

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

This matter is before the Commission upon a motion filed on July 18, 2023, by the Attorney General of the Commonwealth through his Office of Rate Intervention (Attorney General), for leave to file supplemental testimony and for issuance of subpoenas to Bluegrass Water Operating Company, LLC (Bluegrass Water) and US Water, LLC related to documents that the Commission ordered are discoverable, and which Bluegrass has failed to place in the record.

LEGAL STANDARD

KRS 278.320 permits the Commission and each Commissioner to issue subpoenas and subpoenas duces tecum, and all necessary process in proceedings brought before or initiated by the commission, and states that “such process shall extend to all parts of the state.”

Commission regulation 807 KAR 5:001(6) permits parties to request that the Commission subpoenas on their behalf. It requires, in relevant part, that the party requesting a subpoena state as nearly as possible the records it requests be subpoenaed, and that the party submit a completed subpoena form with its written request as necessary. It states that “[e]very subpoena shall be served, in the manner prescribed by

subsection (8) of [807 KAR 5:001, Section 4], on a person whose information is being requested.”

## DISCUSSION

### Motion to File Supplemental Testimony:

On May 19, 2023, the Attorney General filed a motion to compel Bluegrass Water to respond to certain requests for information.<sup>1</sup> Intervenor Scott County, Kentucky (Scott County) similarly filed a Motion to Compel on May 24, 2023.<sup>2</sup> Bluegrass Water responded to both motions to compel on May 26, 2023.<sup>3</sup>

Pursuant to an amended procedural schedule issued by the Commission on May 19, 2023, supplemental requests for information were to be filed by June 2, 2023; those requests were to be responded to by June 16, 2023; and Intervenor Testimony was to be filed by June 30, 2023.<sup>4</sup> Both the Attorney General and Scott County submitted supplemental requests for information by June 2, 2023. Bluegrass Water responded by the applicable deadline after being granted an extension as to some of the requests.

On June 29, 2023, the Commission entered an Order granting the Attorney General’s motion to compel and granting Scott County’s motion to compel in part.<sup>5</sup> The June 29, 2023 Order required Bluegrass to supplement the relevant responses within

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<sup>1</sup> Attorney General’s Motion to Compel (filed May 19, 2023).

<sup>2</sup> Scott County’s Motion to Compel (filed May 24, 2023).

<sup>3</sup> Bluegrass Water’s Response to Attorney General’s Motion to Compel (filed May 26, 2023); Bluegrass Water’s Response to Scott County’s Motion to Compel (filed May 26, 2023).

<sup>4</sup> Order (Ky. PSC May 19, 2023).

<sup>5</sup> Order (Ky. PSC June 29, 2023).

seven days.<sup>6</sup> It also allowed for a second set of supplemental requests to be filed by the Attorney General and Scott County within 14 days of the order and for Bluegrass Water to respond 14 days later.<sup>7</sup> The Order of June 29, 2023 noted that all provisions “not in conflict with . . . this Order . . . shall remain in effect.”<sup>8</sup> As such, the June 29, 2023 Order left the deadline for Intervenors to file testimony as June 30, 2023. The Attorney General and Scott County both filed testimony by that deadline. However, in its July 18, 2023 motion, the Attorney General argued that because the motion to compel was granted only a single day before that testimony was filed, the Attorney General and Scott County were required to file testimony without the benefit of having access to the information compelled to be produced.<sup>9</sup>

Bluegrass Water filed a response to the Attorney General’s July 18, 2023 motion, in which Bluegrass Water stated it did not oppose the Attorney General’s filing of supplemental testimony, provided that the Attorney General respond to supplemental data requests, which were attached as Exhibit 1, that are limited to the scope of the supplemental testimony.<sup>10</sup>

Having reviewed the record, the Commission finds that good cause has been shown for granting the Attorney General’s request to file supplemental testimony, because it pertains to information that the Attorney General received or sought to receive after the previous deadline for intervention testimony following a motion to compel. The

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<sup>6</sup> Order (Ky. PSC June 29, 2023).

<sup>7</sup> Order (Ky. PSC June 29, 2023).

<sup>8</sup> Order (Ky. PSC June 29, 2023).

<sup>9</sup> Attorney General’s Motion (filed July 18, 2023) at 2.

<sup>10</sup> Bluegrass Water’s Response (filed July 25, 2023).

Commission further finds that Bluegrass Water should be allowed to serve additional requests for information on the Attorney General pertaining to the supplemental testimony on or before August 14, 2023, and that the deadline for rebuttal testimony should be extended until August 18, 2023.

Motion to Issue Subpoenas:

By Order of June 29, 2023, the Commission granted the Attorney General's request to compel the production of financial statements of US Water, LLC.<sup>11</sup> Bluegrass Water was ordered to provide the requested information in response to Attorney General's First Request for Information, Item 1-61, within seven days of the date of service of the June 29, 2023 Order.<sup>12</sup> The Attorney General argued that Bluegrass Water has failed to provide the requested information, and instead, stated in its response of July 6, 2023, its previous objection that "Bluegrass does not possess, and is not in control of, any audited, or unaudited, financial statements for US Water, LLC. To the best of Bluegrass Water's knowledge, such information is maintained solely by US Water, LLC."<sup>13</sup> The Attorney General requested that the Commission use its subpoena authority under KRS 278.320 to require Bluegrass Water and US Water, LLC to place the requested information in the record of this case.<sup>14</sup>

While the Commission agrees with the Attorney General that the information sought in the subpoenas to Bluegrass Water and US Water, LLC, is relevant, and has not

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<sup>11</sup> Order (Ky. PSC June 29, 2023).

<sup>12</sup> Order (Ky. PSC June 29, 2023), ordering paragraph 2.

<sup>13</sup> Attorney General's Motion (filed July 18, 2023).

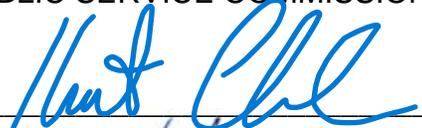
<sup>14</sup> Attorney General's Motion (filed July 18, 2023).

been provided in the record, the Attorney General did not provide the address for US Water, LLC, and it is not clear that US Water, LLC has any direct presence in Kentucky that would allow the Commission to effect service. The Commission accordingly finds that the Attorney General should provide the requisite information regarding the entity to be served pursuant to 807 KAR 5:001, Section 4, including the manner and address at which the Attorney General proposes service, in order for the Commission to determine whether it has the authority to issue the requested subpoena.

IT IS THEREFORE ORDERED that:

1. The Attorney General's motion to file supplemental testimony is granted.
2. Bluegrass Water shall serve additional requests for information on the Attorney General pertaining to the supplemental testimony on or before August 14, 2023.
3. The amended procedural schedule issued as an Appendix to the Commission's May 19, 2023 Order is hereby further amended to extend the deadline for rebuttal testimony until August 18, 2023.
4. All provisions of the Commission's Order of May 19, 2023, in conflict with the provisions of this Order are vacated. All other provisions of the Order of May 19, 2023 shall remain in effect.
5. Within seven days of the date of service of this Order, the Attorney general shall provide the Commission with the requisite information pursuant to 807 KAR 5:001, Section 4, regarding the entity for which it is requesting service of a subpoena, including the manner and address at which the Attorney General proposes service.

PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

  
Commissioner

ENTERED  
AUG 14 2023 rcs  
KENTUCKY PUBLIC  
SERVICE COMMISSION

ATTEST:

  
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