

**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 its Responses to the Commission Staff’s First 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 the Company’s business strategies, financial terms, and otherwise confidential and proprietary information, disclosure of the information could allow the Company’s competitors to discover and make use of this information, which the Company 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 1-2 for Bluegrass Water’s service contract with a third party;
- b. Pricing terms contained within the engineering report regarding the Transferring Entity;¹ and

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 contained within the Exhibit and response 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.

A. CONFIDENTIAL EXHIBIT PSC 1-2 – SERVICE CONTRACT

7. Confidential treatment is sought for certain material in CONFIDENTIAL Exhibit PSC 1-2, specifically the pricing terms contained therein, which are currently confidential pursuant to 807 KAR 5:001, Section 13(4).

8. CONFIDENTIAL Exhibit PSC 1-2 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.

¹ Contained within the Company’s Response to PSC Request No. 1-3.

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 1-2 for which Bluegrass Water seeks confidential treatment is the same as the information contained within Application Exhibit 22 in Case No. 2022-00432 and CONFIDENTIAL Exhibit PSC 2-4 in Case No, 2023-00181, for which it previously sought confidential treatment in its February 27, 2023 and August 4, 2023 Motions for Confidential Treatment filed in those cases. Bluegrass Water respectfully incorporates those motions as if fully set forth herein. Additionally, this information is currently treated confidentially and is not publicly 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.² Disclosing the contract prices could place Bluegrass

² *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

Water at a competitive disadvantage in negotiating future agreements with other counterparties. The contract prices, and information which can be manipulated to determine the contract prices, have been redacted in the publicly-filed copies and are highlighted in the unredacted copies filed under seal.³

12. Bluegrass Water respectfully submits that the Confidential Information contained within CONFIDENTIAL Exhibit PSC 1-2 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. PRICING TERMS CONTAINED WITHIN THE ENGINEERING REPORT.

13. Bluegrass Water is seeking confidential treatment for pricing terms contained within its response to the Commission Staff's Request No. 1-3, which were included in 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 which were filed under seal. The engineering report contains confidential and proprietary information regarding the system and the assets to be acquired.⁴

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).

³ 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.

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.

14. The Confidential Information for which Bluegrass Water seeks confidential treatment is the same as the information contained within Application Exhibit 3, for which it previously sought confidential treatment in its June 29, 2023 Motion for Confidential Treatment filed simultaneously with the Joint Application. Bluegrass Water respectfully incorporates that motion as if fully set forth herein. Additionally, this information is currently treated confidentially and is not publicly 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.”)

15. The Confidential Information in the response to the Commission Staff’s Request No. 1-3 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 Confidential Information concerns the internal ability and workings of Bluegrass Water and its affiliates, including specifically, how they evaluate potential systems for acquisition, the internal processes by which they respond to various issues that arise in similar wastewater systems, and how the Company evaluates the costs associated with improving potential systems. 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.⁵ Disclosing the contract prices could place Bluegrass Water at a competitive disadvantage in negotiating future agreements with other counterparties.

⁵ *See* fn.1.

16. Such processes and information fall within the scope of exemption from disclosure pursuant to KRS 61.878(c). If the Confidential Information 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.

17. The Confidential Information has been redacted in the publicly-filed response to the Commission Staff's Request No. 1-3 and is highlighted in the unredacted copies filed under seal.

18. If the Commission grants the relief sought through the Joint Application, Bluegrass Water requests that the Confidential Information contained in its response to the Commission Staff's Request No. 1-3 remain confidential through the closing of the transaction. If the relief sought through the Joint Application is not granted by the Commission, Bluegrass Water requests that the Confidential Information contained in its response to the Commission Staff's Request No. 1-3 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 Company. 807 KAR 5:001, Section 13(2)(a)(2)

II. The Confidential Information.

19. The Confidential Information is not publicly available, is not disseminated within the Company except to those employees and professionals with a legitimate business need to know and act upon the information, and is 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.

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, by electronic mail, on all parties to this proceeding who have executed an appropriate protective agreement.

23. 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 request to 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 11th day of August, 2023.

Respectfully submitted,

/s/ Edward T. Depp
Edward T. Depp
R. Brooks Herrick
David N. Giesel
DINSMORE & SHOHL LLP
101 S. Fifth St., Suite 2500
Louisville, KY 40202
tip.depp@dinsmore.com

brooks.herrick@dinsmore.com
david.giesel@dinsmore.com
Telephone: (502) 540-2300
Facsimile: (502) 585-2207

*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*