

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF BLUEGRASS)	CASE NO.
WATER UTILITY OPERATING COMPANY, LLC)	2022-00432
FOR AN ADJUSTMENT OF SEWAGE RATES)	

ORDER

On February 27, 2023, Bluegrass Water Utility Operating Company, LLC (Bluegrass Water) tendered its application for an adjustment of rates based on a historical test year pursuant to 807 KAR 5:001E, Section 16. The application proposed that the new rates become effective on March 31, 2023. The application was found to be deficient. On February 27, 2023, Bluegrass Water filed a motion for deviation from filing requirements found in 807 KAR 5:071, Section 3(2)(d) and 807 KAR 5:001E, Section 16(4)(q) and (u). Bluegrass Water made a supplemental filing on March 10, 2023, to cure the deficiencies, including a motion for deviation from filing requirements found in 807 KAR 5:001E, Section 16(5)(c)(5)-(6).

LEGAL STANDARD

Administrative regulation 807 KAR 5:001E, Section 16(10) allows a waiver of the filing requirements for good cause to be determined by looking at:

- (a) If other information that the utility would provide if the waiver is granted is sufficient to allow the commission to effectively and efficiently review the rate application;
- (b) If the information that is the subject of the waiver request is normally maintained by the utility or reasonably available to it from the information that it maintains; and
- (c) The expense to the utility in providing the information that is the subject of the waiver request.

Administrative regulation 807 KAR 5:071, Section 3(2)(d) requires a wastewater utility seeking a rate adjustment to file a “detailed depreciation schedule of all treatment plant, property and facilities, both existing and proposed, listing all major components of ‘package,’ treatment plants separately.”

Administrative regulation 807 KAR 5:001E, Section 16(4) states:

Each application supported by a historical test period shall include the following information or a statement explaining why the required information does not exist and is not applicable to the utility's application:

...

(q) The annual report to shareholders or members and statistical supplements covering the two (2) most recent years from the utility's application filing date.

...

(u) If the utility provides gas, electric, water, or sewage utility service and has annual gross revenues greater than \$5,000,000, a cost of service study based on a methodology generally accepted within the industry and based on current and reliable data from a single time period. . .

Administrative regulation 807 KAR 5:001E, Section 16(5) states in relevant part that:

The following information shall be filed with each application requesting pro forma adjustments or a statement explaining why the required information does not exist and is not applicable to the utility's application:

...

(c) For each proposed pro forma adjustment reflecting plant additions, the following information:

...

5. A schedule containing a complete description of actual plant retirements and anticipated plant retirements related to the pro forma plant additions including the actual or anticipated date of retirement;

6. The original cost and the cost of removal and salvage for each component of plant to be retired during the period of the proposed pro forma adjustment for plant additions.

MOTION TO DEVIATE

As background to the motion, Bluegrass Water is a sewer utility that since 2020 has acquired 22 sewer facilities across Kentucky. These are generally small facilities built by developers then transferred to homeowner's associations for operation and maintenance. Bluegrass Water filed a series of Certificate of Public Convenience and Necessity (CPCN) applications aimed at correction and prevention of exceedances of permitted effluent levels that had led to past violations at these facilities. Bluegrass Water contends that many of the previous owners of these facilities did not maintain the records necessary to provide complete, accurate calculations of plant-in-service value.

Bluegrass Water sought deviations from the above-referenced regulations as follows:

- Regarding 807 KAR 5:071, Section 3(2)(d), Bluegrass Water stated that the depreciation schedule for all treatment plant, property, and facilities, were provided in as detailed a fashion as could be provided due to the lack of detailed records maintained by the previous owners of the facilities. Bluegrass Water further stated that the depreciation study and accompanying testimony comply with 807 KAR 5:001E, Section 16(4)(n), and that the absence of any more detailed information will not prohibit the Commission from conducting a thorough review of the application. Lastly, Bluegrass Water argued that deviations from the requirement to present a

traditional depreciation study are routinely granted,¹ and the absence of such a traditional study does not prevent the Commission's review of a utility's depreciation practices.

- Regarding 807 KAR 5:001E, Section 16(4)(q), Bluegrass Water stated that no annual report was issued, therefore none exists to provide in its application. Likewise, Bluegrass Water stated that since its annual gross revenues are not greater than \$5,000,000, a cost-of-service study was not generated or provided in its application pursuant to 807 KAR 5:001E, Section 16(4)(u).

