

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF BLUEGRASS)	
WATER UTILITY OPERATING COMPANY, LLC)	CASE NO.
FOR A CERTIFICATE OF PUBLIC)	2022-00015
CONVENIENCE AND NECESSITY FOR)	
PROJECTS AT THE WOODLAND ACRES SITE)	

ORDER

On January 26, 2022, Bluegrass Water Utility Operating Company, LLC (Bluegrass Water) filed a motion, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, requesting that the Commission grant confidential treatment for five years for Exhibit B to its application and for an indefinite period for Exhibit H to its application.

The Commission is a public agency subject to Kentucky's Open Records Act, which requires that all public records “be open for inspection by any person, except as otherwise provided by KRS 61.870 to 61.884.”¹ Bluegrass Water sought application of KRS 61.878(1)(c)(1), which exempts records that are “[g]enerally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records” and KRS 61.878(1)(k) which exempts “[a]ll public records or information the disclosure of which is prohibited by federal law or regulation or state law.” Exceptions to the free and open examination of public records contained in KRS 61.878 should be strictly construed.² The party

¹ KRS 61.872(1).

² See KRS 61.871.

requesting that materials be treated confidentially has the burden of establishing that one of the exceptions is applicable.³

Exhibit B to Bluegrass Water's application included an income statement and balance sheet. Bluegrass Water sought confidential treatment for redacted figures from these documents, arguing that under KRS 61.878(1)(c)(1), public disclosure of this information might cause it competitive harm in future acquisitions or operations affecting subsequent bidding processes, and might reveal sensitive information about Bluegrass Water's capabilities and valuation of sewer systems.

Exhibit H to Bluegrass Water's application consists of tax returns for affiliate Bluegrass Water Holding Company, LLC. Bluegrass Water argued that tax returns are exempt from disclosure under KRS 61.878(1)(k) because tax returns are prohibited from release pursuant to 26 U.S.C. § 6103(a) and KRS 131.190(1).

Having considered the motion and the material at issue, the Commission finds that Bluegrass Water's motion is granted in part and denied in part. Tax returns are exempt from public disclosure pursuant to 26 U.S.C. § 6103(a) and KRS 131.190(1).⁴ This material therefore meets the criteria for confidential treatment and is exempted from public disclosure pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(k).

Bluegrass Water's motion for confidential treatment for its balance sheet and income statement is denied. The Commission has not treated financial information as

³ 807 KAR 5:001, Section 13(2)(c).

⁴ See Case No. 2018-00041, *In the Matter of: Electronic Investigation of the Impact of the Tax Cuts and Job Act on the Rates of Columbia Gas of Kentucky, Inc.* (Ky. PSC June 6, 2018), Order at 2.

confidential when it has been or is required to be otherwise disclosed.⁵ Bluegrass Water, as a utility regulated by the PSC, is required to file an Annual Report which contains a balance sheet and income statement.⁶ Although this information may change regularly, this information is intended to and is be made publicly available for all utilities. Therefore, Bluegrass Water's balance sheet and income statement provided in Exhibit B to its application do not meet the criteria for confidential treatment and are not exempted from public disclosure pursuant to KRS 61.878(1)(c)(1) and 807 KAR 5:001, Section 13.

IT IS THEREFORE ORDERED that:

1. Bluegrass Water's motion for confidential treatment for Exhibit H to its application is granted.
2. Bluegrass Water's motion for confidential treatment for Exhibit B to its application is denied.
3. The designated material granted confidential treatment by this Order shall not be placed in the public record or made available for public inspection for an indefinite period or until further Order of this Commission.
4. Use of the designated material granted confidential treatment by this Order in any Commission proceeding shall comply with 807 KAR 5:001, Section 13(9).

⁵ See Case No. 2020-00297, *Electronic Proposed Acquisition by Bluegrass Water Utility Operating Company, LLC and the Transfer of Ownership and Control of Assets by: Delaplain Disposal Company; Herrington Haven Wastewater Company, Inc.; Springcrest Sewer Company, Inc; and Woodland Acres Utilities, LLC*, (Ky. PSC Feb. 25, 2022), Order at 7.

⁶ 807 KAR 5:006, Section 4; *Annual Report of Bluegrass Water Utility Operating Company, LLC to the Public Service Commission for the Year Ending December 31, 2021* at 12-14, 25-26.

5. Bluegrass Water shall inform the Commission if the designated material granted confidential treatment becomes publicly available or no longer qualifies for confidential treatment.

6. If a nonparty to this proceeding requests to inspect the material granted confidential treatment by this Order and the period during which the material has been granted confidential treatment has not expired, Bluegrass Water shall have 30 days from receipt of written notice of the request to demonstrate that the material still falls within the exclusions from disclosure requirements established in KRS 61.878. If Bluegrass Water is unable to make such demonstration, the requested material shall be made available for inspection. Otherwise, the Commission shall deny the request for inspection.

7. The Commission shall not make the requested material for which confidential treatment was granted available for inspection for 30 days from the date of service of an Order finding that the material no longer qualifies for confidential treatment in order to allow Bluegrass Water to seek a remedy afforded by law.

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

9. If Bluegrass Water 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 shall be granted confidential treatment.

10. Within 30 days of the date of service of this Order, 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.

11. The designated material for which Bluegrass Water's 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 to allow Bluegrass Water to seek a remedy afforded by law.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

PUBLIC SERVICE COMMISSION


Chairman

Vice Chairman


Commissioner



ATTEST:


Executive Director

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

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

*Bluegrass Water Utility Operating Company, LLC
1630 Des Peres Road, Suite 140
St. Louis, MO 63131