

**COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION**

In the Matter of:)
)
 Electronic Application of)
 Bluegrass Water Utility Operating)
 Company, LLC for a Certificate of)
 Public Convenience and Necessity for the) **Case No. 2024-00170**
 Installation of a Drain Field at the)
 Marshall Ridge System or an Order)
 Declaring the Installation is an Extension in)
 the Ordinary Course of Business)

**APPLICATION FOR CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
OR AN ORDER DECLARING THE DRAIN FIELD INSTALLATION IS AN
EXTENSION IN THE ORDINARY COURSE OF BUSINESS**

Bluegrass Water Utility Operating Company, LLC (“Bluegrass Water” or the “Company”), by counsel, and pursuant to KRS § 278.020(1), 807 KAR 5:001, 807 KAR 5:071, and other applicable law, respectfully states as follows in connection with its application in the above-captioned matter (“Application”).

Introduction

1. As part of its ongoing efforts to improve the Marshall Ridge system (“Marshall Ridge” or the “Facility”) and comply with state and federal environmental standards, Bluegrass Water seeks to obtain a Certificate of Public Convenience and Necessity (“CPCN”) from the Kentucky Public Service Commission (“Commission”) to install a drain field at the Facility.

2. As detailed in this Application and other documents provided herewith, each aspect of this Application has been examined by the Company to ensure that it presents a reasonable, necessary, and cost-effective course of action. The proposed drain field is necessary to the Company’s efforts to limit effluence violations and improve overall safety and service quality at

the Facility. Moreover, the proposed drain field is not wastefully duplicative, as it will replace the Facility's existing drain field, which the Company has discovered is compromised and not salvageable. Consistent with KRS Chapter 278 and the Commission's regulations and precedent, Bluegrass Water respectfully requests an Order granting the relief requested herein.

3. Alternatively, Bluegrass Water requests that, based on the information presented in this Application, the Commission issue a declaratory order that the drain field installation constitutes an extension of the existing system in the ordinary course of business, and is therefore exempt from CPCN requirements under KRS 278.020(1)(a)(2) and 807 KAR 5:001, Section 15(3).

I. Applicant Information, Relief Sought, and General Requirements.

4. The Company's full name is Bluegrass Water Utility Operating Company, LLC. The Company's address is 1630 Des Peres Road, Suite 140, St. Louis, Missouri 63131. Its email address for purposes of this proceeding is regulatory@cswrgroup.com.

5. Bluegrass Water is a limited liability company that was organized under Kentucky law on March 21, 2019. It is currently in good standing with the Kentucky Secretary of State.

6. Bluegrass Water provides water and wastewater services in communities across the Commonwealth.

7. Pursuant to KRS § 278.020(1), 807 KAR 5:001, 807 KAR 5:071, and other applicable law, the Company seeks to obtain a CPCN from the Commission in order to install – at its Marshall Ridge system – a drain field to replace the Facility's existing drain field which is compromised and unsalvageable.

II. Regulatory Requirements for CPCN Application.

8. Pursuant to KRS § 278.020(2), 807 KAR 5:001 § 15(2), and 807 KAR 5:071 § 3(1)(a), the Company submits this Application for a CPCN in order to install a drain field at Marshall Ridge.

9. To obtain a CPCN pursuant to KRS § 278.020, a utility must demonstrate a need for the facilities it proposes to construct and an absence of wasteful duplication.¹ These requirements ensure that a utility avoids unreasonable or excessive investments by, among other things, confirming the applicant has performed a thorough review of available alternatives.²

10. The proposed drain field is not an “excessive investment in relation to efficiency,” nor would it result in “an unnecessary multiplicity of physical properties.”³ Rather, the Company’s thorough investigation of reasonable alternatives supports a finding that installing the drain field is the most efficient and cost-effective option for the Company’s customers and itself.

A. 807 KAR 5:001 § 15 Requirements.

11. Pursuant to 807 KAR 5:001 § 15(2)(a), the facts relied on to show that the proposed construction or extension is or will be required by public convenience or necessity are set forth in this Application and in the exhibits hereto. *See* Section III, *infra*.

