

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF BLUEGRASS)	
WATER UTILITY OPERATING COMPANY, LLC)	CASE NO.
FOR CERTIFICATES OF CONVENIENCE AND)	2022-00104
NECESSITY FOR PROJECTS AT THE)	
DELAPLAIN SITE)	

ORDER

On December 20, 2023, 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 Exhibits B, C, and D to Bluegrass Water's December 20, 2023 request to deviate from its original construction plans. Bluegrass Water notified the Commission that, due to unforeseen subsurface conditions, the proposed project needed to be altered, resulting in greater cost.

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 Exceptions to the free and open examination of public records contained in KRS 61.878 should be strictly construed.² The party requesting that materials be treated confidentially has the burden of establishing

¹ KRS 61.872(1).

² See KRS 61.871.

that one of the exceptions is applicable.³ 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.”

The material at issue consists of bid evaluation information and bid award letters. Bluegrass Water argued that this information should stay confidential because contractors on future work could use the bids as a benchmark, which would likely lead to the submission of higher bids. Bluegrass Water acknowledged that the Commission generally does not grant confidential treatment to the total amount of a winning bid; however, Bluegrass Water requested that confidential treatment be granted for the winning bid amount until construction begins. Bluegrass Water sought five years confidential treatment for the remaining bid information.

Having considered the motion and the material at issue, the Commission finds that Bluegrass Water’s motion should be granted. The Commission has previously held that non-selected bids, if publicly disclosed, could result in bid manipulation by bidders on other projects, disadvantaging the utility compared to competitors; the Commission does not extend this protection to the aggregate bid total, for revenue requirement transparency purposes.⁴ In the present case, the Commission agrees that maintaining confidentiality of the selected bid amount until construction, or for two years after the issuance of this Order, whichever occurs first, is a reasonable in light of any further delays. The

³ 807 KAR 5:001, Section 13(2)(c).

⁴ Case No. 2021-00183, *Electronic Application of Columbia Gas of Kentucky, Inc. for an Adjustment of Rates; Approval of Depreciation Study; Approval of Tariff Revisions; Issuance of a Certificate of Public Convenience and Necessity; and Other Relief* (Ky. PSC May 15, 2023), Order at 9.

Commission finds that the remaining information should be granted five years' confidential treatment. The designated material is generally recognized as confidential or proprietary; it therefore meets the criteria for confidential treatment and should be exempted from public disclosure pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(c)(1).

IT IS THEREFORE ORDERED that:

1. Bluegrass Water's December 20, 2023 motion for confidential treatment is granted.

2. The designated material granted confidential treatment by this Order shall not be placed in the public record or made available for public inspection for five years or until further order of this Commission, except for the aggregate total of the selected bid, which shall not be placed in the public record or made available for public inspection for two years, or when construction commences, whichever occurs first.

3. 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).

4. If the designated material granted confidential treatment by this Order becomes publicly available or no longer qualifies for confidential treatment, Bluegrass Water shall inform the Commission and file with the Commission an unredacted copy of the designated material.

5. 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.


6. The Commission shall not make the requested material 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.

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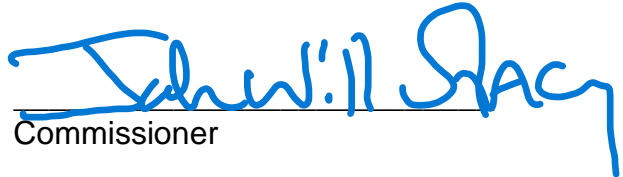
PUBLIC SERVICE COMMISSION



Chairman



Commissioner



Commissioner



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