

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	)	CASE NO.
OWNERSHIP AND CONTROL OF ASSETS BY	)	2019-00360
CENTER RIDGE WATER DISTRICT, INC.; JOANN	)	
ESTATES UTILITIES, INC.; AND RIVER BLUFFS,	)	
INC.	)	

ORDER

On October 21, 2019, Bluegrass Water Utility Operating Company, LLC (Bluegrass Water), Center Ridge Water District, Inc. (Center Ridge Water), Joann Estates Utilities, Inc. (Joann Estates), and River Bluffs, Inc. (River Bluffs), (collectively, Joint Applicants), filed a joint application for approval of the transfer of water and wastewater utility assets of Center Ridge Water, Joann Estates, and River Bluffs. The utilities proposed for acquisition have approximately 700 water and wastewater customers in Calloway, McCracken, and Oldham counties.<sup>1</sup>

The Commission's jurisdiction to investigate and approve the acquisition and transfer of a utility arises under KRS 278.020(6) and (7). Pursuant to KRS 278.020(7), the Commission extended the 60-day period for a decision set forth in KRS 278.020(7) by an additional 60 days. No requests for intervention were received. The Joint Applicants responded to two rounds of requests for information from Commission Staff. The case is now ripe for a decision.

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<sup>1</sup> Verified Application at 1.

## BACKGROUND

Bluegrass Water is a limited liability company with its principal place of business at 500 Northwest Plaza Drive, Suite 500, Saint Ann, Missouri 63074.<sup>2</sup> Bluegrass Water Utility Holding Company, LLC (Holding Company) is the member owner of Bluegrass Water.<sup>3</sup> Kentucky Central States Water Resources, LLC (CSWR) is the member owner of Holding Company.<sup>4</sup> First Round CSWR, LLC (First Round) and Central States Water Resources, Inc. (CSWR, Inc.) are affiliates of each other and sit atop the corporate structure (CSWR Group).<sup>5</sup>

By the Commission's August 14, 2019 Order in Case No. 2019-00104, Bluegrass Water was approved to own, control, operate, and manage eight wastewater systems.<sup>6</sup> By October 1, 2019, Bluegrass Water had closed on all the approved transactions in Case No. 2019-00104 and has been operating all wastewater facilities acquired and providing service to customers since that time.<sup>7</sup> With the acquisition of the eight wastewater systems, Bluegrass Water now serves approximately 1,300 wastewater customers<sup>8</sup> in Bullitt, Franklin, Hardin, Madison, Marshall, McCracken, Scott, and Shelby counties.<sup>9</sup>

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<sup>2</sup> *Id.* at 3.

<sup>3</sup> Case No. 2019-00104, *The 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, LLC; Kingswood Development, Inc.; Airview Utilities, LLC; Brocklyn Utilities, LLC; Fox Run Utilities, LLC; and Lake Columbia Utilities, Inc.*, Order (Ky. PSC Apr. 16, 2019) at 3.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at 3–4.

<sup>6</sup> Verified Application at 3.

<sup>7</sup> *Id.*

<sup>8</sup> Case No. 2019-00104 (Ky. PSC Apr. 16, 2019) at 1.

<sup>9</sup> *Id.* at 1.

## The Utilities

Joann Estates and River Bluffs are each a wastewater utility as defined by KRS 278.010(3)(f).<sup>10</sup> Center Ridge Water is a water utility as defined by KRS 278.010(3)(d).<sup>11</sup> All three utilities are subject to the jurisdiction of the Commission.<sup>12</sup>

Center Ridge Water provides water service to 339 customers in the Pine Bluff Shores Subdivision, Keniana Shores Subdivision, Center Ridge Lake Properties, and the former LH&M Properties (homeowners association) in Calloway County.<sup>13</sup> Center Ridge Water has four systems, each serving one of the aforementioned subdivisions or developments, and each with its own respective tariff.<sup>14</sup> Center Ridge Water is not in good standing with the Kentucky Secretary of State and was administratively dissolved on September 10, 2011.<sup>15</sup> The most recent rate change granted by the Commission to Center Ridge Water was Case No. 2010-00397.<sup>16</sup> In Case No. 2010-00397, the Commission approved a monthly rate for Center Ridge Water.<sup>17</sup>

In relation to the proposed transfer of assets for Joann Estates, the proposed transfer will only be of Joann Estates facilities serving the Timberland Subdivision located

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<sup>10</sup> Verified Application at 4.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at 3.

