

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC JOINT APPLICATION OF)	
BLUEGRASS WATER UTILITY OPERATING)	
COMPANY, LLC FOR APPROVAL OF)	
ACQUISITION AND TRANSFER OF OWNERSHIP)	CASE NO.
AND CONTROL OF ASSETS OF)	2023-00181
COMMONWEALTH WASTEWATER SYSTEMS,)	
LLC, YUNG FARM ESTATE HOMEOWNERS')	
ASSOCIATION, INC., AND MOON RIVER MARINA)	
AND RESORT, LLC)	

ORDER

On May 26, 2023, Bluegrass Water Utility Operating Company, LLC (Bluegrass Water, Commonwealth Wastewater Systems, LLC (Commonwealth Wastewater), Yung Farm Estates Homeowners' Association, Inc. (Yung Farm); and Moon River Marina & Resort LLC (Moon River), filed a joint application, pursuant to KRS 278.020(1) and KRS 278.020(6), (7), and (10), requesting that the Commission approve the acquisition and transfer of control of the assets of wastewater systems currently owned and controlled by Commonwealth Wastewater, Yung Farm, and Moon River and authorize Bluegrass Water to operate those systems.¹ No requests to intervene have been made in this matter. Bluegrass Water responded to two sets of request for information from Commission Staff, and requested that a decision be made on the written record. This matter is now before the Commission for a decision on the merits.

¹ Application at 1.

BACKGROUND

Parties

Bluegrass Water. Bluegrass Water is a Class B sewer utility organized and existing under the laws of the Commonwealth of Kentucky. Bluegrass Water is a manager-managed company that is managed by Central States Water Resources, Inc. (Central States). It is wholly owned by CSWR, LLC (CSWR), which owns and operates sewage utilities through subsidiaries in several other states. Bluegrass Water currently owns sewage utilities in Bullitt, Franklin, Garrard, Graves, Hardin, Jessamine, Madison, Marshall, McCracken, Oldham, Scott, and Shelby counties, and a water utility in Calloway County. At the time it filed its application, it had 3,573 total water and wastewater customers in Kentucky.²

Commonwealth Wastewater. Commonwealth Wastewater is a Kentucky limited liability company with its primary office in Smyrna, Tennessee. Commonwealth Wastewater is a class D sewer utility that owns and operates wastewater collection and treatment facilities in Boyle County, Kentucky to provide service to 14 single-family residential customers.³ Commonwealth Wastewater currently charges a flat rate of \$34.92 per month to each of its 14 residential customers based on its tariff on file with the Commission.⁴

Commonwealth Wastewater's existing facility is authorized to treat up to 5,000 gallons per day. It consists of 1,500-gallon septic tanks at each of the 14 homes in which

² Application at 2.

³ Application at 4.

⁴ Application at 4.

solids are retained, while the liquid phase of wastewater is pumped or gravity fed to the treatment facility. The treatment facility consists of a media filter, followed by a recirculating sand filter treatment facility before water is discharged into an irrigation field.⁵

A report prepared by a third party engineering firm retained by Bluegrass Water indicated that Commonwealth Wastewater's existing facility is [REDACTED]

[REDACTED]

[REDACTED], [REDACTED].⁶

Yung Farm. Yung Farm is a homeowners' association and corporation organized in the Commonwealth of Kentucky.⁷ Yung Farm's existing facility serves 21 single-family residences in Campbell County but it is not currently regulated by the Commission.⁸ Yung Farm charged residential customers \$60 per month for sewage service as of the filing of this application.⁹

Yung Farm's existing facility is authorized to treat up to 8,400 gallons per day.¹⁰ It consists of a gravity collection system that conveys wastewater from the customers to a steel package, activated sludge treatment plant that utilizes chlorine disinfectant prior to discharge. A report prepared by a third party engineering firm retained by Bluegrass Water indicated that Yung Farm's existing facility will require [REDACTED]

[REDACTED]

⁵ Application at 4.

⁶ Application at 4, Exhibit 2.

⁷ Application at 5.

