulatory and technical standards are met on a uniform basis across the Commonwealth, with customers served under a unified tariff.

III. JOINT APPLICANTS REQUEST APPROVAL OF THE ACQUISITION AND TRANSFER OF OWNERSHIP AND CONTROL OF THE COMMONWEALTH WASTEWATER SYSTEM PURSUANT TO KRS § 278.020(6), (7), AND (10)

48. Bluegrass Water and Commonwealth Wastewater hereby request, pursuant to KRS § 278.020(6), (7), and (10), an order from the Commission approving the acquisition of ownership, transfer, and control of Commonwealth Wastewater’s jurisdictional utility assets providing wastewater services in Boyle County (the “CW System”).

49. The proposed acquisition and transfer of ownership and control will occur, subject to the approval of the Commission and other regulatory agencies, under the terms of the accompanying APA dated March 31, 2022, by and between the Commonwealth Wastewater and Central States. As previously noted, a copy of the redacted APA is attached hereto as Exhibit 5.

50. The proposed acquisition and transfer of ownership and control satisfies the requirements of KRS § 278.020(6), (7), and (10). For the reasons set forth in this Application: (i) the proposed acquisition and transfer of ownership and control will be made by a person with the financial, technical, and managerial abilities to provide reasonable service; (ii) it will be made in accordance with law and for a proper purpose; (iii) and it will be consistent with the public interest.

51. Bluegrass Water respectfully requests that the Commission accept the filing of this Application and enter a Final Order approving the proposed acquisition and transfer of ownership and control pursuant to KRS § 278.020(6),(7), and (10).⁸

A. Bluegrass Water Has the Financial, Technical, and Managerial Abilities to Provide Reasonable Service.

⁸ These standards are technically only applicable to acquisition of the jurisdictional Commonwealth Wastewater system. Consequently, this section addresses only the Commonwealth Wastewater system, even though Bluegrass Water believes that it would satisfy the standard for both the Yung Farms and Moon River systems, as well.

52. Bluegrass Water possesses the financial, technical, and managerial abilities to provide reasonable service to the customers of the CW System. The proposed acquisition thus meets the standards of KRS 278.020(6).

53. Bluegrass Water has the necessary abilities to provide services to the community associated with the Commonwealth Wastewater's system, through its affiliation with and support from CSWR, other operating utility affiliates, and its manager, Central States.

54. By finding investment capital and investors who are willing to make investments and take the risks necessary to bring small water and wastewater utility systems into compliance with current statutes, rules, and regulations, the group of companies affiliated with Bluegrass Water and Central States has been able to acquire distressed systems, invest capital necessary to construct or repair physical facilities, and operate those systems in a way that satisfies customers, regulators, and investors alike. The Commission has previously found that Bluegrass Water has the sufficient financial ability to acquire and operate similar systems and to provide reasonable service in Kentucky.⁹ CSWR's business plan and the expertise its personnel provide to affiliates have proven successful in multiple states, and there is every reason to believe that record of success will continue for Bluegrass Water with regard to its previously-acquired Kentucky systems, as well as those proposed to be acquired by this Application.

55. The level of experience and expertise that CSWR currently provides to affiliated systems in Kentucky, Missouri, Mississippi, Louisiana, Texas, Tennessee, Florida, North Carolina, South Carolina, Arizona, and Arkansas — and that it would bring to the acquired systems — is

⁹ See *In the Matter of Proposed Acquisition of Wastewater System Facilities by Bluegrass Water Utility Operating Company, LLC*, Case No. 2021-265, Feb. 24, 2022 Order; and *In the Matter of Proposed Acquisition by Bluegrass Water Utility Operating Company, LLC of Wastewater System Facilities and Subsequent Tariffed Service to Users Presently Served by Those Facilities*, Case No. 2020-028, June 19, 2020 Order; and *In the Matter of Proposed Acquisition by Bluegrass Water Utility Operating Company, LLC and the Transfer of Ownership and Control of Assets by: Delaplain Disposal Company; Herrington Haven Wastewater Company, Inc.; Springcrest Sewer Company, Inc. and Woodland Acres Utilities, LLC*, Case No. 2020-297, Jan. 14, 2021 Order.

