

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 PARTIAL REHEARING OF
THE COMMISSION'S SEPTEMBER 22, 2023 ORDER

Applicant, Bluegrass Water Utility Operating Company, LLC (“Bluegrass Water” or the “Company”), by counsel, and pursuant to KRS 278.400 and 807 KAR 5:001 Section 5, hereby moves the Public Service Commission of Kentucky (the “Commission), for partial rehearing of the Commission’s September 22, 2023 Final Order. Specifically, Bluegrass Water seeks a rehearing of the Commission’s decision denying Bluegrass Water’s acquisition and transfer of ownership and control of the assets of Moon River Marina & Resort LLC (“Moon River”). In support of its Motion, Bluegrass Water states as follows.

On May 26, 2023, Bluegrass Water, Commonwealth Wastewater Systems, Inc. (“Commonwealth Wastewater”), Yung Farm Estates Homeowners’ Association, Inc. (“Yung Farm”), and Moon River Marina & Resort LLC filed a Joint Application for Approval of Acquisition and Transfer of Ownership and Control of Assets of Commonwealth Wastewater, Yung Farm, and Moon River. On September 22, 2023, the Commission approved Bluegrass

Water's acquisition of Commonwealth Wastewater and Yung Farm, but denied Bluegrass Water's acquisition of Moon River.

Under KRS 278.400, which establishes the standard of review for rehearing motions, rehearing is limited to new evidence not readily discoverable at the time of the original hearings, to correct any material errors or omissions, or to correct findings that are unreasonable or unlawful.¹ In denying Bluegrass Water's acquisition of Moon River, the Commission overlooked relevant facts establishing substantial inadequacy of existing service to Moon River as well as the need for improvements to the existing system. The Commission's Final Order states that there is a "significant risk" that Moon River will cease operations in the "foreseeable future."² The Commission's Order overlooks the fact that allowing Bluegrass Water to repair and rehabilitate the Moon River system will help ensure the continued operation and marketability of Moon River in the future because it is situated on a preeminent natural resource and recreational area of the Commonwealth.

Moon River is a small, non-jurisdictional system located in a remote area on the East side of Lake Barkley; it has been in operation as a marina and resort since at least 2018. Moon River Marina and Resort operates a lodging, recreational, and entertainment business located near the Lake Barkley Campground and Lake Barkley State Resort Park. Since its recent ownership change in 2021, the resort has undergone many upgrades, including the addition of an event space and renovations of some of its rental cabins.³ Additionally, the resort operates a restaurant serving breakfast, lunch, and dinner to both its guests and local customers, 12 recreational vehicle sites,

¹ See KRS 278.400; *see also* Case No. 2022-00216, Electronic Application of Bluegrass Water Utility Operating Company, LLC for a Certificate of Public Convenience and Necessity for the Installation of Monitoring Equipment and for a Corresponding Limited Waiver of Daily Inspection Requirements, Order (Sept. 8, 2023).

² Case No. 2023-00181, Final Order at 19 (Sept. 22, 2023)

³ See <https://www.moonriverky.com/>; *see also* <https://www.facebook.com/MoonRiverCadiz/>.

and 15 single-family rental cottages.⁴ The marina operates 74 boat slips and provides boat rentals, fuel, and fishing supplies.⁵ The Moon River system services all of these operations and growing customer base for the resort and marina, and its current owners are not sufficiently skilled or knowledgeable to provide adequate wastewater services to its customers, or to facilitate the necessary repairs and improvements to the current system.

Furthermore, as the Commission noted, Moon River is 26 miles away from Bluegrass Water's Center Ridge District #4, and the nearest available system to Moon River is the Cadiz Sewer Treatment Plant, which would require 3.3 miles of new mains along established utility corridors, and several lift stations to connect.

For a jurisdictional utility acquiring a non-jurisdictional system, the Commission recently held that a utility must obtain a Certificate of Public Convenience and Necessity ("CPCN") pursuant to KRS 278.020(1)(a).⁶ Furthermore, the jurisdictional utility must demonstrate a need and absence of wasteful duplication, which can be demonstrated through a showing of substantial inadequacy of existing service.⁷ The Moon River system currently exhibits a substantial inadequacy of service and has a need for the skilled management and growing economies of scale that Bluegrass Water offers, and Bluegrass Water respectfully requests that the Commission reconsider its finding for the following reasons.