⁸ Application at 5.

⁹ Application at 5.

¹⁰ Application at 5.

[REDACTED]¹¹

Moon River. Moon River is a Kentucky limited liability company.¹² Moon River operates a resort and marina in Trigg County that includes 12 recreational vehicle sites, 15 single-family rental cottages, a food store, a restaurant, and a laundromat. Moon River operates wastewater collection and treatment facilities to provide service to its resort and marina. Because Moon River is serving itself only, it does not currently charge for its service.¹³

The existing facilities consist of a gravity collection system and a treatment plant. The wastewater treatment plant (WWTP) is a very small package activated sludge treatment plant that utilizes chlorine disinfection prior to discharge. Moon River's existing WWTP is authorized to treat up to 1,000 gallons per day. Flows are highly variable both seasonally and through the week with higher flows during weekends with good weather.¹⁴

A report prepared by a third party engineering firm retained by Bluegrass Water indicated the annual average daily flow at the WWTP is [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]¹⁵ In

addition to the high variability of treatment load, [REDACTED]

¹¹ Application at 5, Exhibit 3.

¹² Application at 6.

¹³ Application at 6.

¹⁴ Application at 6, Exhibit 4.

¹⁵ Application at 6, Exhibit 4.

Transaction

CSWR has executed sales agreements with Commonwealth Wastewater, Yung Farm, and Moon River designating the buyer as Central States, or its designee. Central States has designated Bluegrass Water as the buyer for each of the Asset Purchase Agreements (APA). Each agreement provides for the sale of all of the utility assets of each system.¹⁸ The sale includes all assets used or useful to operate the system, including real property interests, service machinery and equipment, other tangible fixtures or personalty, franchises, contract rights, accounts serviceable, and other intangibles.¹⁹ Upon the closing of the transactions, the agreements provide for Bluegrass Water to become responsible for all assets from that point forward.²⁰

Bluegrass Water indicated that there would be continuity of service to the existing customers of the utilities whose assets Bluegrass Water is proposing to purchase. It stated that following the transaction, Bluegrass Water stated it will work to make necessary improvements, to seek appropriate approvals for such improvements as necessary, and to improve the quality of service as needed and in furtherance of its

¹⁶ Application at 6, Exhibit 4.

¹⁷ Application at 6, Exhibit 4.

¹⁸ Application at 7.

¹⁹ Application, 7-8.

²⁰ Application at 7-8.

ongoing efforts to integrate its Kentucky facilities.²¹ Following the closing of the transaction, Bluegrass Water indicated it will update its tariff to include each of the three systems and reflect that current rates for customers of each shall remain unchanged, and customers would otherwise be transitioned to all other general terms and conditions of Bluegrass Water's tariff.²²

Buyer's Financial and Technical Resources

Bluegrass Water is wholly owned and funded with capital from its parent, CSWR. CSWR owns and operates subsidiaries in several surrounding states that provide water and wastewater service. CSWR, including Bluegrass Water, is managed by Central States, which in turn manages the systems in other states. Bluegrass Water noted that Central States has experience through Bluegrass Water and other affiliates managing distressed sewage systems.²³

Bluegrass Water's acquisition of each system's assets will be funded with equity capital from its parent, CSWR. A balance sheet for CSWR, which was filed confidentially in this matter, indicates that its total assets far exceeded the assets of Bluegrass Water and that it had significant cash available.²⁴ Bluegrass Water plans to fund the work to repair and improve the acquired systems with debt and equity financing, "recognizing the Commission's expressed views regarding an appropriate debt-to-capitalization percentage."²⁵ Bluegrass Water stated that the planned transaction will not negatively

²¹ Application at 8.

²² Application at 9.

²³ Application at 15.

²⁴ Application at 16.

