

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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.,)	CASE NO.
MARSHALL COUNTY ENVIRONMENTAL)	2019-00104
SERVICES, LLC, LH TREATMENT COMPANY,)	
LLC, KINGSWOOD DEVELOPMENT, INC.,)	
AIRVIEW UTILITIES, LLC, BROCKLYN)	
UTILITIES, LLC, FOX RUN UTILITIES, LLC,)	
AND LAKE COLUMBIA UTILITIES, INC.)	

ORDER

This matter is before the Commission on four motions for confidential treatment filed, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(c)(1), by Bluegrass Water Utility Operating Company, LLC (Bluegrass Water); P.R. Wastewater Management, Inc. (P.R. Wastewater); Marshall County Environmental Services, LLC (Marshall County Environmental); LH Treatment Company, LLC (LH Treatment); Kingswood Development, Inc. (Kingswood); Airview Utilities, LLC (Airview); Brocklyn Utilities, LLC (Brocklyn); Fox Run Utilities, LLC (Fox Run); and Lake Columbia Utilities, Inc. (Lake Columbia) (collectively, Joint Applicants). The motions were filed on April 16, 2019, May 31, 2019, July 23, 2019, and July 24, 2020, respectively.

In their April 16, 2019 motion, Joint Applicants state that, as a part of its Joint Application, it attached, as Exhibits D–K, a copy of each fully executed Purchase Agreement between Bluegrass Water and each transferring utility, specifically the dollar

amounts contained therein; as Exhibit L First Round Central States Water Resources, LLC's (CSWR) 2018 Consolidated Financial Statements; and as Exhibit N the Bluegrass Water pro forma balance sheet and income statement for the first year of its proposed operation. Joint Applicants request that the designated information be granted confidential treatment for five years.

Joint Applicants maintain that the information sought to be treated as confidential is not publicly disseminated, and public disclosure of this information would harm Bluegrass Water, CSWR and its affiliates, the transferring utilities, or all of them. Joint Applicants argue that Exhibit L reveals information regarding the internal financial ability and workings of CSWR and its affiliates. Furthermore, as CSWR is not a utility, the information disclosed in Exhibit L would not otherwise be subject to disclosure to a regulatory body in the usual course of business. Joint Applicants advised that other significant redactions were required to Exhibit L and N because minimal redaction would allow competitively sensitive confidential information to be inferred from other information disclosed. Joint Applicants argue that disclosure of the acquisition amounts in Exhibits D–K and Exhibit N could create incentives for other potential purchasers to undercut efforts by the Joint Applicants to successfully close these transactions. Joint Applicants also argue that the dollar amounts in Exhibit L could be used by competitors to the business injury of CSWR and its affiliates, including Bluegrass Water. If disclosed, the purchase prices, plans for the future, and consolidated financials would give competitors sensitive information about CSWR's acquisition strategy and capability, its valuation of systems, their problems, and potential.

In addition, Joint Applicants assert that the cost estimates in the Exhibit N balance sheet reflect innovative and proprietary technology and processes developed through experience and used by CSWR and its affiliates to renovate small wastewater systems. Therefore, the public disclosure of this information and accessibility to the information by other potential purchasers would lessen competition in a subsequent bidding process. Such disclosure would also be costly in the future when attempts to acquire similarly distressed systems are made, and CSWR's ability to negotiate terms specific to a particular utility and its circumstances have been compromised.

In their May 31, 2019 motion, Joint Applicants request confidential treatment for part of their responses to requests for information from Commission Staff, and the Attorney General of the Commonwealth of Kentucky, by and through the Office of Rate Intervention (Attorney General). Specifically, requests confidential treatment for five years for engineering reports provided in response to Commission Staff Request 13 (1 PSC 13) (JA_00163–197), information from those reports provided in response to Commission Staff Request 20 (1 PSC 20), the 2018 consolidated financial statement for Bluegrass Water's Arkansas affiliate provided in response to Commission Staff Request 9 (1 PSC 9) (JA_00198–212), information regarding capitalization of Kentucky CSWR and Bluegrass Water UHC, LLC provided in response to Attorney General Request 3 (1 AG 3), and information regarding the capitalization costs for the Missouri UOC and Arkansas UOC in CSWR Group provided in response to Attorney General Request 5 (1 AG 5).

