

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 March 4, 2024, Bluegrass Water Utility Operating Company, LLC (Bluegrass Water) filed a motion, pursuant to KRS 278.400, requesting rehearing of the final Order entered on February 14, 2024 (Final Order), adjusting the rates for wastewater service by Bluegrass Water. No party filed a response to Bluegrass Water’s motion for rehearing, 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.”¹ An order can only be unlawful if it violates a state or federal statute or constitutional provision.²

¹ *Energy Regulatory Comm’n v. Kentucky Power Co.*, 605 S.W.2d 46 (Ky. App. 1980).

² *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).

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 FINDINGS

In its motion, Bluegrass Water requested rehearing on the disallowance of recovery for “acquisition-related” attorney fees. Bluegrass Water argued that the Commission regularly authorizes recovery of similar legal expenses when reviewing rate proceedings for other utilities, such as attorney fees related to title searches and easements.³ Bluegrass Water further argued that the Uniform System of Accounts (USoA) specifically contemplates recovery of legal expenses as utility plant in service (UPIS) under account 104 as a cost of acquisition.⁴ Bluegrass Water argued it was arbitrary and unreasonable to exclude all acquisition-related attorney fees.⁵ Bluegrass Water also stated the Commission’s decision fails to recognize that those acquisition-related legal fees are reasonable and associated with the acquisition of all 20 wastewater systems at issue in this proceeding, which required real estate work and regulatory work largely due to the failure of the prior owners to maintain financial records and property rights necessary to properly operate and access the systems.⁶ Bluegrass Water argued

³ Bluegrass Water’s Motion for Rehearing (filed Mar. 4, 2024) (Motion) at 4.

⁴ Bluegrass Water’s Motion at 6–7.

⁵ Bluegrass Water’s Motion at 8–10.

⁶ Bluegrass Water’s Motion at 8.

that even if the Commission did not believe the full amount of acquisition-related legal fees were “reasonable,” the Commission may not simply disallow recovery of all acquisition-related legal fees.⁷ Bluegrass Water lastly argued that recovery of the acquisition-related costs is consistent with the Commonwealth’s policy goals encouraging regionalization and consolidation under KRS 224A.300, and the decision to deny any recovery of the acquisition-related legal fees dis-incentivizes acquisition of small, troubled utilities.⁸

First, the Commission would note that the cases cited by Bluegrass Water in which the Commission allowed recovery of reasonable legal expenses primarily dealt with expenses that were incurred or forecasted to be incurred during the test period, whether historic or forecasted, used to set rates. Conversely, Bluegrass Water proposed to capitalize legal fees from several years by assigning the cost of the legal fees to the value of the various systems existing plant in service, which would have allowed Bluegrass Water to obtain a return on and the return of legal expenses incurred over several years.⁹ Thus, the cases cited by Bluegrass Water in which the Commission allowed a utility to recover the legal expenses incurred during the test year used to establish a utility’s reasonable revenue requirement for the test year do not support Bluegrass Water’s proposed treatment of the attorney fees.

Second, the Commission acknowledges that the USoA contemplates the initial inclusion of the purchase price and certain acquisition-related costs in account 104. In

⁷ Bluegrass Water’s Motion at 8.

⁸ Bluegrass Water’s Motion at 10–12.

⁹ Notably, Bluegrass Water’s test year operating expenses that form the basis of its approved revenue requirement do include legal expenses.

fact, the Commission specifically noted that in the Final Order when explaining why the “project” referred to in account 183, the standard under which Bluegrass Water claimed to be able to capitalize the legal expenses in question, was not intended to include an acquisition.¹⁰ However, the Commission also noted that the standard in account 104, in addition to KRS 278.295, contemplated treating acquisition-related costs as an acquisition adjustment to the extent that amounts recorded in account 104, including the purchase price and certain expenses incidental to the acquisition, exceeded the net book value of the systems being purchased. For instance, among other things, the USoA contemplates that after the acquisition costs are charged to account 104, the original cost of plant in service for the system purchased will be credited to account 104 with a concurrent charge to the appropriate plant in service account, and that the appropriate accumulated depreciation associated with the original cost of plant will be charged to account 104 and credited to accumulated depreciation.¹¹ The amounts remaining in account 104 after those charges and credits would be the acquisition costs netted against the net plant in service of the system purchased. Following some additional adjustments for nonutility property and contributed capital, which are not relevant to this discussion, the USoA contemplates that the amounts remaining in account 104 will be closed to

¹⁰ The Commission did not intend to indicate in the Final Order and does not intend to indicate here that all expenses incident to an acquisition should be recorded in account 104 and treated in accordance with the procedure contemplated therein. Rather, the Commission cited to account 104 to note that there is a specific mechanism in the USoA for handling acquisition related costs that should be included in plant in service to illustrate that the standard in account 183, on which Bluegrass Water initially relied, was not the proper mechanism for recording acquisition related expenses in plant in service.