<sup>14</sup> *Id.* at 5.

<sup>15</sup> *Id.* at 4.

<sup>16</sup> Verified Application at 5; *See*, Case No. 2010-00397, *Application of Center Ridge Water District, Inc. for an Adjustment of Rates Pursuant to the Alternative Rate Filing Procedure for Small Utilities* (Ky. PSC Aug. 23, 2012).

<sup>17</sup> *Id.*

in McCracken County.<sup>18</sup> In Case No. 2018-00347,<sup>19</sup> the Commission approved a transfer to the Paducah-McCracken Joint Sewer Agency from Joann Estates of the wastewater collection systems serving Wilmington Chiles and Joann Estates subdivisions.<sup>20</sup> The wastewater facility serving the Timberland subdivision was not included in this transfer.<sup>21</sup> Joann Estates provides wastewater service to 69 residential customers in the Timberland Subdivision.<sup>22</sup> Joann Estates' most recent rate case before the Commission was Case No. 2013-00307.<sup>23</sup> Joann Estates was ultimately granted a rate increase, with the approval of a flat monthly rate.<sup>24</sup>

River Bluffs provides wastewater service to 189 residential customers in Oldham County.<sup>25</sup> In Case No. 2007-00433, the Commission approved a rate increase to River Bluffs on January 7, 2008.<sup>26</sup> River Bluffs has not had a rate change since this date.

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<sup>18</sup> Verified Application at 6.

<sup>19</sup> Case No. 2018-00347, *Joint Application of Joann Estates Utilities, Inc. and Paducah-McCracken County Joint Sewer Agency to Approve the Transfer of Wastewater Collection Systems Serving the Wilmington Chiles and Joann Estates Subdivisions in McCracken County, Kentucky* (Ky. PSC Nov. 20, 2018).

<sup>20</sup> Verified Application at 6.

<sup>21</sup> *Id.*; See, Case No. 2018-00347 at 2.

<sup>22</sup> *Id.*

<sup>23</sup> Case No. 2013-00307, *Application of Joann Estates Utilities, Inc. for Rate Adjustment for Small Utilities Pursuant to 807 KAR 5:076* (Ky. PSC Apr. 11, 2014).

<sup>24</sup> *Id.*

<sup>25</sup> Verified Application at 7.

<sup>26</sup> *Id.*; See, Case No. 2007-00433, *Application of River Bluffs, Inc. for an Adjustment in Rates Pursuant to the Alternative Rate Filing Procedure for Small Utilities* (Ky. PSC Jan. 7, 2008).

## The Transaction

Bluegrass Water has executed a sales agreement (Agreement) with each utility for the transfer or sale of each utilities' assets.<sup>27</sup> Each Agreement designates the buyer as CSWR, Inc. or its affiliate.<sup>28</sup> CSWR, Inc. has designated Bluegrass Water, its affiliate, as the buyer for each Agreement.<sup>29</sup> Each Agreement provides for the sale of all the assets owned by the transferring utility pertaining to its operation of a regulated water or wastewater system.<sup>30</sup> The sale includes all assets used or useful to operate the system, including real property interests, wastewater service machinery and equipment, other tangible fixtures or personalty, franchises, contract rights, customer deposits, accounts receivable, and other intangibles.<sup>31</sup> As to the Agreement with River Bluffs, paragraph 1(C) of the Agreement states, "[e]xcluding the mower, shed, trailer, four (4) phones, printers and four (4) computers and monitors, any machinery and equipment such as meters, tools, devices, mobile work equipment, and all furniture, fixtures, machinery, supplies and other tangible items, if any, located in Oldham County."<sup>32</sup> Exhibit C to the Agreement states the same.<sup>33</sup> Finally, upon the closing of the transactions, the

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<sup>27</sup> No customer deposits are held by any utility.