not usually available to small systems like those for which transfer approval is sought in this case. Furthermore, through economies of scale that CSWR's centralized management structures can achieve, this experience and expertise is available at a lower cost than would be the case if Bluegrass Water or Commonwealth Wastewater had to provide such expertise and support on its own. Where additional or supplemental expertise is required (e.g., personnel holding licenses or certifications required by Kentucky law), Bluegrass Water or Central States (as its manager) will engage qualified independent contractors to satisfy those needs.

1. Financial Ability

56. Bluegrass Water has the financial capability necessary to acquire, own, and operate the CW System. It has access to a \$5,000,000 loan that was approved in Case No. 2022-00217. It also has access, through CSWR, to additional equity financing for the proposed acquisitions and ongoing operational needs of the CW System. The planned transaction will not negatively affect Bluegrass Water's ongoing work to adjust its capital structure closer to the Commission's stated goal of a 50-50 debt-equity ratio.

57. CSWR has also provided the Commission with a Guaranty of up to \$175,000 in maximum aggregate liability relating to two months of Bluegrass Water's obligation to its third-party contractors relating to its 20 existing sewer systems. A copy of the Guaranty, is attached as Exhibit 10.

58. CSWR's consolidated balance sheet and income statement for the years ended December 31, 2021 through 2022 is attached to this Application as redacted Exhibit 9.

59. A *pro forma* income statement and balance sheet for Bluegrass Water after the proposed acquisitions/transfer, and as of a point at which planned improvements/repairs and

related financing have occurred, is attached as Exhibit 11¹⁰. The *pro forma* statements for Bluegrass Water reflect the acquisition costs, the costs of the planned repairs and improvements, and the most-recent publicly-available reported annual operating expenses and revenues of the Commonwealth Wastewater.

2. Technical Ability

60. As demonstrated by the success of Bluegrass Water's operating affiliates in Kentucky, Missouri, Mississippi, Louisiana, Texas, Tennessee, Florida, North Carolina, South Carolina, Arizona, and Arkansas, and as Bluegrass Water continues to demonstrate following the closing of the transactions approved in Case Nos. 2019-00104, 2019-00360, 2020-00028, and 2020-00297, access to the affiliate group's technical resources has improved the quality of service to its Kentucky customers and is bringing much needed repairs and operational improvements to its existing Kentucky systems. If the Commission grants approval of the proposed acquisition and transfer, Bluegrass Water will – while ensuring continuity of service – bring the same types of benefits to the acquired system and its affected customers.

61. In addition, Bluegrass Water's technical abilities can be further seen in the pre-Closing diligence undertaken to identify existing system deficiencies and plan concrete steps to address them, bring the systems into compliance, and update and improve their operation for the benefit of customers on the system. See Exhibits 2, 3, and 4 .

62. The Commission has also found that Bluegrass Water possesses the requisite technical ability in the context of its earlier acquisitions. *See* Case No. 2019-00104 (Order of Aug. 14, 2019 at 12); Case No. 2019-00360 (Order of Feb. 17, 2020 at 10); Case No. 2020-00028 (Order

¹⁰ The publicly-filed *pro forma* income statement and balance sheet for Bluegrass Water is redacted. A contemporaneously-filed Motion for Confidential Treatment seeks protection of the confidential information contained within the *pro forma* income statement and balance sheet for Bluegrass Water.

of June 19, 2020 at 16); Case No. 2020-00297 (Order of Jan. 14, 2021 at 10). Having operated those systems without complaint since approvals were granted, Bluegrass Water's technical capabilities have only improved with its ongoing exposure to additional, small Kentucky systems.