²⁵ Application at 12.

affect Bluegrass Water's ongoing work to adjust its capital structure closer to a 50-50 debt-equity ratio.²⁶

The day-to-day operations, billing, and customer service functions are to be provided by third-party contractors for Bluegrass Water's systems. The systems will be operated by a third-party operations and maintenance firm engaged by Bluegrass Water. It is anticipated that Clearwater Solutions, LLC (Clearwater) will be the entity to provide operations and maintenance (O&M) service for the systems proposed to be acquired in this case until the conclusion of the next vendor bidding process, scheduled for the first half of 2024.²⁷ Bluegrass Water indicated that Clearwater has the knowledgeable and experienced personnel necessary to manage the daily wastewater operations of the systems. In addition to the service obligations during normal business hours, Clearwater will be required to have a 24-hour emergency service line on which customers may report any service disruption with notice of service disruption calls to be forwarded to Josiah Cox, the President of Central States.²⁸

A third-party firm engaged by Bluegrass Water will send out bills and handle service-related billing questions for the acquired systems. In Bluegrass Water's other Kentucky systems, that firm is Nitor Billing Services, LLC (Nitor Billing Services). It is anticipated that Nitor Billing Services will have this role for the systems proposed to be acquired in this case. Nitor Billing Services has an online billing system in place to receive credit cards and e-checks from customers and a Bluegrass Water specific customer

²⁶ Application at 16.

²⁷ Application at 10.

²⁸ Application at 11.

service email account to handle customer inquiries and other interactions. The customer service representatives are to be available during normal business hours and to take messages 24 hours a day.²⁹

Bluegrass Water will maintain a toll-free number and a website that contains 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. Bluegrass Water's arrangements will ensure continuity of service to current customers of the four systems and that future customers are provided with a quality of service equal to or better than that currently being provided. These arrangements include implementation of computerized maintenance management system for utility facilities, online bill pay options, up-to-date website bulletins about current service status, and service initiation/discontinuance procedures.³⁰

Central States will be directly responsible for all management, financial reporting, underground facility safety and locations services, Commission and environmental regulatory reporting and management, recordkeeping, and final customer dispute management. Proportional costs for those services will be allocated to Bluegrass Water, which will be considered as one utility.³¹

²⁹ Application at 11.

³⁰ Application at 11.

³¹ Application at 12.

Alternative Operators

Bluegrass Water stated that the nearest available system to Commonwealth Wastewaters' system is the Danville Municipal Sewer System, which would require 3.2 miles of new mains along established utility corridors and several lift stations to connect. Bluegrass Water stated that the nearest available system to Yung Farm's system is the Northern KY Sanitation District 1 Dry Creek WWTP, which would require 2.4 miles of new mains along established utility corridors, and several lift stations to connect. Bluegrass Water stated that the nearest available system to Moon River system is the Cadiz Sewer Treatment Plant, which would require 3.3 miles of new mains along established utility corridors, and several lift stations to connect. Bluegrass Water stated that it is self-evident that those options would be more costly than its plans to purchase and improve the systems due to the length of main required, without even considering the lift stations. Further, Bluegrass Water noted that it is unlikely that those nearest points would have the capacity to accept the flows from the systems it is proposing to purchase.³²

LEGAL STANDARD

KRS 278.020(6) provides that:

No person shall acquire or transfer ownership of, or control, or the right to control, any utility under the jurisdiction of the commission by sale of assets, transfer of stock, or otherwise, or abandon the same, 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.

³² Bluegrass Water's Response to Commission Staff's First Request for Information (Staff's First Request) (filed July 11, 2023), Item 17.

KRS 278.020(7) similarly provides that no entity “shall acquire control, either directly or indirectly, of any utility furnishing utility service in this state, without having first obtaining the approval of the commission.” That statute 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 the public interest.”³³ However, when a transfer involves a sewage utility, as it does here, KRS 278.020(10) further provides that the Commission shall not approve any application made pursuant to subsections (6) or (7) unless the Commission finds 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.”

Because KRS 278.020(6) and (7) apply only to the transfer of jurisdictional utilities, the Commission has previously held on some occasions that the acquisition of a non-jurisdiction utility by a jurisdictional utility did not require any prior approval pursuant to KRS 278.020. However, since Case No. 2020-00028,³⁴ the Commission held that a utility purchasing a non-jurisdictional system must obtain a Certificate of Public Convenience and Necessity (CPCN) pursuant to KRS 278.020(1)(a) before it commences operating the non-jurisdictional utility.