<sup>28</sup> Verified Application at 8.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> Verified Application, Exhibit E, Agreement for Sale of Utility System (executed June 10, 2019), at 2.

<sup>33</sup> Verified Application, Exhibit E, Agreement for Sale of Utility System (executed June 10, 2019) at Exhibit C, Exhibit "C" to Agreement to Sale of Utility System between Central States Water Resources, Inc. and River Bluffs, Inc.

Agreements indicate that Bluegrass Water will assume liability and become responsible for all assets of the transferring utilities from that point forward.<sup>34</sup> Center Ridge Water will remain responsible for a refund to customer Peggy S. Rose pursuant to the Commission's Order in Case No. 2017-00164, and for the \$2,500 penalty pursuant to the Commission's Order in Case No. 2017-00359.<sup>35</sup>

Bluegrass Water proposes a 50/50 capital structure. If the Commission approves the transaction, Bluegrass Water will be funded with equity capital from its affiliate CSWR, LLC.<sup>36</sup> Bluegrass Water will fund the work to repair, replace, and improve the acquired systems with debt financing.<sup>37</sup> Bluegrass Water states that a 50/50 capital structure will provide it with access to working capital and financing resources to allow it to adequately fund and maintain the transferred systems.<sup>38</sup>

After the close of the transactions, Bluegrass Water will assume responsibility for the operation of the water and wastewater systems to ensure continuity of service to customers.<sup>39</sup> Bluegrass Water will provide sewer service to Joann Estates and River Bluffs in accordance with the current sewer tariffs on file with the Commission.<sup>40</sup>

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<sup>34</sup> Verified Application at 9.

<sup>35</sup> Joint Applicants' Response to Commission Staff's Second Request for Information, Item 1.

<sup>36</sup> Verified Application at 9.

<sup>37</sup> *Id.* at 13.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.* at 11.

<sup>40</sup> *Id.*

Bluegrass Water will adopt and provide water service in accordance with Center Ridge Water's most recent tariff on file with the Commission.<sup>41</sup>

Bluegrass Water will engage Midwest Water Operations, LLC (Midwest Water), an independent third-party operator, to operate the acquired water and wastewater systems. Midwest Water, in addition to normal operations, will have a 24-hour emergency service line and notices of disruptions will be forwarded to Josiah Cox, CSWR, Inc.'s president.<sup>42</sup>

Bluegrass Water will also engage Nitor Billing Services to handle billing and service-related billing questions.<sup>43</sup>

Bluegrass Water will maintain a toll-free phone number and a website.<sup>44</sup> The website will contain a summary of customers' rights, tariffs, or links to the tariffs, for each system; contact information for emergencies during regular and after-hours to report service issues; links to any tariffs filed in the future with the Commission; and links to Bluegrass Water's systems maps on the Kentucky Infrastructure Authority Wastewater Mapping website.<sup>45</sup>

CSWR, Inc. will be responsible for all management, financial reporting, underground utility safety and locations services, regulatory reporting and management,

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<sup>41</sup> Verified Application at 11.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.* at 12.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

record keeping, and final customer dispute management.<sup>46</sup> Proportional costs for those services will be allocated to Bluegrass Water.<sup>47</sup>

Bluegrass Water claims that it will make all necessary improvements to ensure that the acquired systems remain functional and customers receive adequate service. Even though Bluegrass Water will have no employees in Kentucky, this service will include 24-hour emergency phone lines for service issues, on-call contractor personnel, and a variety of other options relating to billing and payments.

CSWR, Inc. engaged an independent engineer to conduct site inspections and evaluate each facility.<sup>48</sup> Bluegrass Water states that it has secured the necessary funding and plans to bring each system into compliance within a year of closing.<sup>49</sup> Bluegrass Water anticipates that it will need to spend more than \$350,000 to address the problems identified by the engineer.<sup>50</sup>

As mentioned above, Bluegrass Water initially will operate under the current tariff for each utility. Bluegrass Water states that it eventually will integrate the acquired systems with others operated in Kentucky and customers will be served under one tariff with uniform terms and conditions, including rates.<sup>51</sup>

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<sup>46</sup> *Id.* at 13.