- Regarding 807 KAR 5:001E, Section 16(5)(c)(5), Bluegrass Water's request mirrored its request involving 807 KAR 5:071, Section 3(2)(d). Bluegrass Water argued that lack of information provided by the prior owners of the affected systems prevented Bluegrass Water from providing more detailed information related to the value of each specific plant anticipated to be retired. As with depreciation values, Bluegrass Water has assigned values to retirements.² Bluegrass Water indicated retirement adjustments associated with pro forma plant additions to rate base for two accounts totaling about \$207,288.³ Bluegrass Water also stated that it made \$161,793 in retirement adjustments in the test period.⁴ Bluegrass Water testimony indicated that "[t]he accounting and engineering staff of CSWR [Bluegrass

¹ See Case No. 2018-00208, *In the Matter of: Electronic Application of Water Service Corporation of Kentucky for a General Adjustment in Existing Rates* (Ky. PSC Feb. 11, 2019), Order at 9.

² Application, Exhibit 10, Direct Testimony of Brent Theis (Theis Testimony), Exhibit BT-9. Bluegrass Water's Application incorrectly stated that retirements were set forth in Exhibit 18.

³ Application, Exhibit 10, Direct Testimony of Brent Theis (Theis Testimony), Exhibit BT-9.

⁴ Theis Testimony at 22.

Water's parent company] work together to determine whether the new assets or newly constructed items have replaced an asset. When it is determined that an asset has been replaced, asset balances must be retired."⁵ Bluegrass Water did not provide the dates on which the retirements would occur in its original filing, but provided those dates in its March 10, 2023 filing.

- Regarding 807 KAR 5:001E, Section 16(5)(c)(6), Bluegrass Water argued that in assessing the construction costs of the plant additions for the construction projects previously approved by the Commission, Bluegrass Water did not separately itemize the cost of removal. Rather, the costs of removal of existing plant were included within the total cost of construction. Bluegrass Water also stated that it did not believe the plants to be retired had any salvage value due to the state of disrepair. Bluegrass Water also indicated that it could not provide more detailed information regarding the original cost of the plant being retired for the reasons discussed above with respect to 807 KAR 5:001E, Section 16(5)(c)(5).

DISCUSSION AND FINDINGS

Having reviewed the motions and being fully advised, the Commission finds that the motions for deviation should be granted in part, that the remaining deficiencies identified have been cured without requiring a deviation, and that Bluegrass Water's application for rate adjustment should be deemed filed as of the date of entry of this Order.

807 KAR 5:071, Section 3(2)(d)

⁵ This Testimony at 22.

Bluegrass Water provided a depreciation study, which included a summary of original cost of equipment broken down by facility, account, and date placed into service.⁶ Depreciation information for 19 out of 22 facilities is provided. The Commission finds that the level of depreciation detail provided for those 19 facilities is sufficient to comply with 807 KAR 5:071, Section 3(2)(d). The Commission finds that a waiver should be granted with respect to the depreciation data for the remaining three sites, because it has obtained most of the necessary data and may not have been reasonably able to obtain data from the remaining three facilities' prior owners.

However, the Commission is granting this and other waivers herein with respect to the filing requirements only. Bluegrass Water bears the burden of proof to show that the proposed rate increase is just and reasonable under KRS 278.190(3), including that plant-in-service and associated costs were appropriately included. This deviation should not be construed as a finding that Bluegrass Water has met that burden.

807 KAR 5:001E, Section 16(4)(q), (u)

The Commission finds that Bluegrass Water's application includes statements that an annual report to shareholders and a cost-of-service study do not exist and are unnecessary. Therefore, Bluegrass Water has complied with these provisions and a deviation is not necessary.

807 KAR 5:001E, Section 16(5)(c)(5)

Bluegrass Water did reflect retirement adjustments associated with pro forma plant additions to rate base for two accounts. However, the application, exhibits,

⁶ Application, Exhibit 14, Direct Testimony of John J. Spanos, Exhibit JJS-2.

testimony, and subsequent filings do not make it clear exactly how Bluegrass Water chose the specific amounts to retire, the facilities at which the retirements would occur, or the dates on which the retirements would occur.