KRS 278.020(1)(a) states, in relevant part, that:

No person . . . shall commence providing utility service to or for the public or begin the construction of any plant . . . until that person has obtained from the Public Service Commission a certificate that public convenience and necessity require the service or construction.

³³ KRS 278.020(7).

³⁴ Case No. 2020-00028, *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* (Ky. PSC June 19, 2020), Order.

To establish that public convenience and necessity require the service or construction, a utility is generally required to demonstrate a need and an absence of wasteful duplication.³⁵ “Need” is defined, in part, as “a showing of a substantial inadequacy of existing service, involving a consumer market sufficiently large to make it economically feasible for the new system or facility to be constructed or operated.”³⁶ When reviewing whether to grant a CPCN authorizing a utility to purchase a non-jurisdictional system, the Commission also looks at whether the acquisition will impair the utility’s ability to provide reasonable and adequate service to the utility’s existing customers or the customers of the system the utility is acquiring.³⁷

DISCUSSION

Acquisition and Transfer of Commonwealth Wastewater System

Bluegrass Water has previously been approved by the Commission to purchase 20 other sewage systems and a single water utility in Kentucky, and it is currently operating those systems.³⁸ Bluegrass Water’s parent, CSWR, which will manage Bluegrass Water through its affiliate Central States, which also operates numerous similar small sewage treatment facilities in other states. Further, Bluegrass Water will contract with a third party operator, qualified pursuant to standards established by the Energy and

³⁵ *Kentucky Utilities Co. v. Pub. Serv. Comm 'n*, 252 S.W.2d 885 (Ky. 1952).

³⁶ *Kentucky Utilities Co.*, 252 S.W.2d at 890.

³⁷ See Case No. 2020-00028, June 19, 2020 Order at 16.

³⁸ See e.g., Case No. 2019-00104, *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., Marshall County Environmental Services, LLC, LH Treatment Company, Inc., Airview Utilities, LLC, Brocklyn Utilities, LLC, Fox Run Utilities, LLC and Lake Columbia Utilities, Inc.*, (Ky. PSC Aug. 14, 2020), Order; Case No. 2019-00360, *Electronic Proposed Acquisition by Bluegrass Water Utility Operating Company, LLC and the Transfer of Ownership and Control of Assets by Center Ridge Water District, Inc.; Joann Estates Utilities, Inc.; and River Bluffs, Inc.* (Ky. PSC Feb. 17, 2020), Order; Case No. 2020-00028, June 19, 2020 Order.

Environment Cabinet, Division of Water. Billing for the systems Bluegrass proposes to purchase in this matter will also be handled a contractor that currently does the billing for its existing systems. Thus, the Commission finds that Bluegrass Water, its parent, and affiliates have the technical and managerial ability to provide reasonable service to the customers of the Commonwealth Wastewater system.

Bluegrass Water presented evidence that it has access to financial resources, in part through its parent, necessary to provide reasonable service. It stated that its parent will provide the equity capital necessary to purchase the systems at issue in this matter and to fund repairs and improvements. It further indicated that it has access to debt capital to finance repairs and improvements to the systems and that it could use to obtain a capital structure of close to 50 percent equity and 50 percent debt consistent with Commission requirements in previous cases. Thus, the Commission finds that Bluegrass Water has the financial ability to provide reasonable service and the financial integrity to ensure the continuity of sewer service.

Bluegrass Water argued that the transfer of the Commonwealth Wastewater system is being made in accordance with the law, because it is seeking all proper authorizations and will make all required regulatory filings for the proposed transactions. Bluegrass Water similarly notes that the proposed transactions have been approved by the board or the owners of each transferring utility.³⁹ Bluegrass Water asserted that the proposed transfer is for a proper purpose because it intends to operate them for the purpose of providing reasonable, effective, and efficient wastewater service to existing and future customers, and because it intends on investing the resources necessary to do

³⁹ Application at 18-19.

so.⁴⁰ Based on the evidence presented by Bluegrass Water, the Commission finds that the proposed transactions are being made in accordance with the law and for a proper purpose.