<sup>47</sup> *Id.*

<sup>48</sup> Verified Application at 13.

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> *Id.* at 14.



## DISCUSSION

In order for the Commission to approve the transfer of a water and a wastewater treatment system it must determine that: (1) the acquirer has the financial, technical, and managerial abilities to provide reasonable service;<sup>52</sup> (2) that the transfer is in accordance with law, for a proper purpose and is consistent with the public interest;<sup>53</sup> and (3) that the person acquiring the utility has provided evidence of financial integrity to ensure the continuity of sewage service in the event that the acquirer cannot continue to provide service.<sup>54</sup> The Commission may also attach any conditions it deems necessary in approving a transfer.<sup>55</sup>

The Commission finds that the above mentioned issues concerning the approval of the transfer of the water and wastewater utilities in the instant proceeding were also raised and addressed in Case No. 2019-00104. Therefore, our determination of these issues in Case No. 2019-00104 governs the disposition of the same issues presented in the instant matter.

Based on the evidence of record, the Commission finds that Bluegrass Water will meet the statutory standards for acquisition of the water and wastewater systems only if it agrees to the conditions discussed below.

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<sup>52</sup> KRS 278.020(6).

<sup>53</sup> KRS 278.020(7).

<sup>54</sup> KRS 278.020(10).

<sup>55</sup> KRS 278.020(7).

### Financial Ability

In Case No. 2019-00104, the Commission found that Bluegrass Water and its affiliates had the financial ability to acquire and operate the eight systems as well as to provide reasonable service.<sup>56</sup> In its August 14, 2019 Order, the Commission noted that Josiah Cox testified that CSWR, Inc., as a fallback position for debt if a better rate cannot be found, could obtain a loan with a rate ceiling from U.S. Water Capital.<sup>57</sup> Mr. Cox also testified that at CSWR, Inc. it is common not to draw on equity funding until regulatory approval has been obtained.<sup>58</sup> The Commission found that this equity and debt model appears to have worked in CSWR, Inc.'s Arkansas and Missouri systems and should work in Kentucky.<sup>59</sup>

In the present case, Bluegrass Water states that it has secured the commitment of equity capital and has access to long-term loans to finance the acquisitions, the planned repairs and improvements, and operation of the systems.<sup>60</sup>

The Commission finds that Bluegrass Water and its affiliates have the financial ability to acquire and operate the various systems and provide reasonable service. The record reflects that Bluegrass Water and its affiliates have arranged for the necessary equity and debt to acquire the systems and to provide reasonable service.

In the event that Bluegrass Water's equity and debt model is not the same in the instant case as the model approved by the Commission in Case No. 2019-00104,

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<sup>56</sup> Case No. 2019-00104, Order (Ky. PSC Aug. 14, 2019) at 12.

<sup>57</sup> *Id.*; *See*, J. Cox testimony, hearing video transcript (HVT) 10:20.

<sup>58</sup> *Id.*; *See*, J. Cox testimony, HVT 15:15.

<sup>59</sup> *Id.*

<sup>60</sup> Verified Application at 16.

Bluegrass Water is required to notify the Commission of the same and provide further proof of its financial ability to provide reasonable service pursuant to KRS 278.020(6).

We also note that the Energy and Environment Cabinet (EEC) has tools at its disposal to condition a wastewater permit to ensure the plant's owner has the requisite financial and technical ability to provide reasonable service. These tools include, but are not limited to, requiring the maintenance of a financial instrument or letter of credit, requiring an asset management plan, and conducting a structural analysis of the plant. The water utility will also be subject to a yearly inspection by the EEC and the Department of Water (DOW) as well as a Sanitary Survey every three years that will check staffing requirements, operations, financial records, and regulatory compliance. Oversight by the EEC and the Commission will ensure that the systems operate to provide reasonable service, while Commission review of annual financial reports will help ensure adequate revenues to maintain reasonable service.