¹¹ Nation Association of Regulatory Utility Commissions, Uniform System of Accounts Class A/B Water Companies (available at <https://psc.ky.gov/agencies/psc/forms/usoa/0600ab02.pdf>) (last assessed Mar. 20, 2024) at pages 25–27.

“account 114 – Utility Plant Acquisition Adjustment” (i.e., the remaining balance will be treated as an acquisition adjustment).¹² Similarly, as noted in the Final Order, KRS 278.295 would treat an assignment of value as an acquisition adjustment to the extent a utility is attempting to assign acquisition costs to the value of assets acquired by a utility in excess of the net book value of the assets, which is what Bluegrass Water did by assigning the full acquisition price and “acquisition-related” expenses to plant in service.¹³

However, as noted in the Final Order, a utility has the burden of establishing that the acquisition costs in excess of the purchased systems net book value meet the elements of the “Delta Test,”¹⁴ which were codified in KRS 278.295, in order for the costs to be recorded in plant in service. Prior to the Final Order, Bluegrass Water argued that it was entitled to include the acquisition costs in plant in service pursuant to the standard in account 183, so it made no argument that it was entitled to an acquisition adjustment for the legal expenses it identified as acquisition related expenses. Thus, the Commission found in the Final Order that Bluegrass Water neither made an argument nor established that it was entitled to an acquisition adjustment for the proposed amounts of legal expenses related to acquisitions.¹⁵

¹² Nation Association of Regulatory Utility Commissions, Uniform System of Accounts Class A/B Water Companies at 25–26, 59.

¹³ Final Order at 29.

¹⁴ See Case No. 9059, *In the Matter of: An Adjustment of Rates of Delta Natural Gas Company, Inc.* (Ky. PSC Sept. 11, 1985), Order at 5.

¹⁵ Final Order at 29–30.

While Bluegrass Water now claims that the USoA specifically contemplates the recovery of the legal expenses by including them in the value of plant in service pursuant to the standard set out in account 104, i.e. as an acquisition adjustment, Bluegrass Water has still made no attempt to establish that granting an acquisition adjustment for the legal expenses meets to elements of the “Delta Test” or the provisions of KRS 278.295. Bluegrass Water has also not presented any new evidence or argument that justify modifying the Commission’s previous determination that the legal fees at issue should not be included in plant in service pursuant to the standard set forth in account 183, which is limited to preliminary expenses related to specific construction projects. Bluegrass Water’s primary substantive argument in favor of capitalizing the attorney fees and recovering them in plant in service is that failing to permit it to do so will discourage future mergers and investment, but that policy argument would not justify allowing the capitalization of years of expenses where such capitalization does not meet any applicable standard for capitalization. Thus, Bluegrass Water has failed to establish that it is entitled to rehearing regarding the exclusion of the legal expenses in question from plant in service.

The Commission also disagrees with Bluegrass Water’s characterization of the Final Order as excluding the legal expenses, wholesale, without any discussion of whether they are reasonable. As previously noted, Bluegrass Water sought to assign years of legal expenses to its plant in service to be recovered over the life of the plant while also recovering a return on the legal expenses. While the Commission questioned the reasonableness of the expenses, the Commission excluded the expenses from plant in service, because Bluegrass Water failed to establish that they could be capitalized and

recovered as part of plant in service. That determination is fully supported by the law and record in this case for the reasons discussed herein and in the Final Order, and Bluegrass Water has made no argument and presented no evidence that some alternative accounting treatment would justify its inclusion of the costs in plant in service or its expensing of all or any portion of the costs in the test year. Thus, the Commission finds that Bluegrass Water failed to establish that it is entitled to rehearing on the issue of the “acquisition-related” attorney fees and therefore finds that Bluegrass Water’s motion for rehearing should be denied.

IT IS THEREFORE ORDERED that:

1. Bluegrass Water’s motion for rehearing is denied.
2. This case is closed and removed from the Commission’s docket.

PUBLIC SERVICE COMMISSION

Walt Clark

Chairman

Ally

Vice Chairman

Mary Pat Regan

Commissioner



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