3. Managerial Ability

63. CSWR currently provides management and technical services for water and wastewater systems in Kentucky, Missouri, Mississippi, Louisiana, Texas, Tennessee, Florida, North Carolina, South Carolina, Arizona, and Arkansas. In total, those systems serve approximately 140,000 customers/connections. Bluegrass Water's affiliates' actions in providing skilled management to these systems has allowed these systems to reverse course from failing to complying with state and federal regulation while providing better service to a broader customer base. CSWR's experienced management team has extensive knowledge of how to diagnose the issues that arise in small failing systems and how to resolve these issues to enable the systems to provide reliable, cost-effective services that better serve the communities it proposes to bring into the Bluegrass Water system.

64. In addition, Bluegrass Water has demonstrated its managerial ability by leveraging the skills and capabilities of its affiliates, including Central States and CSWR, in order to engage and oversee qualified third-party firms to provide effective operations and maintenance services, as well as customer service and billing functions.

B. The Proposed Acquisition is to be Made in Accordance with the Law, for a Proper Purpose, and is Consistent with the Public Interest.

65. Bluegrass Water's proposed acquisition of the wastewater utility system is in accordance with the law, for a proper purpose, and is consistent with the public interest. The proposed acquisition thus meets the standards of KRS 278.020(7).

1. Made in accordance with the law

66. The proposed acquisition and transfer will not occur before or without the Commission's approval.

67. In addition to this application to the Commission, Bluegrass Water will make all required regulatory filings for the proposed transaction and expects to receive all required approvals. In particular, Bluegrass Water will apply for the transfer of all KPDES permits for the system to Bluegrass Water.

68. The transaction has been approved by Bluegrass Water's member and by the board or owner(s) of Commonwealth Wastewater.

2. For a proper purpose

69. Bluegrass Water is acquiring the CW System assets to operate them for the purpose of providing reasonable, effective, safe, and efficient wastewater service to existing and future customers.

70. The acquisition will result in the transfer of assets to an entity that will have sufficient capital and operating funds to operate, maintain, repair, and expand the systems, while ensuring continuity of service to its customers. Aggregation of the assets and operations of Commonwealth Wastewater with others in one operating company affiliated with entities that have substantial experience and expertise in operating water utility systems is also likely to create economies of scale and scope that can sustain and improve existing service.

3. Consistent with the public interest

71. Full compliance with both state and federal regulations is imperative for purposes of health and safety. Bluegrass Water will ensure continuity of service for the customers of the Commonwealth Wastewater, and customers will receive better, safer, and more reliable service. Bluegrass Water has researched the state of the existing system, and as described previously, it has

identified concrete plans and possesses the financial wherewithal to bring the system into compliance with all applicable laws and regulations in a cost-effective manner.

72. The CW System presently faces significant operational and other challenges. It is in the public interest that the system be acquired by an experienced entity with substantial technical, managerial, and financial resources to professionalize and improve the operations of the system.

C. Bluegrass Water Has Provided Evidence of Financial Integrity to Ensure the Continuity of Sewer Service in the Event that Bluegrass Water Cannot Continue to Provide Service.

73. As required by KRS § 278.020(10), Bluegrass Water has provided herewith evidence of its financial integrity to ensure the continuity of wastewater service, identified in paragraphs 56-59 above and in attached Exhibits 9 and 10.

74. As Condition #5 to the Final Orders in Cases No. 2019-00104 and 2019-00360, and Condition #9 to the Final Order in Case No, 2020-00297 the Commission required that Bluegrass Water “post a guaranteed financial instrument that is the equivalent of two-months of the cost of its third-party contractors” with respect to the sewer utilities’ systems approved to be acquired in those cases. In fulfillment of those conditions, a Guaranty by CSWR (attached as Exhibit 10) was filed in those cases on April 16, 2021. The Guaranty’s maximum aggregate liability (\$175,000) is sufficient to cover two months’ costs of Bluegrass Waters’ third-party contractors for its existing 20 sewer systems and the estimated additional cost of those contractors for the systems that are the subject of this Application.