12. Pursuant to 807 KAR 5:001 § 15(2)(b), the Company states that it has submitted the relevant permit application to the Purchase District Health Department and is currently awaiting a response from County officials. A copy of the permit application is attached herewith as Exhibit 1.

¹ *Kentucky Utilities Co. v. Pub. Serv. Comm’n*, 252 S.W.2d 885 (Ky. 1952).

² *Joint Application of Louisville Gas and Electric Company and Kentucky Utilities Company for a Certificate of Public Convenience and Necessity for the Construction of Transmission Facilities in Jefferson, Bullitt, Meade, and Hardin Counties, Kentucky*, Case No. 2005-00142 (Ky. PSC Sept. 8, 2005).

³ *Kentucky Utilities Co.*, *supra*, 252 S.W.2d at 891.

13. Pursuant to 807 KAR 5:001 § 15(2)(c), the Company hereby provides in this Application a full description of the proposed location of the drain field, as well as a description of the proposed manner of installation. *See paras. 39 – 40.*

14. The proposed project is a replacement of an existing drain field and is not likely to compete with any other public utility, corporation, or person, as no other entity provides service to the Facility.

15. Pursuant to 807 KAR 5:001 § 15(2)(d)(1), the Company hereby provides, as part of Exhibit 1,⁴ maps to suitable scale showing the location of the proposed drain field.

16. Pursuant to 807 KAR 5:001 § 15(2)(d)(2), the Company hereby provides, as part of Exhibit 1, detailed plans and specifications regarding the proposed drain field.

17. Pursuant to 807 KAR 5:001 § 15(2)(e), the Company plans to finance the proposed project primarily with funds available under its existing and previously-approved Letter of Credit,⁵ although it may also draw upon equity working capital provided by its parent company, CSWR, LLC (“CSWR”), if needed. The estimated capital cost of the proposed project is anticipated to be \$213,416. The Company’s existing Letter of Credit and capital contributions from CSWR are anticipated to cover the proposed expenditures such that refinancing existing debt or incurring additional debt should be unnecessary for Bluegrass Water’s ability to pay for the project.

18. Pursuant to 807 KAR 5:001 § 15(2)(f), the Company states that the estimated annual cost of operating the drain field after it is placed into service will be substantially the same as the cost to operate the existing drain field and will not require a present change in rates.

⁴ The Company attached maps of the proposed drain field and detailed plans and specifications to the application it submitted to the Purchase District Health Department.

⁵ *See In the Matter of: Electronic Application of Bluegrass Water Utility Operating Company, LLC for Issuance of Evidence of Indebtedness*, Case No. 2022-00217, Order, 5 (Ky. PSC Sept. 28, 2022). *See also id.*, Notice of Filing of Unredacted Material, Exhibit 17 – Term Sheet.

B. 807 KAR 5:071 § 3 Requirements.

19. In addition to the requirements of 807 KAR 5:001 §§ 14 & 15, the Company must also comply with 807 KAR 5:071 § 3(1). *See* 807 KAR 5:071 § 3(1).

20. Pursuant to 807 KAR 5:071 § 3(1)(a), the Company states that in fulfillment of conditions in the final orders in Cases No. 2019-00104, 2019-00360, and 2020-00297, and to insure continuity of wastewater service, the Company has obtained and filed with the Commission an Amended and Restated Guaranty from CSWR in favor of the Commission and providing for two months of Bluegrass's obligation to its third-party contractors for services to all the sites of its wastewater system, including the affected service area(s). A copy of the Guaranty is submitted as Exhibit 2.

21. Pursuant to 807 KAR 5:071 § 3(1)(b), the Company states that because installation of the replacement drain field does not involve new construction, preliminary approval from the Division of Water Quality is not required.

22. Pursuant to 807 KAR 5:071 § 3(1)(c), a detailed map of the Facility showing the location of plant, collection mains, manholes, and utility service area is included in Exhibit 1. *See also* para. 15. The Facility is not a discharge facility.