Joint Applicants argue that the reports and information in JA_00163–197 and 1 PSC 20, reveal information regarding the internal ability and workings of Bluegrass

Water and its affiliates. Specifically, this information reveals how they evaluate potential systems for acquisition and the internal processes by which they respond to various issues that arise in similar wastewater systems. Joint Applicants also argue that these documents demonstrate innovative and proprietary technology and processes developed through experience and used by CSWR and its affiliates to renovate small water and wastewater systems. As such, Joint Applicants assert that these processes are “trade secrets” as defined by KRS 365.880(4) and fall within the scope of the trade secret exemption from disclosure pursuant to KRS 61.878(c). Joint Applicants argue that Bluegrass Water and its affiliates would suffer a serious business injury if these trade secrets were misappropriated by other competitors in the wastewater industry. Joint Applicants also assert that the engineering reports in JA_00163–197 are exempt from public disclosure as proprietary because Bluegrass Water expended funds with a third party in investigating the systems. Accordingly, if this information were shared publicly, Bluegrass Water asserts it would suffer harm because it would give other potential purchasers and competitors a “leg-up” with the systems discussed in the report and lessen competition in a subsequent bidding process.

Joint Applicants argue that the information in JA_00198–212, and the responses to 1 AG 3 and 1 AG 5, is not publically disseminated and public disclosure would harm Bluegrass Water and its affiliates. The Joint Applicants asserts that the Arkansas affiliates, due to their size, are not subject to state regulation and the information is not reported to any regulatory body. Joint Applicants further assert that the information in the responses reveals the internal financial ability and workings of the CSWR Group, and the Arkansas consolidated financial statements contain sensitive and commercially valuable

information that is neither public nor disseminated outside of the CSWR Group. Joint Applicants further assert that information about the affiliated entities in Arkansas and Missouri could be used by competitors to injure CSWR Group and Bluegrass Water by providing sensitive information about Bluegrass Water and CSWR Group's acquisition strategy and capability and their valuation of systems, their problems, and potential.

In their July 23, 2019 motion, Joint Applicants seek confidential treatment for five years for information provided in response to the Attorney General's Post-Hearing Data Request No. 5 (2 AG 5) and No. 7 (2 AG 7). Request 2 AG 5 requested an updated Balance Sheet and Income Statement, updated as of June 30, 2019. Bluegrass Water previously included the Balance Sheet and Income Statement as Exhibit L to its application, and requested confidential treatment for it and other information in Exhibit L.

Request 2 AG 7 requested copies of the capital investment worksheets that accompanied the engineering memos submitted in Exhibit N of the Joint Application, and for which Bluegrass Water had already requested confidential treatment. Bluegrass Water raises the same arguments for confidential treatment in its response to 2 AG 7 that it did in support of its April 16, 2019 motion requesting confidential treatment for Exhibit N to the Joint Application.

In their July 24, 2020 motion, Joint Applications seek confidential treatment for CSWR's 2019 Consolidated Financial Statements, which was filed in this proceeding on July 24, 2020. Joint Applicants argue that CSWR's 2019 Consolidated Financial Statements reveals information regarding the internal financial ability and workings of CSWR and its affiliates. Furthermore, as CSWR is not a utility, the information disclosed

in CSWR's 2019 Consolidated Financial Statements would not otherwise be subject to disclosure to a regulatory body in the usual course of business.