Bluegrass Water asserts that the transfer is in the public interest, because the system currently faces operational challenges and it is in the public interest that the system be acquired by an experienced entity with substantial technical, managerial, and financial resources to professionalize and improve the operations of the system. While the Commonwealth Wastewater's system does not appear to be in poor condition, likely due to its age, the public interest is generally served through the consolidation of small water and wastewater utilities to promote professional management at a lower cost due to economies of scale. Commonwealth Wastewater is a limited liability company with its principal office in Tennessee, which operates only the system in question. While it would be ideal for Commonwealth Wastewater's system to be attached to a larger system nearby, the only evidence presented in this matter indicates that there is no nearby system able to accept the flow from Commonwealth Wastewater's system without, at minimum, significant construction of costly, new sewage lines. Thus, the Commission finds that Bluegrass Water's proposed purchase of the utility assets of Commonwealth Wastewater is consistent with the public interest, and therefore, that Bluegrass Water's proposed acquisition should be approved.

However, the Commission's approval is based in part on the financial resources of CSWR. Further, as Bluegrass Water indicated in its application, the Commission required that Bluegrass Water post a guaranteed financial instrument that is the equivalent of two-

⁴⁰ Application at 19.

months of the cost of its third-party contractors with respect to the sewer utilities' systems approved to be acquired in previous cases.⁴¹ The Commission finds that a similar condition is necessary here to provide the financial integrity necessary to ensure the continuity of sewage service pursuant to KRS 278.020(10).

Bluegrass Water also indicated that it will update its tariff to include Commonwealth Wastewater and reflect that current rates for customers of the system shall remain unchanged but that customers would otherwise be transitioned to all other general terms and conditions of Bluegrass Water's tariff. While the Commission finds that Bluegrass Water's proposed rate for Commonwealth is reasonable, 807 KAR 5:011, Section 11 requires that a utility purchasing another utility to first adopt the existing tariff of the utility it is purchasing before incorporating the customers of the purchased utility into its existing tariff. Thus, when Bluegrass Water closes on the Commonwealth Wastewater system, it should file an adoption notice pursuant to 807 KAR 5:011, Section 11 before seeking to incorporate the current customers of the Commonwealth Wastewater system into Bluegrass Water's existing tariff.

Acquisition and Transfer of Yung Farm System

The Yung Farm system currently provides sewer service to residents of the Yung Farm Estates subdivision and such service is necessary for the homes in that subdivision as well as the potential expansion of the subdivision to empty lots. The evidence in the record indicates that there is no county or city system nearby that could feasibly serve the subdivision at this time,⁴² and there has been no evidence that any person or entity other

⁴¹ Case No. 2019-00104, Aug. 14, 2020 Order; Case No. 2019-00360, Feb. 17, 2020 Order.

⁴² Bluegrass Water's Response to Staff's First Request, Item 17.

than Bluegrass Water is interested in operating the system. Bluegrass Water also presented evidence that it will be able to provide reasonable and adequate service to its existing customers and the customers of the Yung Farm system following the acquisition. For the reasons discussed above with respect to the Commonwealth Wastewater system, the Commission also finds that Bluegrass Water has the financial ability to provide reasonable service and the financial integrity to ensure the continuity of sewer service. Thus, the Commission finds that Bluegrass Water's proposed acquisition should be approved and that Bluegrass Water should be granted a CPCN to serve the customers in the area currently served by the Yung Farm system. However, for the reasons discussed above with respect to Commonwealth Wastewater, the Commission finds that its approval should be subject to the condition that Bluegrass Water post a guaranteed financial instrument that is the equivalent of two-months of the cost of its third-party contractors for all systems it owns and operates.