#### Managerial Ability

The Commission finds that Bluegrass Water will have the managerial ability to provide reasonable service in Kentucky. As in Case No. 2019-00104, the Commission in the instant case finds persuasive the fact that CSWR, Inc. has worked with, and can contract with, two proven entities like Midwest Water Operations and Nitor Billing Services as demonstrating that Bluegrass Water has the managerial ability to operate the transferred utilities.<sup>61</sup>

The Commission also notes that it has the ability, pursuant to KRS 278.260-280, to investigate the rates and services of any utility and prescribe how the utility should

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<sup>61</sup> See, Case No. 2019-00104, Order (Ky. PSC Aug. 14, 2019) at 14.

perform its functions in order to provide reasonable and adequate services at reasonable rates.

However, due to the business structure of Bluegrass Water and its intent to have no employees and no office in Kentucky, there must be at least one individual with the responsibility for the operations of Bluegrass Water. Based on the record in this case, that individual should be the President of CSWR, Inc., and he should agree to be subject to service of process in Kentucky as if a resident of Kentucky. Should Bluegrass Water's model fail in any other manner to provide the requisite managerial ability to provide reasonable service, the Commission will investigate and correct the deficiency.

#### Financial Integrity to Ensure Continuity of Services

Bluegrass Water's business model is, at this time, being applied in Kentucky; however, Bluegrass Water simply has not been operating long enough to provide sufficient assurance to the Commission absent a financial commitment to ensure continued operations should Bluegrass Water be unable to provide reasonable service.

In Case No. 2019-00104, the Commission required that Bluegrass Water post a financial instrument equivalent to two-months of the cost of its third-party contractors in relation to the eight wastewater utilities ultimately acquired by Bluegrass Water.<sup>62</sup> Likewise, in this case, Bluegrass Water will be required to do the same for the two sewer utilities to be acquired. This requirement will be terminated by further order of the Commission upon the Commission's confirmation that Bluegrass Water's financial condition is sufficiently strong to ensure the continued operation of water and wastewater service.

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<sup>62</sup> Verified Application at 19.

## Capital Structure

As discussed above, Bluegrass Water will finance the acquisition and operations utilizing a 50/50 capitalization structure. As of October 31, 2019, Bluegrass Water's capital structure is 100 percent equity.<sup>63</sup> In compliance with the August 14, 2019 Order of the Commission in Case No. 2019-00104, Bluegrass Water filed its Notice and Plan re Capital Structure (Notice) on October 31, 2019, thereby notifying the Commission that its equity-to-capital percentage exceeded 50 percent and detailed its plan to achieve the approved equity-to-capital ratio.<sup>64</sup> In the October 31, 2019 Notice, Bluegrass Water states, "Other than current liabilities in the nature of accounts payable, Bluegrass Water's present capitalization is entirely equity and will exceed the benchmark in the near term."<sup>65</sup> Bluegrass Water further states:

The plan has been and remains to finance acquisitions with equity and to fund investment (repairs, replacements, extensions, and improvements) in utility plant with long-term debt. As of September 30, 2019, Bluegrass Water completed the last closings on the acquisitions approved in the 8/14/19 Order and had not yet undertaken significant investment in the recently acquired utility plant. Therefore, its capital structure at the end of the 2019 third quarter is all or nearly all equity . . . . Acquisitions, which are equity-funded, will be balanced out as debt-funded investments in the acquired systems are made."<sup>66</sup>

Bluegrass Water goes on to advise that it cannot predict when it will achieve the approved equity-to-capital ratio.<sup>67</sup> Bluegrass Water advises that this is due to

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<sup>63</sup> Joint Applicants' Response to Commission Staff's First Request for Information, Item 16.

<sup>64</sup> *Id.*

<sup>65</sup> Notice and Plan re Capital Structure at 1.

<sup>66</sup> Notice and Plan re Capital Structure at 1–2.

<sup>67</sup> *Id.* at 2.