23. Pursuant to 807 KAR 5:071 § 3(1)(d), the Company attaches as CONFIDENTIAL Exhibit 3⁶ a detailed estimate of the anticipated \$213,416 cost of installing the drain field.

24. Pursuant to 807 KAR 5:071 § 3(1)(e), the Company submits Financial Exhibits in the form described in 807 KAR 5:001 § 12 as Exhibits 4(a), (b), and (c).

⁶ The publicly filed copy of the detailed estimate of capital costs is redacted. A contemporaneously filed Motion for Confidential Treatment seeks protection of the confidential information contained within the detailed estimate.

25. Pursuant to 807 KAR 5:071 § 3(1)(f), the Company states that it proposes to finance the improvements through the Company's existing letter of credit with CoBank, ACB, and using equity working capital provided by CSWR.

26. Pursuant to 807 KAR 5:071 § 3(1)(g), the Company states that the Company does not anticipate a material impact on operational costs as a result of the installation of the drain field. *See also* para. 18.

27. Pursuant to 807 KAR 5:071 § 3(1)(h), the Company estimates that the total number of customers, class of customers, and average monthly consumption for each class of customer to be served by the proposed drain field is not anticipated to change as a consequence of the project. The proposed drain field will serve approximately 52 customer connections.

28. The requirements set forth in 807 KAR 5:071 § 3(i), (j), & (k) do not apply to the Company because the Company is not presently seeking to adjust rates. *See* 807 KAR 5:071 § 3(1)(m) ("If the establishment of rates is not sought by the applicant, omit paragraphs (i), (j), and (k) of this subsection.").

29. Pursuant to 807 KAR 5:071 § 3(1)(l), the Company hereby provides a full and complete explanation of its current corporate organizational chart (attached as Exhibit 5) in order to give the Commission a full and complete understanding of the situation. Bluegrass Water is a member-managed company. Its manager is Central States Water Resources, Inc. ("Central States"), which is an affiliate entity incorporated under Missouri law. Bluegrass Water's sole member is Bluegrass Water Utility Holding Company, LLC, whose sole member is Kentucky Central States Water Resources, LLC, which is organized under Kentucky law. The sole member of Kentucky Central States Water Resources is CSWR.

C. 807 KAR 5:001 § 12 Requirements.

30. Pursuant to 807 KAR 5:001 § 12, the Company's Financial Exhibits are attached as Exhibits 4(a), (b), and (c). *See also* para. 24.

D. Other Filing Requirements.

31. The Company has included a table showing its compliance with the statutory and regulatory requirements for this Application. *See* Exhibit 6.

III. Public Convenience and Necessity Require Installing the Drain Field.

A. Need to Install the Drain Field.

32. As part of its ongoing efforts to bring the Facility into compliance with applicable effluence standards, the Company plans to install a new drain field.

33. The Facility's struggles to meet environmental compliance standards predate Bluegrass Water's acquisition of the Facility.⁷ As the Commission noted when it approved the Company's acquisition of Marshall Ridge and other facilities, "[s]everal of the engineering reports noted that significant improvements were necessary to the plants to be acquired."⁸

34. Following acquisition of Marshall Ridge, the Company immediately began repairs including repairing damage to the berms around the lagoons and evaluating the collection systems for repairs.⁹

35. Through its ongoing inspections, the Company has determined that the Facility's continuing compliance issues are the result of the condition of the existing drain field.

⁷ *In the Matter of: 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*, Case No. 2020-00028, Order, 20 (Ky. PSC June 19, 2020).

⁸ *Id.*

⁹ *Id.*, Post-Closing First Month Utility Performance Report (Jan. 8, 2021).

36. Trees were permitted to grow in the drain field prior to the Company's acquisition of the Facility. The tree root infiltration is severe, causing cracks and leaks throughout the drain field, resulting in stagnant water ponding on the surface.

37. The area is now heavily wooded, making digging up the existing field and surrounding trees, and replacing the piping difficult and prohibitively expensive.

38. As a result of the above, the Company has determined that the existing drain field is not salvageable, and installing a new drain field is required to bring the Facility back into compliance with applicable effluence standards.

