

**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)	
)	
)	

**JOINT APPLICANTS' AMENDMENT TO MAY 26, 2023,
MOTION FOR CONFIDENTIAL TREATMENT**

1. This motion amends and supersedes the May 26, 2023 Motion for Confidential Treatment filed by Bluegrass Water Utility Operating Company, LLC (“Bluegrass Water”) in this matter.

2. Bluegrass Water and Joint Applicants, Commonwealth Wastewater Systems, LLC (“Commonwealth Wastewater”), Yung Farm Estates Homeowners’ Association, Inc. (“Yung Farm”) and Moon River Marina & Resort LLC (“Moon River”)(collectively, Commonwealth Wastewater, Yung Farm, and Moon River, the “Transferring Entities”)(collectively with Bluegrass Water, “Joint Applicants”), pursuant to 807 KAR 5:001 Section 13 and KRS 61.878, hereby move the Kentucky Public Service Commission (the “Commission”) to grant confidential treatment to certain information (the “Confidential Information”) contained in the Verified Joint Application for Acquisition and Transfer of Ownership and Control of Assets (the “Joint Application”)

submitted to the Commission on May 26, 2023. In support of this Motion, the Joint Applicants state as follows:

3. Joint Applicants filed an Application for necessary approvals for Bluegrass Water to acquire ownership and control of three wastewater systems in the Commonwealth on May 26, 2023. One wastewater system, owned and operated by Commonwealth Wastewater, is a jurisdictional utility that is presently regulated by the Commission. The remaining two wastewater systems, owned and operated, respectively, by Yung Farm and Moon River, are not jurisdictional utilities and are not regulated by the Commission.

4. Because the Confidential Information contains information related to the Joint Applicants' business strategies, financial terms of the proposed transactions, and otherwise confidential and proprietary information, disclosure of the information could allow the Joint Applicants' competitors to discover and make use of this information, which the Joint Applicants wish to prevent by seeking to protect this information as confidential.

5. 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).

6. Specifically, the Joint Applicants seek to keep the following information confidential:

- a. The proposed purchase price for the Transferring Entities;¹
- b. Confidential and proprietary information contained within the engineering reports regarding the Transferring Entities;²
- c. Confidential and proprietary information contained within the consolidated balance sheet and income statement of CSWR, LLC ("CSWR");³ and

¹ Exhibits 5, 6, and 7.

² Exhibits 2, 3, and 4.

³ Exhibit 9.

- d. Confidential and proprietary information contained within Bluegrass Water *pro forma* statements regarding the purchase prices for the Transferring Entities, costs of planned repairs and improvements, and the most-recently reported annual operating expenses and revenues of the Transferring Entities.⁴

I. KRS § 61.878(1)(c)(1) – Confidential or Proprietary Commercial Information.

7. 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.”

8. The Confidential Information contained within the Exhibits for which the Joint Applicants seek confidential treatment is not publicly disseminated and public disclosure of this information would harm Bluegrass Water, CSWR and its affiliates, the Transferring Entities, or all of them.

A. The Asset Purchase Agreements.

9. The proposed acquisitions will occur under the terms of Asset Purchase Agreements (“APAs”) between Bluegrass Water’s manager, Central States Water Resources Inc. (“Central States”) and the Transferring Entities. A redacted copy of each APA is an exhibit to the Joint Application as follows:

<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

⁴ Exhibit 11.

Confidential treatment is sought for certain material in these APAs, specifically the dollar amounts contained therein.

10. The public disclosure of the Confidential Information will inevitably inure to the benefit of the Joint Applicants' potential counterparties and competitors, which would gain valuable, non-public information about the Joint Applicants' businesses. Information such as this is generally recognized as confidential or proprietary.⁵ Disclosing the detailed terms of the APAs could place the Joint Applicants at a competitive disadvantage in negotiating future agreements with other counterparties. The dollar amounts have been redacted in the publicly-filed copies and are highlighted in the unredacted copies filed under seal.⁶

B. The Engineering Reports.

11. Bluegrass Water is also seeking confidential treatment for the engineering reports filed for each of the Transferring Entities and attached to the Joint Application as Exhibits 2, 3, and 4. These engineering reports have been redacted in the publicly-filed Joint Application. The material for which confidential treatment is sought has been highlighted in the unredacted copies filed under seal. These engineering reports contain confidential and proprietary information regarding the systems and the assets to be acquired.⁷

⁵ See, e.g., *Hoy v. Kentucky Indus. Revitalization Authority*, 907 S.W.2d 766, 768 (Ky. 1995) (“It does not take a degree in finance to recognize that such information concerning the inner workings of a corporation is ‘generally recognized as confidential or proprietary’”); *Marina Management Servs. v. Cabinet for Tourism, Dep’t of Parks*, 906 S.W.2d 318, 319 (Ky. 1995) (unfair commercial advantage arises simply from “the ability to ascertain the economic status of the entities without the hurdles systemically associated with the acquisition of such information about privately owned organizations”); Case No. 2019-00115, *In the Matter of: Electronic Application of Grayson County Water District for a Deviation from Meter Testing Requirements of 807 KAR 5:066, Section 16(1)*, Order (Ky. P.S.C. September 19, 2019) (granting confidential protection for proprietary product produced by a third party that was not available to the general public/required membership to obtain and was generally recognized as confidential).

⁶ The Commission has previously granted confidential treatment to the same and similar information in Case No. 2020-00028, *Proposed Acquisition by Bluegrass Water of Wastewater System Facilities* (Ky. PSC Apr. 16, 2020), Order at 3; Case No. 2021-00265, *Proposed Acquisition of Wastewater System Facilities by Bluegrass Water Utility Operating Company, LLC* (Ky. PSC Apr. 26, 2022), Order at 3.