IV. BLUEGRASS WATER REQUESTS APPROVAL OF THE ACQUISITION AND TRANSFER OF OWNERSHIP AND CONTROL OF THE YUNG FARM AND MOON RIVER SYSTEMS PURSUANT TO KRS § 278.020(1)(a), § 278.030

75. Bluegrass Water further seeks, pursuant to KRS § 278.020(1)(a) and KRS § 278.030, an order from the Commission granting approval of the acquisition of two non-jurisdictional wastewater systems operated by: (1) Yung Farm; and (2) Moon River (together with Commonwealth Wastewater and Yung Farm, the “Transferring Entities”).

76. In its Final Order *In the Matter of Electronic Proposed Acquisition by Bluegrass Water Utility Operating Company, LLC of Wastewater System Facilities and Subsequent Tariffed Service to Users Presently Served by Those Facilities*, Case No. 2020-00028, the Commission acknowledged that it had:

[P]reviously determined that a jurisdictional utility’s acquisition of a non-jurisdictional utility does not require Commission approval. For example, in Case No. 2005-00206, the Commission found that Kentucky-American Water Company’s (Kentucky-American) acquisition of a municipal water utility did not require Commission approval because the municipal’s facilities were not a utility as defined under KRS 278.010. We, however, part ways with this precedent as discussed below.

KRS 278.010(1)(a) provides, in part, that, “[n]o person, partnership, public or private corporation, or combination thereof shall commence providing utility service to or for the public. . . until that person has obtained from the Public Service Commission a certificate that public convenience and necessity require the service or construction.”

. . .

Requiring approval under KRS 278.020(1)(a) ensures that the Commission discharges its statutory duty to ensure that the acquiring utility’s ability to provide adequate service at fair, just, and reasonable rates is not impaired. . . . Insofar as the acquisition of a non-utility’s system may impact a jurisdictional utility’s ability to provide adequate and reasonable service, either to customers of the system to be acquired or to the customers of the acquiring utility, it follows that the Commission has such authority to prevent such an acquisition and its approval for such an acquisition is required. The Commission finds that the plain reading of KRS 278.020 supports and requires such a determination.

(June 19, 2020, Final Order, Case No. 2020-00028).

77. Neither Yung Farm nor Moon River is a jurisdictional utility as defined in KRS § 278.010, but upon approval of the proposed acquisition, Bluegrass Water proposes to assume ownership and control of the Yung Farm and Moon River wastewater systems and will be providing jurisdictional utility service at those locations “to or for the public.”

78. The final order in Case No. 2020-00028 further established that when a jurisdictional utility seeks to acquire a previously non-jurisdictional system, the Commission must approve initial tariffed rates that are “fair, just and reasonable rates for the services rendered or to be rendered by it to any person,” meeting the KRS § 278.030(1) standard.

79. The proposed acquisitions and transfer of ownership and control will occur, subject to the approval of the Commission and other regulatory agencies, under the terms of the accompanying APAs, dated November 10, 2021, by and between the Yung Farm and Central States, or its assigns, and dated June 20, 2022, by and between Moon River and Central States, or its assigns. As previously noted, redacted copies of both APAs are attached hereto as Exhibits 6 and 7.

80. The proposed acquisition satisfies the requirements of KRS § 278.020(1)(a) and KRS § 278.030. For the reasons set forth in this Application, Bluegrass Water’s ability to provide adequate service at fair, just, and reasonable rates to customers of Yung Farm and Moon River, as well as its existing customers, will not be impacted by these proposed acquisitions.

A. Bluegrass Water’s Acquisition of the Yung Farm and Moon River Systems Will Not Impair its Ability to Provide Reasonable and Adequate Service to its New and Existing Customers Throughout Kentucky; It Should Therefore Be Granted a Certificate of Public Convenience and Necessity.

81. Yung Farm and Moon River are not utilities within the meaning of the statute, and thus, they do not provide utility service as defined in KRS § 278.010. However, after approval and upon closing of the proposed transactions, Bluegrass Water will be providing wastewater

utility service “for the public, for compensation,” in the Yung Farm and Moon River service areas. Based on the Commission’s previous rulings, this constitutes a situation in which Bluegrass Water will “commence providing utility service to or for the public” in the Yung Farm and Moon River service areas, necessitating a KRS § 278.020(1)(a) CPCN.