Commission approval being required for the construction of more significant investments, and the necessary funds will not all be borrowed and expended immediately upon Commission approval.<sup>68</sup> Further, that Bluegrass Water is contemplating further applications regarding other acquisitions that will need significant investment and debt funding for that investment.<sup>69</sup> But, due to the investment in utility plant and corresponding debt funding occurring after equity funded closing, it may take longer for investment in the already acquired utility plan to produce a company wide 50/50 capitalization ratio.<sup>70</sup>

We find that Bluegrass Water's equity-to-capitalization percentage should not exceed 50 percent and that every effort must be made to lower that percentage. Given that the equity-to-capital percentage exceeds 50 percent, Bluegrass Water will submit to the Commission within 30 days of this Order a detailed plan explaining how it will revise its capital structure to achieve its approved equity-to-capital ratio in relation to the instant case.

#### Employer or Purchaser of Last Resort

The Commission has imposed as a condition on previous out-of-state acquirers that the acquirer would not be the employer or purchaser of last resort for employees, assets, services, or products associated with any affiliate of the acquirer. The Commission imposed the same condition on Bluegrass Water in Case No. 2019-00104,<sup>71</sup> and does so in the instant case. This is a reasonable condition to impose to ensure that

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<sup>68</sup> *Id.* at 2–3.

<sup>69</sup> *Id.* at 3.

<sup>70</sup> *Id.*

<sup>71</sup> See, Case No. 2019-00104, Order (Ky. PSC Aug. 14, 2019) at 18–19.

the acquisition is in the public interest. We will also require Bluegrass Water to inform the Commission within 30 days of the occurrence of the transfer, sale, or abandonment of any of Bluegrass Water's affiliates' utilities in other jurisdictions.

Monitoring adequacy and reliability

The Commission will require that, one month after the closing of the transactions, Bluegrass Water file a report listing discharge quality, number of service interruptions, employee or contractor response times, and DOW violations or citations for the preceding month. This will serve as a baseline against which to judge improvements to the systems. Bluegrass Water shall also file, at six months and one year after the closing of the transaction, a report listing discharge quality, number of service interruptions, employee or contractor response times, and DOW violations or citations for the preceding year. This will allow the Commission to review the anticipated progress that Bluegrass Water has made in improving quality in the systems.

In addition to the reports above, we will also require Bluegrass Water to maintain its records in such a way as to be able to readily distinguish between violations, repairs, investments, etc. for each system. This will allow review of Bluegrass Water's practices and will assist the Commission in determining how Bluegrass Water has used its resources in the operation and management of various systems as well as the reasonableness of the expenses and practices in any future ratemaking proceeding.

Local Office

As discussed above, Bluegrass Water will maintain a toll-free phone number and a website. The website will contain (1) a summary of customers' rights; (2) tariffs, or links to the tariffs, for each system; (3) contact information for emergencies during regular and

after-hours to report service issues; (4) links to any tariffs filed in the future with the Commission; and (5) links to Bluegrass Water's systems maps on the Kentucky Infrastructure Authority Wastewater Mapping website.<sup>72</sup>

#### Proposed Purchase Price of Acquired Systems

The record reflects that only the proposed purchase price for River Bluffs exceeds the net utility plant reported in the most recent annual reports on file with the Commission. For Center Ridge Water and Joann Estates, the proposed purchase price is less than the net utility plant reported in the most recent annual reports. The Commission will not disturb the proposed purchase prices of any of the systems.

#### Other Conditions

We also find that the imposition of the following conditions is necessary to ensure that the proposed transaction is in the public interest.

Pursuant to KRS 278.020, Bluegrass Water shall not begin the construction of any plant, equipment, property, or facility for furnishing water or wastewater services to the public, except ordinary extensions of existing systems in the usual course of business, until Bluegrass Water has obtained a Certificate of Public Convenience and Necessity from the Commission.

Pursuant to KRS 278.300, Bluegrass Water shall not issue any securities or evidences of indebtedness, or assume any obligation or liability in respect to the securities or evidences of indebtedness of any other person, until Bluegrass Water has been authorized to do so by an Order of the Commission.

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<sup>72</sup> Verified Application at 12.