B. Proposed Drain Field Installation.

39. The Company proposes to install a drain field at Marshall Ridge to replace the Facility's existing drain field and bring the Facility into compliance by allowing proper drainage and eliminating ponding of stagnant water.

40. The proposed drain field will utilize industry standard designs. The scope includes an absorption lagoon, lateral field system, piping, and valving. The lateral field system will include lateral trenches for gravity distribution. Effluent piping will be installed to the absorption lagoon. Overflow piping will be installed to the lateral field system. *See Exhibit 1.*

C. Absence of Wasteful Duplication.

41. The Company determined that infiltration of Marshall Ridge's existing drain field is too significant to make refurbishing the existing drain field a feasible solution, and therefore believes that installing the proposed drain field is the most economical method of bringing the Facility into compliance while avoiding wasteful duplication in the form of unnecessary sewage treatment installations.

42. The Company first considered maintaining the status quo: that is, rehabilitating its existing drain field and continuing to conduct maintenance on the field as needed. However, given the extent of the damage to the drain field and the likelihood of continued maintenance issues, it became apparent that installing the proposed drain field was the most economical option. Repairing the existing drain field would require a full removal of the damaged drain field, surrounding trees, and replacement in-kind, whereas installing a new drain field in a more suitable location would not require substantial removal costs and would be both more cost-effective and more likely to bring the Facility into compliance over the long term.

43. In addition to being more cost-effective than repairing the existing drain field, installing the proposed drain field is more cost-effective than alternatives. Whereas installing the proposed drain field could allow use of existing components and connections, new facility alternatives would require new electrical services, process changes and upgrades, and additional components, while only achieving a useful life of roughly 10-15 years.

44. Bluegrass Water retained 21 Design Group Inc. to design the proposed drain field based on the specific needs at the Facility. In order to avoid wasteful duplication, the Company requested a design scaled to meet the needs of the customer base for its Marshall Ridge system with operation and maintenance costs consistent with its current drain field and a useful life of approximately 30 years.

45. Contractors have not yet been retained to perform the work on the project. The Company plans to limit project costs via a contractor bidding process, which is expected to begin once engineering reports have been finalized.

IV. Installing the Drain Field at Marshall Ridge Constitutes an Extension of Existing Systems in the Ordinary Course of Business.

A. The Commission may issue a Declaratory Order that an Improvement is Exempt from CPCN Requirements.

46. In order to “provide guidance with respect to the jurisdiction of the Commission, and the applicability, meaning, and scope of” Commission regulations or the statutes in KRS Chapter 278, 807 KAR 5:001 § 19 grants the Commission the power and discretion to issue declaratory orders.¹⁰ Consistent with the approach that Kentucky Courts have taken regarding declaratory judgments, “declaratory orders are intended to provide some guidance with respect to some act or conduct that may be within the Commission's jurisdiction. [807 KAR 5:001 § 19] establishes procedures for obtaining such guidance where no other available remedy or process is readily available to address the proposed act or conduct.”¹¹

47. Under KRS 278.020(1)(a)(2) and 807 KAR 5:001 § 15(3), the Commission may grant exceptions to CPCN application requirements when a proposed improvement constitutes an “ordinary extension of existing systems in the usual course of business.”¹² Commission regulations and relevant Commission decisions clarify that this exception applies to extensions that “do not result in wasteful duplication of utility plant, do not compete with the facilities of existing public utilities, and do not involve a sufficient capital outlay to materially affect the existing financial condition of the utility involved or to require an increase in utility rates.”¹³

¹⁰ *In the Matter of: Application of Tower Access Group, LLC for Declaratory Ruling as to Jurisdiction over a 190-Foot Monopole Constructed on the Campus of Eastern Kentucky University*, Case No. 2015-00090, Order, 9 (May 5, 2015).

¹¹ *In the Matter of: Application of Jessamine-South Elkhorn Water District for a Certificate of Public Convenience and Necessity to Construct and Finance a Waterworks Improvement Project Pursuant to KRS 278.020 and 278.300*, Case No. 2012-00470, Order, 10 (Jan. 3, 2014).