Having carefully considered the April 16, 2019 motion and the material at issue, the Commission finds that the designated information in Exhibit L CSWR's Consolidated Balance Sheet for which Joint Applicants seek confidential treatment meets the criteria for confidential treatment and is exempted from public disclosure pursuant to KRS 61.878(1)(c)(1). The Commission finds that the designated information in Exhibit L should not be placed in the public record or made available for public inspection for a period of five years. The Commission finds that the designated information in Exhibits D–K and Exhibit N, while warranting confidential treatment when filed, does not meet the criteria for confidential treatment and is not exempted from public disclosure pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(c)(1) because the transactions to which the records relate have been closed.

Having carefully considered the May 31, 2019 motion and the material at issue, the Commission finds that the designated information in the responses to 1 PSC 13, 1 PSC 20, 1 PSC 9, 1 AG 3, and 1 AG 5 meet the criteria for confidential treatment and is exempted from public disclosure pursuant to KRS 61.878(1)(c)(1). The Commission finds that the designated information in the responses to 1 PSC 13, 1 PSC 20, 1 PSC 9, 1 AG 3, and 1 AG 5, should not be placed in the public record or made available for public inspection for five years.

Having carefully considered the July 23, 2019 motion and the material at issue, the Commission finds that the designated information in response to 2 AG 5 for which Joint Applicants seek confidential treatment meets the criteria for confidential treatment and is

exempted from public disclosure pursuant to KRS 61.878(1)(c)(1). The Commission finds that the designated information in response 2 AG 5 should not be placed in the public record or made available for public inspection for five years. The Commission finds that the designated information in 2 AG 7, while warranting confidential treatment when filed, should be denied confidential treatment because the transactions to which the records relate have been closed.

Having carefully considered the July 24, 2020 motion and the material at issue, the Commission finds that the designated information in CSWR's 2019 Consolidated Balance Sheet for which Joint Applicants seek confidential treatment meets the criteria for confidential treatment and is exempted from public disclosure pursuant to KRS 61.878(1)(c)(1). The Commission finds that the designated information in CSWR's 2019 Consolidated Balance Sheet for which Joint Applicants seek confidential treatment meets the criteria for confidential treatment and is exempted from public disclosure pursuant to KRS 61.878(1)(c)(1) should not be placed in the public record or made available for public inspection for five years.

IT IS THEREFORE ORDERED that:

1. Joint Applicants' April 16, 2019 motion for confidential protection is granted in part and denied in part.
2. Joint Applicants' May 31, 2019 motion for confidential protection is granted.
3. Joint Applicants' July 23, 2019 motion for confidential protection is granted in part and denied in part.
4. Joint Applicants' July 24, 2020 motion for confidential protection is granted.

5. Joint Applicant's request to keep the information identified out of the public record and not be subject to public inspection for five years is granted as to the designated material in Exhibit L, responses to 1 PSC 13, responses to 1 PSC 20, responses to 1 PSC 9, responses to 1 AG 3, responses to 1 AG 5, responses to 2 AG 5, and CSWR's 2019 Consolidated Balance Sheet.

6. Joint Applicant's request to keep the information identified out of the public record and not be subject to public inspection for five years is denied as to Exhibits D–K, Exhibit N, and responses to 2 AG 7.

7. The designated materials denied confidential treatment by this Order are not exempt from public disclosure and shall be placed in the public record and made available for public inspection.

8. If Joint Applicants objects to the Commission's determination that the requested material not be granted confidential treatment, it must seek either rehearing pursuant to KRS 278.400 or judicial review of this Order pursuant to KRS 278.410. Failure to exercise either of these statutory rights will be deemed as agreement with the Commission's determination of which materials should be granted confidential treatment.

9. Within 30 days of the date of service of this Order, Joint Applicants shall file a revised version of the designated material for which confidential treatment was denied, reflecting as unredacted the information that has been denied confidential treatment.

10. The designated material for which Joint Applicants request for confidential treatment has been denied shall neither be placed in the public record nor made available for inspection for 30 days from the date of service of this Order in order to allow Joint Applicants to seek a remedy afforded by law.