Pursuant to 807 KAR 5:011, Section 11(1)(a), within 30 days of the close of the acquisition of each system, Bluegrass Water shall file adoption notices for each of the systems' tariffs.

### CONCLUSIONS OF LAW

Based upon the discussion and findings above, the Commission makes the following conclusions of law:

1. Center Ridge Water, Joann Estates, and River Bluffs are utilities subject to the Commission's jurisdiction.

2. Bluegrass Water is a "corporation" and a "person" for purposes of KRS Chapter 278.<sup>73</sup>

3. KRS 278.020(6) provides that "[n]o person shall acquire or transfer ownership of, or control, or the right to control, any utility under the jurisdiction of the commission . . . without prior approval by the commission. The commission shall grant its approval if the person acquiring the utility has the financial, technical, and managerial abilities to provide reasonable service."

4. KRS 278.020(7) provides that "[n]o individual, group, syndicate, or general or limited partnership, association, corporation, joint stock company, trust, or other entity (an 'acquirer'), whether or not organized under the laws of this state, shall acquire control, either directly or indirectly, of any utility furnishing utility service in this state without having first obtained the approval of the commission." KRS 278.020(7) further provides that the "commission shall approve any proposed acquisition when it finds that the same is to be made in accordance with law, for a proper purpose and is consistent with public interest."

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<sup>73</sup> KRS 278.010.

5. KRS 278.020(10) provides that “[t]he commission shall not approve any application under subsection (6) or (7) of this section for the transfer of control of a utility described in KRS 278.010(3)(f) unless the commission finds, in addition to findings required by those subsections, that the person acquiring the utility has provided evidence of financial integrity to ensure the continuity of sewage service in the event that the acquirer cannot continue to provide service.”

6. Based on its financial commitments and subject to its acceptance of the conditions set forth in the Appendix to this Order, Bluegrass Water has sufficient financial integrity to ensure the continuity of service.

7. Bluegrass Water, subject to its acceptance of the conditions set forth in the Appendix to this Order, has the financial, technical, and managerial abilities to provide reasonable service to those persons located in the acquired systems.

8. To avoid any potential adverse effects that the proposed transaction may have on the quality of service that Bluegrass Water provides, the proposed transaction will be consistent with the public interest only under the conditions set forth in the Appendix to this Order.

IT IS THEREFORE ORDERED that:

1. The transfer of Center Ridge Water, Joann Estates, and River Bluffs is conditionally approved, subject to Bluegrass Water and Josiah Cox accepting the conditions set forth in the Appendix to this Order.

2. The transfer of Center Ridge Water, Joann Estates, and River Bluffs is also contingent upon Center Ridge Water’s payment of the refund to customer Peggy S. Rose pursuant to the Commission’s Order in Case No. 2017-00164 and for the \$2,500 penalty

pursuant to the Commission's Order in Case No. 2017-00359. Within 20 days of payment of the refund and penalty, Center Ridge Water shall file with the Commission proof of payment.

3. The proposed transfer of control shall not proceed unless the Commission receives, within 20 days of the date of this Order, written acknowledgements of Josiah Cox and, on behalf of Bluegrass Water and its affiliates by each entity's chief executive officer, that each of the entities accept and agree to be bound by the commitments set forth in the Appendix to this Order.

4. Within ten days of completion of the transfer of Center Ridge Water, Joann Estates, and River Bluffs to Bluegrass Water, Bluegrass Water shall notify the Commission in writing of the date that each transfer occurred.

5. Within 90 days of completion of the transfer of Center Ridge Water, Joann Estates, and River Bluffs to Bluegrass Water, each entity shall file with the Commission a final annual report covering the reporting period of January 1, 2020, to the date of closing in addition to any outstanding annual reports for periods prior to the calendar year 2020.

6. This case will remain open for the purpose of ensuring that those conditions specifically ordered in paragraphs 1 through 5 above and set forth in the Appendix attached to this Order are met by Bluegrass Water, Center Ridge Water, Joann Estates, and River Bluffs.