¹² KRS 278.020(1)(a)(2).

¹³ 807 KAR 5:001, Sec. 15(3); *In the Matter of: Electronic Application of McCreary County Water District for a Declaratory Order, or in the Alternative, for a Certificate of Public Convenience and Necessity for Certain Economic Development Wastewater Improvements*, Case No. 2022-00284, Order, 6 (Oct. 12, 2022) (citing *Kentucky Utilities Co. v. Pub. Serv. Comm'n*, 252 S.W.2d 885, 890 (Ky. 1952)).

B. The Drain Field Installation at the Marshall Ridge Facility Meets the Statutory Requirements for Exemption.

48. While Bluegrass Water has prepared all necessary materials for a CPCN under 807 KAR 5:001 §§ 14 and 15 as well as 807 KAR 5:071 § 3, the Company also believes that the drain field installation at the Facility meets the statutory and regulatory requirements for an ordinary extension of existing systems.

49. More specifically, the installation: (a) does not result in wasteful duplication; (b) does not compete with the facilities of existing public utilities, and (c) does not involve a sufficient capital outlay to materially affect the existing financial condition of the utility involved or to require any increase in utility rates.

(a) The drain field installation does not result in wasteful duplication, which is “an excess of capacity over need” or “an excessive investment in relation to productivity or efficiency, and an unnecessary multiplicity of physical properties.”¹⁴ As discussed *supra*, the Company has compared the proposed project to possible alternatives and determined that installing the drain field at the Facility is the most effective and economical means of bringing the Facility into compliance with Kentucky law.

(b) The proposed installation does not compete with the facilities of existing public utilities, as no other utility provides service to the system and the proposed drain field does not expand or alter the system’s scope.

(c) The proposed installation will not materially affect the existing financial condition of the utility involved. In previous CPCN cases, the Commission has found that ten

¹⁴ *Kentucky Utilities Co. v. Pub. Serv. Comm’n*, 252 S.W.2d at 890.

percent (10%) of net plant is a sufficient capital outlay to justify a CPCN requirement.¹⁵ As documented in CONFIDENTIAL Exhibit 3, the estimated cost of the proposed drain field installation is \$213,416, which is equivalent to less than approximately 1.5% of Bluegrass Water's total assets. These costs are not a sufficient capital outlay to materially affect the existing financial condition of the utility or require an increase in utility rates.

Relief Sought

50. The Company respectfully requests the Commission to issue a final order approving this Application and granting the following relief:

- (a) a certificate of public convenience and necessity, pursuant to KRS § 278.020(2), for the proposed drain field;
- (b) in the alternative, a declaratory order stating that the drain field installation at the Marshall Ridge system constitutes an extension of existing systems in the ordinary course of business; and
- (c) all other relief to which the Company may be entitled.

Respectfully submitted,

/s/ Edward T. Depp
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¹⁵ *In the Matter of: Springcrest Sewer Co., Inc. Request for Deviation from 807 KAR 5:071, Section 7(4), Case No 2014-00277, Order (Ky. PSC Dec. 16, 2014) (finding that remote monitoring installations that exceeded 10% of a utility's net plant in service was material, and therefore required a CPCN).*

*Counsel to Bluegrass Water
Utility Operating Company, LLC*

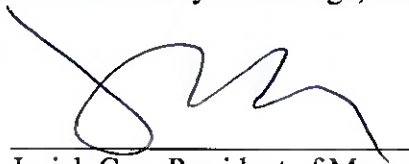
Certification

I hereby certify that a copy of this filing 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*

Verification

I, Josiah Cox, President of the Manager of Bluegrass Water Utility Operating Company, LLC, state that I have read the foregoing application and its exhibits, and the statements contained in the application and exhibits are true and correct to the best of my knowledge, information, and belief.



Josiah Cox, President of Manager,
Central States Water Resources, Inc.

Date: June 17, 2024

State of Missouri)
)
County of St. Louis)

Subscribed, sworn to, and acknowledged this 17th of JUNE, 2024, before me, a Notary Public, in and before said County and State.

My Commission expires: April 10, 2027


Notary Public