11. The designated material in Exhibits L, responses to 1 PSC 13, responses to 1 PSC 20, responses to 1 PSC 9, responses to 1 AG 3, responses to 1 AG 5, responses to 2 AG 5, and CSWR's 2019 Consolidated Balance Sheet shall not be placed in the public record or made available for public inspection for five years, or until further Orders of this Commission.

12. If Joint Applicants object to the time limits that the Commission has placed on the confidential treatment for the information in question, it must seek either rehearing pursuant to KRS 278.400 or judicial review of this Order pursuant to KRS 278.410. Failure to exercise either of these statutory rights will be deemed as agreement with the Commission's determination of the period for which the materials are afforded confidential treatment. Joint Applicants will be required to demonstrate a change in circumstances in any subsequent motion for continued confidential treatment of materials in question after the end of the period set forth in ordering paragraphs 14 and 15 of this Order.

13. Use of the materials in question in any Commission proceeding shall be in compliance with 807 KAR 5:001, Section 13(9).

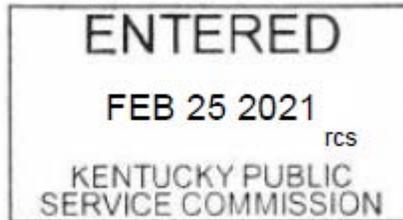
14. If a nonparty to this proceeding requests to inspect materials granted confidential treatment by this Order and the period during which the materials have been granted confidential treatment has not run, then Joint Applicants shall have 30 days from receipt of written notice of the request to demonstrate that the materials still fall within the exclusions from disclosure requirements established in KRS 61.878. If Joint Applicants are unable to make such demonstration, the requested materials shall be made available for inspection. Otherwise, the Commission shall deny the request for inspection.

15. The Commission shall not make the requested materials available for inspection for 30 days following an Order finding that the materials no longer qualify for confidential treatment in order to allow Joint Applicants to seek a remedy afforded by law.

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By the Commission

Vice Chairman Kent A. Chandler did not participate in the deliberations or decision concerning this case.



ATTEST:

A handwritten signature in blue ink that reads "Linda C. Lindwell". The signature is written in a cursive style.

Executive Director

Case No. 2019-00104

*Kingswood Development, Inc.
9201 Lena Lane
Louisville, KY 40299-5400

*R Mitten
Bluegrass Water Utility Operating Company, LLC
500 Northwest Plaza Dr., Ste. 500
, MONTANA 63074

*Justin M. McNeil
Office of the Attorney General Office of Rate
700 Capitol Avenue
Suite 20
Frankfort, KENTUCKY 40601-8204

*Lake Columbia Utilities, Inc.
1007 Doric Circle
Louisville, KY 40205

*Kathryn A Eckert
McBrayer PLLC
201 East Main Street
Suite 900
Lexington, KENTUCKY 40507

*Airview Utilities, LLC
1706 Bardstown Road
Louisville, KY 40205

*Katherine Yunker
McBrayer PLLC
201 East Main Street
Suite 900
Lexington, KENTUCKY 40507

*Fox Run Utilities, LLC
1706 Bardstown Road
Louisville, KY 40205

*P. R. Wastewater Management, Inc.
72 Persimmon Ridge Drive
Louisville, KY 40245

*Brocklyn Utilities, LLC
1706 Bardstown Road
P. O. Box 91588
Louisville, KY 40205

*Larry Cook
Assistant Attorney General
Office of the Attorney General Office of Rate
700 Capitol Avenue
Suite 20
Frankfort, KENTUCKY 40601-8204

*Marshall County Environmental Services, LLC
522 US Hwy 68 West
Benton, KY 42025

*Bluegrass Water Utility Operating Company, LLC
500 Northwest Plaza Dr., Ste. 500
, MONTANA 63074

*LH Treatment Company, LLC
134 Prater Drive
Georgetown, KY 40324