First, as the engineering report provided by Bluegrass Water indicates, the Moon River system clearly requires various improvements and repairs, which the Company was prepared to undertake following acquisition.⁸ It is in the public interest to ensure appropriate management of

⁴ *See id.*

⁵ *See id.*

⁶ Case No. 2020-00028, 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, Final Order. (June 19, 2020).

⁷ *Kentucky Utilities Co. v. Pub. Serv. Comm'n.*, 252 S.W.2d 885, 890 (Ky. 1952)

⁸ Case No. 2023-00181, Application at 6, CONFIDENTIAL Exhibit 4.

a wastewater treatment plant located on the banks of one of Kentucky's most important recreational and tourist locations. The current service being provided for Moon River, on the edge of Lake Barkley and near Lake Barkley State Resort Park, is inadequate and in need of repair.⁹ Furthermore, after completion of the various improvements and repairs outlined in the confidential engineering report provided with the Application, no additional projects are planned, nor does Bluegrass Water anticipate that major additional projects will be required.

As the Commission has previously noted, Bluegrass Water's business model is novel insofar as it is willing to acquire and improve small wastewater treatment systems, which sometimes require significant capital improvements.¹⁰ This goal is consistent with the Legislature's explicit findings that "it is necessary to encourage regionalization, consolidation, and partnerships among governmental agencies, and private parties when appropriate, with the goal of making public water and wastewater treatment secure for all Kentuckians." KRS 224A.300. The Moon River system needs Bluegrass Water's assistance, and Bluegrass Water has specific system improvement plans, demonstrated technical and managerial experience to implement them, and access to the capital necessary to accomplish these changes for the benefit of Moon River, customers of and visitors to its marina, and other visitors to Lake Barkley State Resort Park and the Land Between the Lakes state recreational area.

Furthermore, Moon River is a stable and growing business, providing jobs for local residents, as well as recreational opportunities and entertainment for its guests and locals. While it

⁹ See Case No. 2023-00181, Bluegrass Water Utility Operating Company, LLC's Responses to the Commission Staff's Second Request for Information, Request 2-10, Exhibit 2-10 (Part 1 of 3) and Exhibit 2-10 (Part 2 of 3); see also Kentucky Pollutant Discharge Elimination System Permit No. KY0041122 (attached hereto as Exhibit 1), see also Kentucky Department for Environmental Protection, Notice of Violation (attached hereto as Exhibit 2).

¹⁰ See Case No. 2019-00104, Electronic Proposed Acquisition by Bluegrass Water Utility Operating Company, LLC and the Transfer of Ownership and Control of Assets by P.R. Wastewater Management, Inc., Marshall County Environmental Services, LLC, LH Treatment Company, Inc., Airview Utilities, LLC, Brooklyn Utilities, LLC, Fox Run Utilities, LLC and Lake Columbia Utilities, Inc., Final Order (Aug. 14, 2020).

is true that Moon River is likely to be the only customer of the system through its life, the system is nevertheless in distress and in need of significant repairs and improvements which Bluegrass Water is willing and able to successfully provide.

Additionally, Bluegrass Water's acquisition of Moon River will further the General Assembly's stated objective to "encourage regionalization, consolidation, and partnerships among governmental agencies, and private parties when appropriate, with the goal of making public water and wastewater treatment secure for all Kentuckians."¹¹ Bluegrass Water's acquisition of Moon River is within the public interest to ensure that Moon River, its customers, and Kentuckians at-large can continue to enjoy the natural beauty of Lake Barkley with safe and secure wastewater treatment.

WHEREFORE, Bluegrass Water respectfully requests that the Commission grant its Motion for Partial Rehearing of the Final Order and order the following relief, as requested herein:

1. Approve Bluegrass Water's Application for Approval of Acquisition and Transfer of Ownership and Control of Assets of Moon River Marina & Resort LLC; and
2. Any and all other relief necessary to accomplish the foregoing.

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)

¹¹ See KRS 224A.300.

*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*