By the Commission

ENTERED  
FEB 17 2020  
KENTUCKY PUBLIC  
SERVICE COMMISSION

ATTEST:

  
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Executive Director

## APPENDIX

### APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION IN CASE NO. 2019-00360 DATED **FEB 17 2020**

The proposed acquisition of Center Ridge Water, Joann Estates, and River Bluffs is approved upon the following conditions:

1. Within 30 days of the closing of the transaction, Bluegrass Water shall file with the Commission and parties in this case its post-closing accounting entries in accordance with the Commission's Uniform System of Accounts for Class C Sewer Utilities and Class C Water Utilities.
2. Upon Bluegrass Water's closing on a transferred utility's assets, the customers served by those assets do not experience adverse change in service.
3. No later than March 31<sup>st</sup> of each year, Bluegrass Water shall file with the Commission a detailed organizational chart showing all subsidiaries and affiliates as of the end of the previous calendar year.
4. Bluegrass Water, post-closing, will adequately fund and maintain the transferred systems.
5. Within 60 days of the closing of the transaction, Bluegrass Water shall post a guaranteed financial instrument that is the equivalent of two months of the cost of its third-party contractors.
6. Given that the equity-to-capital percentage exceeds 50 percent, Bluegrass Water shall submit to the Commission within 30 days of this Order a detailed plan explaining how it will revise its capital structure to achieve its approved equity-to-capital ratio.

7. Bluegrass Water shall not be the employer or purchaser of last resort for employees, assets, services, and products associated with any affiliate of Bluegrass Water.

8. Bluegrass Water shall inform the Commission within 30 days of the occurrence of the transfer, sale, or abandonment of any of its affiliates' utilities in other jurisdictions.

9. One month after the closing of the transaction, Bluegrass Water shall file for each of the acquired systems a report listing discharge quality, number of service interruptions, employee or contractor response times, and DOW violations or citations for the preceding month.

10. Six months after the closing of the transaction, Bluegrass Water shall file for each of the acquired systems a report listing discharge quality, number of service interruptions, employee or contractor response times, and DOW violations or citations for the preceding month.

11. One year after the closing of the transaction, Bluegrass Water shall file for each of the acquired systems a report listing discharge quality, number of service interruptions, employee or contractor response times, and DOW violations or citations for the preceding month.

12. Bluegrass Water shall maintain its records in such a way to be able to readily distinguish between violations, repairs, investments, etc. for each system.

13. The President of Central States Water Resources, Inc. and its successors or assigns shall be subject to service of process in Kentucky as if he or she was a resident of Kentucky.

14. Bluegrass Water shall maintain a toll-free phone number and website.
15. Bluegrass Water shall file the Kentucky Pollutant Discharge Elimination System Permit for Joann Estates within ten days of its receipt by Bluegrass Water.
16. Bluegrass Water shall not begin the construction of any plant, equipment, property, or facility for furnishing wastewater or water services to the public, except ordinary extensions of existing systems in the usual course of business, until Bluegrass Water has obtained a Certificate of Public Convenience and Necessity from the Commission.
17. Pursuant to KRS 278.300, Bluegrass Water shall not issue any securities or evidences of indebtedness or assume any obligation or liability in respect to the securities or evidences of indebtedness of any other person until Bluegrass Water has been authorized to do so by an Order of the Commission.
18. Pursuant to 807 KAR 5:011, Section 11(1)(a), within 30 days of the close of the acquisition of each system, Bluegrass Water shall file adoption notices for each of the systems' tariffs.
19. Pursuant to KRS 278.130 and KRS 278.140, Bluegrass Water shall pay the annual assessments for the acquired utilities as calculated using the gross revenue reports for the 2019 and 2020 calendar years and shall pay the annual assessment for each year thereafter, based upon its total gross revenue.
20. The transfer of Center Ridge Water, Joann Estates, and River Bluffs is also contingent upon Center Ridge Water's payment of the refund to customer Peggy S. Rose, pursuant to the Commission's Order in Case No. 2017-00164, and for the \$2,500 penalty, pursuant to the Commission's Order in Case No. 2017-00359. Within 20 days from the

payment of the refund and penalty, Center Ridge Water shall file with the Commission proof of payment.



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