82. Under KRS 278.020(1)(a), the Commission shall grant an applicant a certificate to “commence providing utility service to or for the public” if public convenience and necessity require the service. In its final order entered on June 19, 2020, in Case No. 2020-00028, the Commission applied this standard to a utility’s acquisition of non-jurisdictional facilities and subsequent service to the existing customers. In doing so, it required an applicant to show that its commencement of service to those persons will not impair its ability to provide reasonable and adequate service to either the new customers or its current customers.

83. Here, public convenience and necessity for the service is evident from the continuing demand and need for the service, shown by the past and continuing use of the Yung Farm and Moon River sewer-service facilities. Even so, and as previously noted, Bluegrass Water’s investigation of the existing systems has revealed that certain repairs and improvement are appropriate; it has identified concrete plans to address those issues;¹¹ and it possesses the financial wherewithal to implement these plans successfully.

84. Bluegrass Water’s ability to provide reasonable and adequate service to new and existing customers stems from and is supported by its affiliation with Central States, CSWR, and Bluegrass Water’s other operating utility affiliates. The experience and expertise the affiliate group currently provides to systems in Kentucky and other states, and that it would bring to the acquired systems, is not usually available to small systems like Yung Farms and Moon River.

¹¹ See Exhibits 3 and 4.

85. Additionally, as more fully described in Section III(A)(1), *supra*, Bluegrass Water has the financial capability necessary to acquire, own, and operate the acquired Yung Farm and Moon River assets.

86. Furthermore, as more fully described in Section III(C), Bluegrass Water also has sufficient assets to ensure the continuity of wastewater service on the systems to be acquired.

87. The Commission has also previously found in prior acquisition cases that Bluegrass Water has sufficient financial ability to acquire, operate, and provide reasonable service to small systems like Yung Farm and Moon River. That remains true.

88. If the Commission grants approval of the proposed acquisitions, the same types of benefits obtained in the previous acquisition approvals would be brought to Yung Farm and Moon River and their respective customers. Service will be successfully transitioned to Bluegrass Water, in compliance with Commission conditions and consistent with those imposed in connection with Bluegrass Water's prior acquisition applications. The transactions and assimilation of these systems into the Bluegrass Water family will also result in no interruption or impairment of service to Bluegrass Water's existing customers.

89. Bluegrass Water will continue to engage qualified third-party firms to provide O&M service and customer service support, while Bluegrass Water maintains effective oversight of these firms and functions by leveraging CSWR personnel.

90. Aggregation of the assets and operations of the systems with others in one Kentucky-focused operating company that has affiliates with substantial experience and expertise in operating small wastewater systems is also likely lead to the creation of economies of scale and scope that can sustain and improve existing service to existing and new customers, alike.

91. It is therefore in the public interest, generally, and in the interest of Yung Farm’s and Moon River’s respective customers, specifically, that these systems be acquired by Bluegrass Water.

B. Bluegrass Water’s Proposed Tariffed Rates for Post-Acquisition Service are Fair, Just, and Reasonable.

92. In its Final Order entered on June 19, 2020, in Case No. 2020-00028, the Commission specified that when a utility is seeking acquisition of a previously non-jurisdictional system, the Commission must approve initial tariffed rates that are fair, just, and reasonable, consistent with KRS 278.030(1).

93. Because Yung Farm and Moon River are not jurisdictional utilities, there is no filed tariff that Bluegrass Water may adopt effective with the Closing. Consequently, Bluegrass Water proposes that – post-Closing – it will amend its tariff to: (i) mirror the current Yung Farm rate of \$60.00 per month; and (ii) reflect a Moon River rate of \$21.00 per month (rather than the present no-charge service), which will allow the Company to recoup a small portion of the operating expenses necessary to run this system.”

94. Bluegrass Water also proposes that its other general tariff rules and regulations for residential service, as filed and effective at that time, shall apply to Yung Farm and Moon River customers, the same as any other Bluegrass Water customers.