The absence of identification of facilities to which the retirements apply or methods of calculation makes it difficult for the Commission to determine whether Bluegrass Water has provided a “complete description” of retirements. However, Bluegrass Water did provide retirement information by major plant accounts, provided some information regarding how the retirements were projected, and in its March 10, 2023 filing, provided the expected retirement dates. While Section 16(5)(c)(5) contemplates more detail, Bluegrass Water provided information that will allow further investigation of the retirement amounts and indicated that it lacked some detailed information due to its recent purchases of the systems. Thus, as with the depreciation information supplied by Bluegrass Water, the Commission finds a waiver should be granted with respect to 807 KAR 5:001, Section 16(5)(c)(5). The Commission notes that this should not be construed to mean that Bluegrass Water’s filings thus far meet its burden to establish the impact of retirements on revenue requirement and reminds Bluegrass Water that failure to establish retirements as the result of new construction may result in a reduction of the revenue requirement.⁷

807 KAR 5:001E, Section 16(5)(c)(6)

The Commission considers Bluegrass Water’s assertion in its March 10, 2023 filing that the removed plant likely has no salvage value sufficient for filing requirement purposes. With respect to the requirement that Bluegrass Water provide

⁷ Case No. 2020-00290, (Ky. PSC Aug. 2, 2021), Order at 75-76.

the cost of removal of existing plant associated with plant additions, the Commission notes that Bluegrass Water is in control of the estimates it receives, such that the fact the estimates do not separately itemize the removal cost alone would not satisfy the requirement or justify a waiver. Further, 807 KAR 5:001E, Section 16(5)(c)(6) contemplates more detailed information regarding retired plant than was provided. However, the Commission recognizes that due to the nature of construction projects incorporating new components into existing systems, contractors may not have itemized the cost of removal of retired plant from the installation. Further, as above, Bluegrass Water provided information that will allow further investigation of the retirement amounts and indicated that it lacked some detailed information due to its recent purchases of the systems. As such, the Commission finds that Bluegrass Water should be granted a waiver from 807 KAR 5:001E, Section 16(5)(c)(6) to the extent necessary. However, as above, this finding should not be construed to mean that the information provided thus far is sufficient for Bluegrass Water to meet its burden.⁸

All other deficiencies in Bluegrass Water's original application have been cured. Bluegrass Water's application is deemed filed as of the date of this order. Pursuant to KRS 278.180(1), changes to any rate by any utility is prohibited except upon 30 days' notice to the Commission. Therefore, since the application was accepted for filing as of the issuance of this Order, the earliest date that Bluegrass Water's proposed rates can be effective is May 14, 2023.

⁸ See Case No. 2020-00290, (Ky. PSC Aug. 2, 2021), Order at 66.

The Commission further finds that an investigation is necessary to determine the reasonableness of the proposed rates, and that an investigation cannot be completed by May 14, 2023. . Therefore, pursuant to KRS 278.190(2), the Commission will suspend the effective date of the proposed rates for five months, up to and including October 13, 2023.

The Commission further finds that a procedural schedule is necessary to review the reasonableness of the proposed rates. Therefore, the Commission establishes the procedural schedule attached as an Appendix to this Order.

Additionally, any hearing scheduled in this matter shall be held on the designated day or days and continued until called from the bench by the presiding officer. Pursuant to 807 KAR 5:001E, Section 2, if the hearing is not concluded on the designated day, the hearing may be continued upon verbal announcement by the presiding officer. A verbal announcement made by the presiding officer shall be proper notice of the continued hearing. Hearings are held in the Richard Raff Hearing Room at the offices of the Public Service Commission at 211 Sower Boulevard, Frankfort, Kentucky. Witnesses who sponsor schedules, testimony, or responses to requests for information are expected to participate in person at a hearing.

IT IS THEREFORE ORDERED that:

1. Bluegrass Water's motions for deviation from filing requirements are granted in part and denied in part as moot.
2. Bluegrass Water's motions for deviation from filing requirements in 807 KAR 5:071, Section 3(2)(d) and 807 KAR 5:001E, Section 16(5)(c)(5) are granted.

3. Bluegrass Water's motion for deviation from filing requirements 807 KAR 5:001E, Section 16(4) is denied as moot.

4. Bluegrass Water's application is deemed filed as of the date of entry of this Order.

5. Bluegrass Water's proposed rates are suspended for five months up to and including October 13, 2023.

6. The procedural schedule set forth in the Appendix to this Order shall be followed.

7. Bluegrass Water shall respond to all requests for information propounded by Commission Staff, whether identified on the procedural schedule or otherwise, as provided in those requests.

8. Any party filing a paper with the Commission shall file an electronic copy in accordance with the electronic filing procedures set forth in 807 KAR 5:001E, Section 8. Electronic documents shall be in portable document format (PDF), shall be searchable, and shall be appropriately bookmarked. The Commission directs the parties to the Commission's July 22, 2021 Order in Case No. 2020-00085⁹ regarding filings with the Commission.

