

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 Notice Regarding Subpoena (Notice) filed on August 18, 2023, by the Attorney General of the Commonwealth through the Office of Rate Intervention (Attorney General).¹ The Attorney General’s Notice was filed in response to the Commission’s August 14, 2023 Order, which directed the Attorney General to provide the requisite information regarding the requested subpoena and 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 upon US Water, LLC (US Water).²

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.”

¹ Attorney General’s Notice (filed Aug. 18, 2023).

² Order (Ky. PSC Aug. 14, 2023).

Commission regulation 807 KAR 5:001, Section 4(6) permits parties to request that the Commission issue 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

In its Notice, the Attorney General asserted that it requested the address for service on US Water from Bluegrass Water Utility Operating Company, LLC (Bluegrass Water), which Bluegrass Water refused to provide.³ The Attorney General explained that US Water has been identified in litigation in other states under differing formal names, but it was most recently served through a Missouri proceeding, addressed to US Water Systems, LLC in Wilmington, Delaware.⁴ The Attorney General further urged the Commission to consider whether it has jurisdiction over a utility’s indirect parent pursuant to KRS 454.210.⁵

Bluegrass Water filed a response on August 22, 2023, which argued Bluegrass Water is not responsible for assisting the Attorney General with determining how or where to serve discovery to non-parties on behalf of the Attorney General.⁶ Further, Bluegrass

³ Attorney General’s Notice (filed Aug. 18, 2023) at 1.

⁴ Attorney General’s Notice (filed Aug. 18, 2023) at 1–2.

⁵ Attorney General’s Notice (filed Aug. 18, 2023) at 2.

⁶ Bluegrass Water’s Response to the Attorney General’s Notice Regarding Subpoena (Response) (filed Aug. 22, 2023) at 1.

Water argued the Attorney General has failed to comply with the Commission's August 14, 2023 Order, as well as 807 KAR 5:001, Section 4; that a clear reading of KRS 454.210 does not allow the Commission to effect service of the proposed subpoena; and that the Commission should not issue the proposed subpoena.⁷

The Commission concludes that, while the Attorney General has provided an address for service of a subpoena on US Water, it appears there is no direct presence by that entity in Kentucky that would allow the Commission to effect service pursuant to KRS 454.210. The Attorney General has also failed to date to provide a subpoena form, as required under 807 KAR 5:001 Section 4 (6) (c). The Commission therefore finds that the Attorney General should file into the record a copy of the subpoena form it proposes to issue, and upon signature by the Commission, the Attorney General shall undertake responsibility for perfecting service of the subpoena on US Water.

IT IS THEREFORE ORDERED that within seven days of the date of service of this Order, the Attorney General shall provide the Commission with a copy of the proposed subpoena form to be served on US Water pursuant to 807 KAR 5:001, Section 4(6)(c), for review and signature by the Commission, after which time, the Attorney General shall attempt to perfect service of the subpoena.

⁷ Bluegrass Water's Response (filed Aug. 22, 2023) at 2.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ENTERED
AUG 30 2023 rcs
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:


Executive Director

*Angela M Goad
Assistant Attorney General
Office of the Attorney General Office of Rate
700 Capitol Avenue
Suite 20
Frankfort, KENTUCKY 40601-8204

*Honorable John E Selent
Attorney at Law
Dinsmore & Shohl, LLP
101 South Fifth Street
Suite 2500
Louisville, KENTUCKY 40202

*Sarah D. Reddick
Dinsmore & Shohl, LLP
101 South Fifth Street
Suite 2500
Louisville, KENTUCKY 40202

*Aaron Silas
Central States Water Resources
1650 Des Peres Road
Suite 303
St. Louis, MISSOURI 63131

*Honorable Kerry E Ingle
Attorney at Law
Dinsmore & Shohl, LLP
1400 PNC Plaza
500 West Jefferson Street
Louisville, KENTUCKY 40202

*Edward T Depp
Dinsmore & Shohl, LLP
101 South Fifth Street
Suite 2500
Louisville, KENTUCKY 40202

*R. Brooks Herrick
Dinsmore & Shohl, LLP
101 South Fifth Street
Suite 2500
Louisville, KENTUCKY 40202

*Lawrence W Cook
Assistant Attorney General
Office of the Attorney General Office of Rate
700 Capitol Avenue
Suite 20
Frankfort, KENTUCKY 40601-8204

*Cameron R Culbertson
Scott County Attorney
198 E. Washington St.
Georgetown, KENTUCKY 40324

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

*Honorable David Edward Spenard
Strobo Barkley PLLC
239 South 5th Street
Ste 917
Louisville, KENTUCKY 40202

*Michael West
Office of the Attorney General Office of Rate
700 Capitol Avenue
Suite 20
Frankfort, KENTUCKY 40601-8204

*Dave Woodsmall
Central States Water Resources
1650 Des Peres Road
Suite 303
St. Louis, MISSOURI 63131

*Russ Mitten
Central States Water Resources
1650 Des Peres Road
Suite 303
St. Louis, MISSOURI 63131

*John Horne
Office of the Attorney General Office of Rate
700 Capitol Avenue
Suite 20
Frankfort, KENTUCKY 40601-8204

*Randal A. Strobo
Strobo Barkley PLLC
239 South 5th Street
Ste 917
Louisville, KENTUCKY 40202