⁷ The Commission has previously granted confidential treatment to the same and similar information in Case No. 2020-00028, *Proposed Acquisition by Bluegrass Water of Wastewater System Facilities* (Ky. PSC Apr. 16, 2020),

12. The Confidential Information in the engineering reports contained in Exhibits 2, 3, and 4 for which confidential treatment is sought is not publicly disseminated, and public disclosure of this information would harm Bluegrass Water should it be publicly available during the pendency of this case. The reports reveal information regarding the internal ability and workings of Bluegrass Water and its affiliates, including specifically, how they evaluate potential systems for acquisition and the internal processes by which they respond to various issues that arise in similar wastewater systems. These documents also demonstrate innovative and proprietary technology and processes developed through experience and used by Bluegrass Water and its affiliates and its affiliates to renovate wastewater systems. Such processes and information fall within the scope of exemption from disclosure pursuant to KRS 61.878(c). If the information contained within the engineering reports do not receive confidential treatment during the pendency of this proceeding, the risk would be unnecessarily increased that Bluegrass Water and its affiliates would suffer a serious business injury and the confidential information would be misappropriated by other competitors in the wastewater industry.

C. The Consolidated Balance Sheet and Income Statement of CSWR, LLC.

13. Bluegrass Water is also seeking confidential treatment for the consolidated balance sheet and income statement for CSWR, LLC, attached to the Joint Application as Exhibit 9. This consolidated balance sheet and income statement contains confidential and propriety information relating to the business of CSWR and its affiliates.⁸ The consolidated balance sheet and income

Order at 3; Case No. 2021-00265, *Proposed Acquisition of Wastewater System Facilities by Bluegrass Water Utility Operating Company, LLC* (Ky. PSC Apr. 26, 2022), Order at 3.

⁸ The Commission has previously granted confidential treatment to the same and similar information in Case No. 2020-00028, *Proposed Acquisition by Bluegrass Water of Wastewater System Facilities* (Ky. PSC Apr. 16, 2020), Order at 3; Case No. 2021-00265, *Proposed Acquisition of Wastewater System Facilities by Bluegrass Water Utility Operating Company, LLC* (Ky. PSC Apr. 26, 2022), Order at 3; Case No. 2020-00297, *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, Inc.* (Ky. PSC Feb. 25, 2022), Order at 3.

statement have been fully redacted in the publicly-filed Joint Application. The material for which confidential treatment is sought has been highlighted in the unredacted copies filed under seal.

14. The redacted information contained within Exhibit 9 is not publicly available, is treated as confidential by Bluegrass Water and its affiliates, and it is not widely disseminated even among the employees of these companies. Only personnel with a business reason to use it are permitted to view this business information. Exhibit 9 reveals information regarding the internal financial status and workings of CSWR and its affiliates; furthermore, CSWR is not a utility, and the information disclosed in Exhibit 9 would not otherwise be subject to disclosure to a regulatory body in the usual course of business.

D. *Pro Forma* Statements Regarding the Purchase Prices, Costs of Planned Repairs and Improvements, and the Most-Recently Reported Annual Operating Expenses of the Transferring Entities.

15. Bluegrass Water also seeks confidential treatment for a redacted portion of Exhibit 11 to the Joint Application, the Bluegrass Water *pro forma* statements which reflect the purchase prices, costs of planned repairs and improvements, and the most-recently reported annual operating expenses and revenues of the Transferring Entities. The *pro forma* statement has been fully redacted in the publicly-filed Joint Application. The material for which confidential treatment is sought has been highlighted in the unredacted copies filed under seal. This *pro forma* statement contains confidential and propriety information relating to the business of CSWR and its affiliates.

16. The sensitive, commercially-valuable, financial and inter-affiliate transaction information contained in Exhibit 11, the *pro forma* balance sheet statement information is not publicly distributed or disseminated outside of CSWR and its affiliates. It is provided with the Joint Application to show Bluegrass Water's financial status, as required by KRS 278.020(6), (7), and (10) and to give the Commission a fuller picture and background of finances within CSWR

and its affiliates, so that it may be confident that financial capability exists for renovating and improving the system assets and for ongoing operations.

VI. The Confidential Information.

17. The Confidential Information is not publicly available, is not disseminated within the Joint Applicants except to those employees and professionals with a legitimate business need to know and act upon the information, and are not disseminated to others without a legitimate need to know and act upon the information.

18. The Joint Applicants previously requested that if the Commission grants the relief sought through the Joint Application, CONFIDENTIAL Exhibits 2, 3, 4, and 9 to the Joint Application remain confidential through the pendency of this proceeding. That request contained an unintentional clerical error with respect to the periods for which confidential treatment is sought. The following two paragraphs amend that request and address the periods for which Joint Applicants seek protection of the Confidential Information.

19. The Joint Applicants request that the Confidential Information contained in CONFIDENTIAL Exhibits 9, and 11 to the Joint Application 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 the Joint Applicants. 807 KAR 5:001, Section 13(2)(a)(2).

20. If the Commission grants the relief sought through the Joint Application, the Joint Applicants request that the Confidential Information contained in CONFIDENTIAL Exhibits 2, 3, 4, 5, 6, and 7 to the Joint Application remain confidential through the pendency of this proceeding. If the relief sought through the Joint Application is not granted by the Commission, the Joint Application request that this 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 the Joint Applicants. 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 the Joint Applicants to request an evidentiary hearing to protect their 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 Joint Application.

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, the Joint Applicants will inform the Commission in writing and have its confidential status removed. 807 KAR 5:001 Section 13(10)(b).

WHEREFORE, the Joint Applicants respectfully requests that the Commission classify and protect the Confidential Information as confidential for the period(s) requested above.

This the 12th day of July, 2023.

Respectfully submitted,

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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.

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