95. These proposed rates are “fair, just and reasonable” in accordance with KRS 278.030(1), because they are the rates currently paid by these customers for their existing service. Moreover, the application of the other general terms and conditions are “fair, just, and reasonable” in accordance with KRS 278.030(1) because they are consistent with general terms and conditions applicable to existing Bluegrass Water customers, they will contribute to an efficient integration

of the systems into Bluegrass Water operations, and they will ensure continuity of service and clarity of service obligations to customers of the affected systems.

96. These filed-tariff provisions would therefore constitute “reasonable rules governing the conduct of its business and the conditions under which it shall be required to render service.” (KRS 278.030(2).)

97. Finally, the rates proposed for Yung Farm and Moon River are also uniformly applicable to all users throughout their respective service areas, in accordance with KRS 278.030(3).

98. These tariff revisions would be proposed to be effective simultaneously with the anticipated closings on the respective wastewater service facilities so that there will be no gap in service or tariff coverage for the affected customers.

99. Bluegrass Water proposes that this closing date would be no earlier than the 31st day after the issuance of a final order on this Application, in order to ensure consistency with the requirements of KRS 278.180.

VII. CONCLUSION

WHEREFORE, Bluegrass Water respectfully requests that the Commission enter a final order as follows:

- (1) Issue a final order regarding this Joint Application within the 60-day period provided in KRS 278.020(7);
- (2) Grant this Application as submitted or, in the alternative, with appropriate terms and conditions prescribed;
- (3) Permit Bluegrass Water after the proposed acquisition/transfer to operate the transferred assets in accordance with its current tariff on file with the Commission,

except that the rates to be charged to all customers of the three affected systems will remain unchanged from their current rates until such time as those rates may be adjusted in any future proceeding, and

- (4) Relieve Commonwealth Wastewater Systems, LLC of any further utility-service obligations upon closing of the transaction to transfer its assets to Bluegrass Water.

Respectfully submitted,

/s/ Edward T. Depp

Edward T. Depp

R. Brooks Herrick

David N. Giesel

DINSMORE & SHOHL LLP

101 S. Fifth St., Ste. 2500

Louisville, KY 40202

tip.depp@dinsmore.com

brooks.herrick@dinsmore.com

david.giesel@dinsmore.com

502.540.2300

502.540.2529 (f)

*Counsel to Bluegrass Water Utility
Operating Company, LLC*

Certification

I hereby certify that a copy of this Application and its exhibits 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*

Verification

I, Jeff Riden, Chief Executive Officer of Commonwealth Wastewater Systems, LLC, state that I have read the foregoing application and its exhibits, and the statements contained in the application and exhibits are true and correct to the best of my knowledge, information, and belief.



Jeff Riden, Chief Executive Officer,
Commonwealth Wastewater Systems, LLC

Date: 5/17/23

State of Tennessee)
County of Rutherford)

Subscribed, sworn to, and acknowledged this 17 of May, 2023, before me, a Notary Public, in and before said County and State.

My Commission expires: 06/23/25

Seneca Cordell
Notary Public



Verification

I, Garrett Renfro, Member, Moon River Marina & Resort, LLC, state that I have read the foregoing application and its exhibits, and the statements contained in the application and exhibits are true and correct to the best of my knowledge, information, and belief.


Garrett Renfro, Member, Moon River Marina & Resort, LLC

Date: 5/11/2023

Commonwealth of Kentucky)
)
County of Jefferson)

Subscribed, sworn to, and acknowledged this 11th of May, 2023, before me, a Notary Public, in and before said County and State.

My Commission expires: 01-23-2024



Notary Public



Verification

I, Katherine Renfro, Member, Moon River Marina & Resort, LLC, state that I have read the foregoing application and its exhibits, and the statements contained in the application and exhibits are true and correct to the best of my knowledge, information, and belief.



Katherine Renfro, Member, Moon River Marina & Resort, LLC

Date: 5-11-23

Commonwealth of Kentucky)
County of Jefferson)

Subscribed, sworn to, and acknowledged this 11th of May, 2023, before me, a Notary Public, in and before said County and State.

My Commission expires: 01-23-2024



Notary Public