Pursuant to 807 KAR 5:011, Section 11, a person purchasing an existing utility is required to adopt the utility's existing tariffs on file with the Commission, including any rates and service requirements therein, before filing a new or revised tariff for the predecessor utility or incorporating the predecessor utility into the successor utility's existing tariff. However, because Yung Farm is not a utility as defined by KRS 278.010(3), there is not a tariff on file with the Commission for the Yung Farm system that Bluegrass Water can adopt. Bluegrass Water instead proposes filing a tariff to establish an initial rate of \$60 per month for residential customers of the Yung Farm system, consistent with Yung Farm's current monthly rate, and further proposes amending its existing tariff to make Bluegrass Water's general rules and regulations for residential service on file with

the Commission applicable to customers of the Yung Farm system, all to be effective at closing.

With 14 residential customers, a rate of \$60 a month would generate about \$10,080 in annual revenue a year.⁴³ Bluegrass Water presented evidence that the O&M expense for the Yung Farm system would significantly exceed that amount.⁴⁴ While Bluegrass Water's estimates might be off, it is unlikely that they would be off to such an extent that a rate of \$60 a month would not be justified. Further, Yung Farm was previously charging that rate, which provides some support for the fact that it is justified by the expenses likely to be incurred to operate the Yung Farm system. Thus, the Commission finds that Bluegrass Water's proposed initial rate of \$60 per month for the Yung Farm system is fair, just and reasonable under the circumstances.

The Commission also finds that it is reasonable for Bluegrass Water to amend its tariff to make its general rules and regulations applicable to customers in the Yung Farm system upon closing. Those general rules and regulations include general rules regarding substances that should not be discharged into the sewer; service pipe connections; protection by customers; notice of trouble; maintenance; connections; line relocation; easements; discontinuance of service; billing, collection, and penalties; and liability of the company. The general rules and regulations for residential service are currently applicable to all Bluegrass Water residential customers and govern how Bluegrass Water administers service. Such general terms are necessary for utilities to provide service, and it is reasonable for Bluegrass Water to apply the same general terms

⁴³ $12 \times 14 \times \$60.00 = \$10,080$.

⁴⁴ Bluegrass Water's Response to Commission Staff's Second Request for Information (Staff's Second Request) (filed Aug. 4, 2023), Item 5.

to the Yung Farm system as it does to other residential customers served by its systems. Thus, the Commission will approve Bluegrass Water's proposal to amend its tariff to apply the general conditions to the Yung Farm system upon closing.

Acquisition and Transfer of Moon River System

Bluegrass Water failed to establish that its purchase and operation of the Moon River system is justified by a need that would entitle it to CPCN. The Moon River system is in a remote area about 20 miles west of Hopkinsville, Kentucky on the East side of Lake Barkley and is 26 miles from the closest facility that Bluegrass Water currently operates, its water system at Center Ridge District #4.⁴⁵ The Moon River system currently only has a single customer—the resort and marina owned by the current owner of the wastewater collection and treatment system. Bluegrass Water stated that does not currently expect to expand service in the area.⁴⁶ Bluegrass Water similarly indicated that it did not anticipate that customers other than Moon River would seek to connect to the Moon River system.⁴⁷ Thus, the resort and marina that currently owns the system is likely to be the only customer of the system through its life.

Since Moon River is currently providing self-service and there no other customers to serve in the area, there is not a substantial inadequacy of existing service in the area. Moon River can continue providing self-service, through an operator contractor if it chooses, and no other customers will be effected. In fact, it would likely be more economic for Moon River to continue to provide self-service, because it knows its plans

⁴⁵ Bluegrass Water's Response to Staff's Second Request, Item 17.

⁴⁶ Bluegrass Water's Response to Staff's Second Request, Item 14.

⁴⁷ Bluegrass Water's Response to Staff's Second Request, Item 15.

and future needs, and therefore, could more efficiently determine the extent to which investments should be made in its package treatment plant, e.g. not making significant investments if it expects to scale back operations or making such investments if it plans to expand. More importantly, it would not be economic for Bluegrass Water to invest in and operate a system in a remote location for a single customer due to the significant risk that costs will be stranded and assigned to other customers and the risk that a single customer will not be able to cover potentially significant costs.