9. As set forth in 807 KAR 5:001E, Section 4(11)(a), a person requesting permissive intervention in a Commission proceeding is required to demonstrate either (1) a special interest in the proceeding that is not adequately represented in the case, or (2)

⁹ Case No. 2020-00085, *Electronic Emergency Docket Related to the Novel Coronavirus COVID-19* (Ky. PSC July 22, 2021), Order (in which the Commission ordered that for case filings made on and after March 16, 2020, filers are NOT required to file the original physical copies of the filings required by 807 KAR 5:001E, Section 8).

that the person requesting permissive intervention is likely to present issues or develop facts that will assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings. Therefore, any person requesting to intervene in a Commission proceeding must state with specificity the person's special interest that is not otherwise adequately represented, or the issues and facts that the person will present that will assist the Commission in fully considering the matter. A mere recitation of the quantity of utility service consumed by the movant or a general statement regarding a potential impact of possible modification of rates will not be deemed sufficient to establish a special interest. In addition, any motion to intervene filed after the date established in the procedural schedule shall also show good cause for being untimely. If the untimely motion is granted, the movant shall accept and abide by the existing procedural schedule.

10. Bluegrass Water shall give notice of the hearing in accordance with the provisions set forth in 807 KAR 5:001E, Section 9(2). In addition, the notice of hearing shall include the following statement: "This hearing will be streamed live and may be viewed on the PSC website, psc.ky.gov"; and "Public comments may be made at the beginning of the hearing. Those wishing to make oral public comments may do so by following the instructions listing on the PSC website, psc.ky.gov." At the time publication is requested, Bluegrass Water shall forward a duplicate of the notice and request to the Commission.

11. At any public hearing in this matter, neither opening statements nor summarization of direct testimonies shall be permitted.

12. Any hearing scheduled in this matter shall be held on the designated day or days and continued until called from the bench by the presiding officer. Pursuant to 807 KAR 5:001E, Section 2, if the hearing is not concluded on the designated day, the hearing shall be continued upon verbal announcement by the presiding officer. A verbal announcement made by the presiding officer shall be proper notice of the continued hearing.

13. Witnesses who sponsor schedules, testimony, or responses to requests for information shall participate in person at any hearing scheduled in this matter.

14. Pursuant to KRS 278.360 and 807 KAR 5:001E, Section 9(9), a digital video recording shall be made of the hearing.

15. The Commission does not look favorably upon motions for continuance. Accordingly, motions for extensions of time with respect to the schedule herein shall be made in writing and will be granted only upon a showing of good cause.

16. The Commission does not look favorably upon motions to excuse witnesses from testifying at Commission hearings. Accordingly, motions to excuse a witness from testifying at a Commission hearing or from testifying in person at a Commission hearing shall be made in writing and will be granted only upon a showing of good cause.

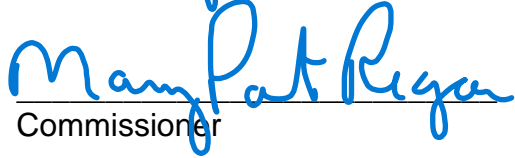
PUBLIC SERVICE COMMISSION



Chairman



Vice Chairman



Commissioner

ENTERED
APR 14 2023 rcs
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:



Executive Director

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2022-00432 DATED APR 14 2023

- Last day for intervention requests to be accepted..... 04/21/2023
- All initial requests for information to Bluegrass Water shall be filed no later than 04/28/2023
- Bluegrass Water shall file responses to initial requests for information no later than..... 05/12/2023
- All supplemental requests for information to Bluegrass Water shall be filed no later than 05/26/2023
- Bluegrass Water shall file responses to supplemental requests for information no later than 06/09/2023
- Intervenor testimony, if any, in verified prepared form shall be filed no later than 06/23/2023
- All requests for information to Intervenors shall be filed no later than 07/07/2023
- Intervenors shall file responses to requests for information no later than..... 07/21/2023
- Bluegrass Water shall file, in verified form, its rebuttal testimony no later than 08/04/2023
- Last day for Bluegrass Water to publish notice of hearingTo be scheduled
- Public Hearing to be held in the Richard Raff Hearing Room at the offices of the Public Service Commission at 211 Sower Boulevard, Frankfort, Kentucky, for the purpose of cross-examination of witnesses of Bluegrass Water and Intervenors To be scheduled
- Post-Hearing Briefs, if any To be scheduled

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