

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 arises upon the motion of Scott County, Kentucky (Scott County) to excuse members of the Scott County Fiscal Court (Fiscal Court Members) and the Scott County Judge/Executive Joe Pat Covington (Judge/Executive) from the hearing scheduled for September 19–22, 2023 (Motion).

Scott County stated that its recommendations upon Bluegrass Water Utility Operating Company, LLC's (Bluegrass Water) application are through the pre-filed testimony of its retained expert, Ariel Miller, and she will be present at the hearing for cross-examination regarding evidence offered by Scott County in support of its positions.¹ Scott County argued that, while the Fiscal Court Members sponsored two responses to requests for information from Bluegrass Water, and the Judge/Executive sponsored responses to 14 requests, those individuals did not pre-file testimony and the recommendations of Scott County are through its expert witness.² Scott County further argued that the responses sponsored by the Fiscal Court Members and Judge/Executive do not concern Ms. Miller's testimony, do not concern the rates and service of Bluegrass

¹ Scott County's Motion (filed Sept. 6, 2023) at 1.

² Scott County's Motion at 2.

Water, and are not proper subjects for examination in the instant case as they concern matters outside of the Commission's jurisdiction.³ Scott County claimed these officials should be excused from the September 19-22, 2023 hearing, as their attendance presents an undue burden because they did not pre-file testimony, are not offered as witnesses for Scott County, and the time and expense of appearing would be substantial.⁴ In the alternative, Scott County requested that if the Commission require attendance of a local official at the hearing, the Judge/Executive be permitted to attend as a witness on behalf of all local officials and the Fiscal Court Members be excused.

Bluegrass Water filed a response on September 13, 2023 objecting to Scott County's Motion. Bluegrass Water stated that Scott County made no effort to confer with Bluegrass Water prior to filing its Motion, and seeks only to insulate local elected officials from testifying about matters of public interest.⁵ Bluegrass Water argued that, while Ms. Miller sponsored responses to data requests and is therefore also subject to cross-examination, her role is as an expert witness and she does not have authority to speak on behalf of the Fiscal Court Members or Judge/Executive.⁶ Bluegrass Water further argued that Scott County's elected officials have presented evidence under oath in this matter and should not be shielded from cross-examination about those facts, consistent with Commission principles and the Commission's May 18, 2023 Order,⁷ which provides that "Witnesses who sponsor schedules, testimony, or responses to requests for

³ Scott County's Motion at 2.

⁴ Scott County's Motion at 2-3

⁵ Bluegrass Water's Response (filed Sept. 13, 2023) at 1.

⁶ Bluegrass Water's Response at 1.

⁷ Order (Ky. PSC May 18, 2023).

information shall participate in person at the September 19, 2023–September 22, 2023 hearing.”⁸

Scott County filed a reply on September 15, 2023, which sought to distinguish individuals that file responses to requests for information upon matters other than rates and service as “qualitatively different from individuals who supply testimony in support of an application for an adjustment in rates,” and stated, “The latter are clearly necessary for a robust record while the former are not.”⁹ Scott County argued that Fiscal Court Members’ and Judge/Executive’s responses to Bluegrass Water’s request for information do not pertain to the rates and service of Bluegrass Water,¹⁰ that cross-examination of these officials would not be of any significant value regarding the Miller Testimony,¹¹ and that an opportunity to cross-examine these individuals would unduly complicate the hearing concerning matters other than rates and service.¹²

The Commission finds Scott County’s arguments unpersuasive, as the Fiscal Court Members and Judge/Executive sponsored responses to certain requests for information on behalf of Scott County, and therefore are within the scope of individuals that are required to participate in person and subject to cross-examination at the September 19–22, 2023 evidentiary hearing pursuant to the Commission’s May 18, 2023 Order. The Commission would reiterate that excusing witnesses from testifying at a

⁸ Bluegrass Water’s Response at 2.

⁹ Scott County’s Reply (filed Sept. 15, 2023) at 4.

¹⁰ Scott County’s Reply at 4.

¹¹ Scott County’s Reply at 5. Scott County sought to also distinguish individuals who present testimony as witnesses in opposition to an applicant, versus the responses to request for information that was ‘invited into the record by Bluegrass Water.’

¹² Scott County’s Reply at 5.

Commission hearing is at odds with developing a robust record upon which the Commission reaches a decision and therefore such requests will not be considered lightly.¹³ The Commission finds that good cause has not been established by Scott County to recuse the Fiscal Court Members or Judge/Executive from appearing at the hearing scheduled for September 19-22, 2023, and Scott County's Motion should be denied. However, the Commission acknowledges that the appearance of all local officials for the entirety of the hearing could present a burden and would entertain any motion for a date certain for these individuals to appear.

IT IS HEREBY ORDERED that Scott County's motion is denied.

¹³ See Case No. 2022-00147, *In the Matter of Electronic Application of Water Service Corporation of Kentucky for a General Adjustment in Existing Rates and a Certificate of Public Convenience and Necessity to Deploy Advanced Metering Infrastructure* (Ky. PSC Nov. 7, 2022).

PUBLIC SERVICE COMMISSION



Chairman



Vice Chairman



Commissioner

ENTERED
SEP 15 2023 rcs
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SERVICE COMMISSION

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