

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 28, 2024 Scott County, Kentucky (Scott County) filed a motion for rehearing,<sup>1</sup> pursuant to KRS 278.400, requesting rehearing of the Commission’s final Order entered on February 14, 2024, (Final Order) adjusting the rates for wastewater service by Bluegrass Water Utility Operating Company, LLC (Bluegrass Water). Bluegrass Water filed a response to Scott County’s motion,<sup>2</sup> and it is now before the Commission for a decision.

LEGAL STANDARD

KRS 278.400, which establishes the standard of review for motions for rehearing, limits rehearing to new evidence not readily discoverable at the time of the original hearings, to correct any material errors or omissions, or to correct findings that are unreasonable or unlawful. A Commission Order is deemed unreasonable only when “the evidence presented leaves no room for difference of opinion among reasonable minds.”<sup>3</sup>

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<sup>1</sup> Scott County’s paper was styled as an application, but based on its form and request for relief, it was a motion filed pursuant to 807 KAR 5:001.

<sup>2</sup> Bluegrass Water’s Response in Opposition to Scott County’s Application for Rehearing (filed Mar. 4, 2024).

<sup>3</sup> *Energy Regulatory Comm’n v. Kentucky Power Co.*, 605 S.W.2d 46 (Ky. App. 1980).

An order can only be unlawful if it violates a state or federal statute or constitutional provision.<sup>4</sup>

By limiting rehearing to correct material errors or omissions, and findings that are unreasonable or unlawful, or to weigh new evidence not readily discoverable at the time of the original hearings, KRS 278.400 is intended to provide closure to Commission proceedings. Rehearing does not present parties with the opportunity to relitigate a matter fully addressed in the original Order.

### DISCUSSION AND FINDING

Scott County requested modification or extension of the Final Order to provide findings of fact and conclusions of law for two issues: rate allocation assignment and phase-in of rate or gradualism. Scott County acknowledged the rate allocation results provided in the Final Order were consistent with the Commission's acceptance of Bluegrass Water's proposal, but argued no findings of fact or conclusion of law were provided regarding the rate allocation assignment.<sup>5</sup> Scott County also argued the Final Order does not contain any findings of fact or conclusions of law as to why the principles of gradualism and rate shock should not be deployed in the instant case.<sup>6</sup>

Bluegrass Water filed a response in opposition to Scott County's motion, stating that Scott County continued to seek a benefit for its Delaplain commercial customers,

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<sup>4</sup> *Public Service Comm'n v. Conway*, 324 S.W.3d 373, 377 (Ky. 2010); *Public Service Comm'n v. Jackson County Rural Elec. Coop. Corp.*, 50 S.W.3d 764, 766 (Ky. App. 2000); *National Southwire Aluminum Co. v. Big Rivers Elec. Corp.*, 785 S.W.2d 503, 509 (Ky. App. 1990).

<sup>5</sup> Scott County's Application for Rehearing (Motion) (filed Feb. 28, 2024) at 2.

<sup>6</sup> Scott County's Motion at 2-3.

despite the fact that other customers in Scott County's Longview system were granted a rate decrease.<sup>7</sup>

The Final Order notes both Bluegrass Water's and Scott County's arguments and then finds that a unified rate is reasonable, because the majority of Bluegrass Water's customers are residential and "[a] separate rate for each geographically distinct merged system of Bluegrass Water would create unreasonable and undue hardship to individuals in some areas served by Bluegrass Water."<sup>8</sup> Further, as noted in the final Order in Case No. 2020-00290,<sup>9</sup> a unified rate is likely to encourage regionalization,<sup>10</sup> which should eventually drive down costs in the long term by allowing utilities to take advantage of economies of scale, and a unified rate will serve to levelize rates in the long term so that each system will not experience a significant rate changes every time it requires significant investment or some unexpected cost, which all systems will experience at some point.

The Commission is sensitive to the rate increases that will be experienced by some customers when initially implementing a unified rate, and considered Scott County's proposal to phase in a new rate for certain customers in Scott County. However, to do so, as argued by Bluegrass Water, the Commission would have had to create a regulatory asset for amounts that were not recovered due to the phased in rate, because the initial rate of a phased in rate would be lower than the rate that would allow Bluegrass Water to

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<sup>7</sup> Bluegrass Water's Response in Opposition to Scott County's Application for Rehearing.

<sup>8</sup> Final Order (Ky. PSC Feb. 14, 2024) at 96.

<sup>9</sup> Case No. 2020-00290, *Electric Application of Bluegrass Water Utility Operating Company, LLC for an Adjustment of Rates and Approval of Construction* (Ky. PSC Aug. 2, 2021), Order at 13.

<sup>10</sup> See Direct Testimony of Josiah Cox at 12-14 (citing to a report from the National Regulatory Research Institute indicating that single tariff pricing is a way to encourage mergers).

recover the revenue requirement that was ultimately determined to be reasonable. Such a regulatory asset would result in the final rate being higher because it would need to be set at a level necessary to recover both the revenue requirement determined to be reasonable and the portion of the revenue requirement previously deferred in the first phase, along with a carrying charge. Since the Final Order decreased the revenue requirement, and therefore, reduced the overall rate increase that would be experienced by new customers (and reduced the rate for current residential customers), the Commission finds that it would not be in the best interest of the parties to approve a phased in rate, because it would result in the final rate being higher than it otherwise would be without a phased in rate.

The findings discussed above were either explicitly or implicitly addressed in the Final Order when the Commission considered the parties arguments and then made a finding approving a unified rate. Further, Scott County did not identify any new evidence or information in its motion that would justify granting rehearing on those portions of the Commission's order approving the unified rate. Additionally, to the extent that any additional explanation may have been necessary, this Order provides such clarification. Therefore, the Commission finds that Scott County's motion for rehearing should be denied, except to the extent that this order provides additional clarification.

IT IS THEREFORE ORDERED that Scott County's motion for rehearing is denied, except to the extent that this Order provides additional clarification.

PUBLIC SERVICE COMMISSION

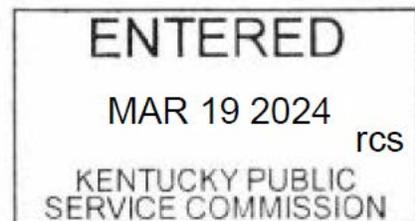
  
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