

**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)	Case No.
CONTROL OF ASSETS OF MAGRUDER VILLAGE)	2023-00218
WATER COMPANY)	

**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 the Joint Application for Acquisition and Transfer of Ownership and Control of Assets (the ‘Joint Application’) submitted contemporaneously herewith. In support of this Motion, the Bluegrass Water states as follows:

2. Bluegrass Water has filed contemporaneously herewith a Joint Application for necessary approvals for Bluegrass Water to acquire ownership and control of a wastewater system within the Commonwealth. The wastewater system, owned and operated by Magruder Village Water Company (“Magruder Village or “Transferring Entity”), is not a jurisdictional utility and is not regulated by the Commission.

3. 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.

4. 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).

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

- a. Confidential and proprietary information contained within the engineering report regarding the Transferring Entity;¹
- b. The price terms contained within the proposed Agreement for Sale of Utility System;²
- c. Confidential and proprietary information contained within the consolidated balance sheet and income statement of CSWR, LLC ("CSWR");³ and

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

6. 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.”

7. The Confidential Information contained within the Exhibits 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, the Transferring Entity, or all of them.

¹ CONFIDENTIAL Exhibit 3.

² CONFIDENTIAL Exhibit 4.

³ CONFIDENTIAL Exhibit 6.

A. The Engineering Report.

8. Bluegrass Water is seeking confidential treatment for the engineering report filed and attached to the Joint Application as Exhibit 3. The engineering report has 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 report contains confidential and proprietary information regarding the system and the assets to be acquired.⁴

9. The Confidential Information in the engineering report contained in Exhibit 3 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 report reveals 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. This document also demonstrates 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 report does 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.

⁴ 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.

B. The Agreement for Sale of Utility System.

10. The proposed acquisitions will occur under the terms of an Agreement for Sale of Utility System (“APA”) between Bluegrass Water’s Manager, Central States Water Resources, Inc. (“Central States”) and the Transferring Entity. A redacted copy of the APA is Exhibit 4 to the Joint Application. Confidential treatment is sought for certain material in this APA, specifically the dollar amount contained therein.

11. 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 price terms of the APA could place the Joint Applicants at a competitive disadvantage in negotiating future agreements with other counterparties. The dollar amount has been redacted in the publicly-filed copy and are highlighted in the unredacted copy filed under seal.⁶

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

12. 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 6. This consolidated balance sheet and income statement contains confidential and propriety information

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.

relating to the business of CSWR and its affiliates.⁷ The consolidated balance sheet and income statement 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.

13. The redacted information contained within CONFIDENTIAL Exhibit 6 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. CONFIDENTIAL Exhibit 6 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 CONFIDENTIAL Exhibit 6 would not otherwise be subject to disclosure to a regulatory body in the usual course of business.

II. The Confidential Information.

14. 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.

15. If the Commission grants the relief sought through the Joint Application, Bluegrass Water requests that the Confidential Information contained in CONFIDENTIAL Exhibits 3, and 4 to the Joint Application remain confidential through the closing of the transaction, and the information contained within CONFIDENTIAL Exhibit 6 remain confidential for a period of five

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), 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.

(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).

16. If the relief sought through the Joint Application is not granted by the Commission, Bluegrass Water requests that the Confidential Information contained in CONFIDENTIAL Exhibits 3, 4, and 6 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).

17. 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).

18. 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. CONFIDENTIAL Exhibit 6 is being electronically filed with the Joint Application as confidential in its entirety.

19. 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.

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

This the 29th day of June, 2023.

Respectfully submitted,

/s/ Edward T. Depp
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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.

/s/ Edward T. Depp
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