

**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)	
)	
)	

**BLUEGRASS WATER UTILITY OPERATING COMPANY, LLC'S
MOTION 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 Staff’s Second Request for Information (“PSC Requests”) submitted contemporaneously herewith. In support of this Motion, the Bluegrass Water states as follows.

2. Because the Confidential Information contains information related to Bluegrass Water’s business strategies, financial terms of the proposed transactions, and otherwise confidential and proprietary information, disclosure of the information could allow Bluegrass Water’s competitors to discover and make use of this information, which Bluegrass Water wishes to prevent by seeking to protect this information as confidential.

3. 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).

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

- a. Pricing terms contained within CONFIDENTIAL Exhibit PSC 2-4 for Bluegrass Water’s service contracts with third parties; and
- b. The proposed purchase price for Commonwealth Wastewater Systems, LLC, Yung Farm Estates Homeowners’ Association, Inc., and Moon River Marina & Resort, LLC (the “Transferring Entities”) contained within CONFIDENTIAL Exhibit PSC 2-7.

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

5. 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.”

6. 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 are not disseminated to others without a legitimate need to know and act upon the information.

A. CONFIDENTIAL EXHIBIT PSC 2-4 – SERVICE CONTRACTS

7. Confidential treatment is sought for certain material in CONFIDENTIAL Exhibit PSC 2-4, specifically the pricing terms contained therein, which are currently confidential pursuant to 807 KAR 5:001, Section 13(4).

8. CONFIDENTIAL Exhibit PSC 2-4 contains information related to amounts paid to outside vendors and contractors by Bluegrass Water. These contracts are the result of a competitive bidding process. Additionally, Bluegrass Water will engage in an RFP process to

award future contracts for services of a similar nature. Public disclosure of the current pricing could therefore lead to higher bids in future public bidding procedures.

9. These effects were recognized in PSC Case No. 2003-00054, 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 (August 4, 2003)

10. The portion of CONFIDENTIAL Exhibit PSC 2-4 for which Bluegrass Water seeks confidential treatment is the same as the information contained within Application Exhibit 22 in Case No. 2022-00432, for which it previously sought confidential treatment in its February 27, 2023 Motion for Confidential Treatment filed in that case. Bluegrass Water respectfully incorporates that motion as if fully set forth herein. Additionally, this information is currently treated confidentially and is not publically 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.”)

11. The public disclosure of the Confidential Information will inevitably inure to the benefit of Bluegrass Water’s potential counterparties and competitors, which would gain valuable, non-public information about Bluegrass Water’s businesses. Information such as this is generally recognized as confidential or proprietary.¹ Disclosing the purchase price for the Transferring

¹ *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

Entities could place Bluegrass Water at a competitive disadvantage in negotiating future agreements with other counterparties. The purchase prices, and information which can be manipulated to determine the purchase prices, have been redacted in the publicly-filed copies and are highlighted in the unredacted copies filed under seal.²

12. Bluegrass Water respectfully submits that the Confidential Information contained within CONFIDENTIAL Exhibit PSC 2-4 remain confidential for 5 years from the date of the filing of this Motion, which Bluegrass Water submits is a reasonable period of time for confidentiality in light of the competitive conditions of the wastewater industry.

B. CONFIDENTIAL EXHIBIT PSC 2-7

13. Confidential treatment is sought for certain material in CONFIDENTIAL Exhibit PSC 2-7, specifically the purchase price of the Transferring Entities, which is currently confidential pursuant to 807 KAR 5:001, Section 13(4).

14. Furthermore, additional information contained within CONFIDENTIAL Exhibit PSC 2-7 requires redaction to prevent discovery of the purchase prices, which are currently confidential pursuant to 807 KAR 5:001, Section 13(4).

15. Bluegrass Water has previously moved for confidential treatment of the Confidential Information contained within CONFIDENTIAL EXHIBIT PSC 2-7 in its May 26, 2023 and July 11, 2023 Motions for Confidential Treatment. Bluegrass Water respectfully

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).

² 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.

incorporates those motions as if fully set forth herein. The public disclosure of the Confidential Information will inevitably inure to the benefit of Bluegrass Water's potential counterparties and competitors, which would gain valuable, non-public information about Bluegrass Water's businesses. Information such as this is generally recognized as confidential or proprietary.³ Disclosing the purchase price for the Transferring Entities could place Bluegrass Water at a competitive disadvantage in negotiating future agreements with other counterparties. The purchase prices, and information which can be manipulated to determine the purchase prices, have been redacted in the publicly-filed copies and are highlighted in the unredacted copies filed under seal.⁴

16. The Confidential Information for which the Bluegrass Water seeks confidential treatment is not publicly disseminated, and public disclosure of this information would harm Bluegrass Water, CSWR, and its affiliates, and the Transferring Entities.

17. If the Commission grants the relief sought through the Joint Application, Bluegrass Water requests that this Confidential Information contained within CONFIDENTIAL EXHIBIT PSC 2-7 remain confidential through the closing of the transaction 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).

18. If the relief sought through the Joint Application is not granted by the Commission, Bluegrass Water requests that the Confidential Information contained within CONFIDENTIAL Exhibit PSC 2-7 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).

³ See, n.1.

⁴ See, n.2.

II. The Confidential Information.

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

20. 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).

21. 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 Commission Staff's First Requests for Information.

22. 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.

23. 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, the Bluegrass Water respectfully requests that the Commission classify and protect the Confidential Information as confidential for the period(s) requested above.

This the 4th day of August, 2023.

Respectfully submitted,

/s/ Edward T. Depp
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Certification

I hereby certify that a copy of this Motion for Confidential Treatment 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
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