Bluegrass Water provided an engineering report that identified a number of projects currently recommended for the Moon River system and indicated that the system was

⁴⁸ On its face, that information indicates that a significant expansion of the existing plant would likely be necessary in the very near future. Further, when asked whether it sought flow data from the water provider for the Moon River resort and whether that data indicated that additional projects would be necessary, Bluegrass Water provided the information that it received from Moon River, which appeared to be incomplete, with little explanation and did not explain what implications it had on the need for future projects to serve the resort and marina.⁴⁹ Thus, in addition incurring significant O&M expense by serving Moon River,⁵⁰ the Commission finds that Bluegrass Water would likely have to make significant capital investments if it expanded its service to Moon River.

⁴⁸ Application at 6, Exhibit 4.

⁴⁹ Bluegrass Water's Response to Staff's Second Request, Item 9.

⁵⁰ Bluegrass Water's Supplemental Response to Staff's First Request (filed Aug. 4, 2023), Item 2.

The types of projects that Bluegrass Water typically completes when it purchases a system have very long expected useful lives of 20 to 30 years.⁵¹ This is an issue if a system is only serving a single customer, because there will always be a relatively high risk that a single customer will stop taking service over such a long period.⁵² In fact, the limited liability company currently operating the Moon River resort and marina was only formed in 2022,⁵³ which suggests, at minimum, that there was some recent change in the operation or structure of the resort. Further, when Bluegrass Water was asked for a balance sheet, income statement, and statement of retained earnings for Moon River, it responded that it requested the information from Moon River, “but no supporting documentation has been made available.”⁵⁴ Thus, while Bluegrass Water stated that it has no reason to believe that the Moon River resort and marina will cease operations in the “foreseeable future,”⁵⁵ the Commission finds that there is a significant risk of that

⁵¹ See Case No. 2022-00102, *Electric Application of Bluegrass Water Utility Operating Company, LLC for a Certificate of Public Convenience and Necessity for Projects at the Herrington Haven Site* (Ky. PSC Nov. 7, 2022), Order (indicating that the useful lives of improvements for which Bluegrass Water is requesting a CPCN are expected to be 20 to 30 years and that sewage lines and lift stations would be expected to have 50 and 30 year useful lives, respectively); Case No. 2022-00015, *Electric Application of Bluegrass Water Utility Operating Company, LLC for a Certificate of Public Convenience and Necessity for Projects at the Woodland acres Site* (Ky. PSC Sept. 22, 2022), Order at 6, 13 (indicating that the useful lives of improvements for which Bluegrass Water is requesting a CPCN are expected to be 20 to 30 years); see also Case No. 2022-00104, *Electric Application of Bluegrass Water Utility Operating Company, LLC for a Certificate of Public Convenience and Necessity for Projects at the Delaplain Site* (Ky. PSC Mar. 30, 2023); Case No. 2022-00046, *Electric Application of Bluegrass Water Utility Operating Company, LLC for a Certificate of Public Convenience and Necessity for Projects at the Persimmon Ridge Site* (Ky. PSC Nov. 3, 2022), Order.

⁵² Conversely, it is much less likely an entire neighborhood or a mixed commercial, residential, or industrial area would suddenly cease taking service altogether.

⁵³ Application at 5.

⁵⁴ Bluegrass Water’s Response to Staff’s First Request, Item 7. Conversely, Commonwealth Wastewater provided a balance sheet and income statement in response to the same request, and Yung Farm indicated that they did not have the information.

⁵⁵ Bluegrass Water’s Response to Staff’s Second Request, Item 2.

occurring, as there is with any single customer, and no evidence was presented to indicate that this customer in particular is likely to require service during the life of the investments Bluegrass Water is likely to make in the Moon River system.

If the resort at Moon River were to cease operations after Bluegrass Water began operating and made investments in the systems, which would be a serious risk if the Commission approved this CPCN, then the Commission would be left with one of two bad options: (1) allowing Bluegrass Water to recover its investment in the Moon River system from other customers, and thereby, increasing their already high rates; or (2) preventing Bluegrass Water from recovering that investment, which could still effect the costs paid by other customers for financing and could affect Bluegrass Water's ability to provide adequate service. Given the likely costs necessary to serve Moon River and the risk that costs would be stranded, in addition to the fact that Moon River is providing self-service, the Commission finds that there is no need that justifies granting Bluegrass Water a CPCN to expand its service to the Moon River area, acquire Moon River's system, and begin providing service to Moon River, and therefore, that Bluegrass Water's application for a CPCN to acquire and operate the Moon River system should be denied.

IT IS THEREFORE ORDERED that:

1. The transfer of the assets of Commonwealth Wastewater to Bluegrass Water as proposed in the joint application is approved, subject to the conditions set forth herein, as of the date of entry of this Order.

2. Bluegrass Water is granted a CPCN, pursuant to KRS 278.020(1)(a), to provide utility service to and for the public in the area currently served by the Yung Farm

system, and Bluegrass Water's application for Commission approval of its acquisition of the Yung Farm system is granted, subject to the conditions set forth herein.

3. The initial rate and terms of service proposed by Bluegrass Water for customers of the Yung Farm system are approved, effective on the date of closing.

4. Bluegrass Water is denied a CPCN, pursuant to KRS 278.020(1)(a), to provide utility service to and for the public in the area currently served by the Moon River system, and Bluegrass Water's application for Commission approval of its acquisition of the Moon River system is denied.

5. Bluegrass Water, Commonwealth Wastewater, and Yung Farm shall notify the Commission in writing of the closing of each transaction to which they are a party within ten days of the closing.

6. Bluegrass Water, Commonwealth Wastewater, and Yung Farm shall file with the Commission a report on the status of the efforts to complete any approved transfer that does not close within 90 days of the date of entry of this Order.

7. Any material revision to the proposed transaction shall require approval by the Commission in order for the amendment to be effective.

8. Commonwealth Wastewater shall submit journal entries associated with the transfer of its system within 30 days of the date of closing on its system.

9. Bluegrass Water shall submit the journal entries associated with the transfer of each system within 30 days of the date of closing of each system.

10. The current owners of each system for which approval was granted shall continue to operate the wastewater systems until the closing of the transaction, at which time Bluegrass Water will begin operating the system and serving the customers.

11. Commonwealth Wastewater shall be relieved from any future service obligation as the closing of the transaction.

12. Within 60 days of the closing of each transaction, Bluegrass Water shall post a guaranteed financial instrument that is the equivalent of two-months of the cost of its third-party contractors.

13. Six months after the closing of each 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 any violations or citations for the preceding six months.

14. 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 year.

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

16. Bluegrass Water shall not begin the construction of any plant, equipment, property, or facility for furnishing wastewater services to the public, except ordinary extensions of existing systems in the usual course of business, until Bluegrass Water has obtained a CPCN 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, Bluegrass Water shall file an adoption notice for Commonwealth Wastewater's tariff.

19. Within ten days of closing of the acquisition of the Yung Farm system, Bluegrass Water shall file revised tariff sheets with the Commission, using the Commission's electronic Tariff Filing System, containing the rates approved in this Order.

20. Any documents filed pursuant to ordering paragraphs 5 through 17 shall reference this case number and shall be retained in Bluegrass Water's general correspondence file.


21. The Executive Director is delegated authority to grant reasonable extensions of time for the filing of any documents required by this Order upon a showing of good cause for such extension.

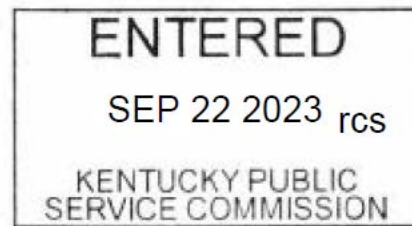
22. This case is closed and removed from the Commission's docket.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner



ATTEST:


Executive Director

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