

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of

Electronic Proposed Acquisition by)
Bluegrass Water Utility Operating Company,)
LLC and the Transfer of Ownership and)
Control of Assets by: P.R. Wastewater)
Management, Inc.; Marshall County Envi-)
ronmental Services LLC; LH Treatment)
Company, LLC; Kingswood Development,)
Inc.; Airview Utilities, LLC; Brocklyn)
Utilities, LLC; Fox Run Utilities, LLC; and,)
Lake Columbia Utilities, Inc.)

No. 2019-00104

**Applicants’ Response to
Attorney General’s Post-Hearing Brief**

Bluegrass Water Utility Operating Company, LLC (“Bluegrass Water”) P.R. Wastewater Management, Inc., Marshall County Environmental Services LLC, LH Treatment Company, LLC, Kingswood Development, Inc., Airview Utilities, LLC, Brocklyn Utilities, LLC, Fox Run Utilities, LLC, and Lake Columbia Utilities, Inc. (collectively, “Applicants”), hereby respond in opposition to the Attorney General’s Post-Hearing Brief (“AG Brief”), which concludes that the proposed transfer/acquisition of utility assets should be denied. AG Brief p.10. If, nonetheless, “the Commission considers approving the proposed transaction[,] the Attorney General believes the Commission must impose” the 28 conditions listed in an Appendix to the brief. AG Brief p.6. To the contrary, the proposed transfer/acquisition should be approved, and without terms or conditions that unduly burden Applicants or prejudice and constrain transactions or matters within the Commission’s jurisdiction that may arise in the future (*e.g.*, on an application to raise rates or construct improvements) or prospectively apply an *ad hoc* and different standard to Bluegrass Water than provided in KRS ch. 278, 807 KAR 5, or other applicable statute or

regulation. Furthermore, imposing the Attorney General’s suggested 28 conditions in an order nominally approving the Joint Application would have the same effect as a straightforward denial. The imposition of any condition — other than those usual and proper to an asset transfer¹ — will slow the transactions’ closing as Bluegrass Water assesses the constraints, risks, and uncertainties involved and will also increase the probability that there will be no closing because the proposed transaction has become economically unviable.

KRS 278.020(6) standard: acquirer “has the financial, technical, and managerial abilities to provide reasonable service”

For an acquisition and transfer of ownership and control by the sale of utility assets as is proposed in this case, KRS 278.020(6) provides that the Commission “shall grant its approval if the person acquiring the utility has the financial, technical, and managerial abilities to provide reasonable service.” The Attorney General does not dispute Bluegrass Water’s technical ability to provide reasonable service, but asserts that the case “record is devoid of evidence as to whether Bluegrass UOC has the financial or managerial ability to provide reasonable service....” AG Brief p.2. As to both financial ability and managerial ability, the Attorney General focuses on what to him are unsatisfactory statements or responses, to the exclusion of all other evidence presented. This narrow, negative view of bits of evidence distorts the practical realities of Bluegrass Water’s financial and managerial capacity and does not cast any doubt on the ability to provide reasonable service (the actual benchmark).

As to financial ability, the Attorney General’s dissatisfaction appears to be focused on the form of the evidence of the debt and equity financing for Bluegrass Water. To him, the lack of a

¹ For example, the conditions in ordering paragraphs 2-9 (pp. 12-13) of the 1/19/18 final Order in Case No. 2017-00383, *Electronic Verified Joint Application of Eastern Rockcastle Water Association, Inc. and Kentucky-American Water Company for the Transfer of Control and Assets* (“KAWC-Eastern Rockcastle Transfer Case”).

formal, written agreement as to equity capital and debt financing apparently must mean that there is no commitment and no evidence of a commitment. AG Brief pp. 2-3.² This is not true. Bluegrass Water continues to have access to the equity and debt financing described in the verified Joint Application.³ That commitment allows CSWR Group to treat the debt financing described as a default source, and to shop the markets for lower-cost alternatives.⁴ Commitment by the funder does not require — as the Attorney General presumes — a written agreement or that the funding have been already received.⁵

In fact, it would tell against the financial ability to provide reasonable service if the CSWR Group had already borrowed funds and drawn on equity for the applied-for acquisition and for future, hypothetical capital projects at the to-be-acquired systems. The Attorney General might prefer that an acquirer keep unproductive cash in hand or to obligate itself on financing at whatever terms are available when a KRS 278.020 application is filed, but has not even attempted to show how that preference bears on the ability to provide reasonable service; nor does he acknowledge the selling utilities' lack of access to equity or long-term debt financing, other than

² It is particularly misleading to represent that Bluegrass Water “states that there is no evidence that the ‘equity capital ... necessary to acquire the assets that are subject of the Joint Application’ has been received or committed.” AG Brief p.3 & fn.8. In the cited Response, Bluegrass Water addressed AG Post-Hearing Request 06 for “the agreement that evidences CSWR, LLC’s post-acquisition access to equity capital” by providing facts about its impending receipt of equity capital; neither the request nor the response mentions anything about commitment of equity capital.

³ JA ¶¶ 44-45, 53, 62-63; *see also* Responses to 1 PSC 04, 05 and 1 AG 02 (supp.), 03. The Attorney General wrongly ignores that the verified statements in the Joint Application and the verified data requests are themselves “record evidence.” *See* AG Brief p.3.

⁴ J. Cox testimony, VTE 4:58:05 (market rates), 2019-07-02_15.42.16.804 VTE 6:00 (going to market), 10:00 (secured equity funding), 10:20 (loan from U.S. Water Capital a fall-back position, with rate ceiling), 15:15 (often not pull equity funding until after regulatory approval obtained for the acquisition), 17:40 (rate); P. Macias testimony, 2019-07-02_17.22.40.729 VTE 4:45 (confidence as to quantity and rate available for capital), 7:55 (rate); *see also* Response to 1 PSC 05.

⁵ The snapshots provided of the cash on CSWR, LLC’s consolidated balance sheet (*see* JA Exh. L; Response to 1 Attorney General Post-Hearing Request 05) undercut the Attorney General’s expressed concern about CSWR, LLC’s not yet having received equity capital for the (not yet approved).

whatever funding the owners can personally provide.⁶ Information provided with the Joint Application and in response to data requests demonstrates that, over time and up through June 30, 2019, the CSWR Group has had the financial means to borrow money and invest equity to sustain and improve the operation of the Arkansas and Missouri systems in providing reasonable service.⁷ That same financial ability inheres in Bluegrass Water and will support its ability to provide reasonable service.⁸

The Attorney General's challenge to managerial ability is similarly disconnected from any relevance to the benchmark of providing reasonable service. For him, the issue is that Bluegrass Water will be providing service through people who are not its employees and who will not all be resident in Kentucky.⁹ The AG Brief (p.4) concludes that this means that Bluegrass Water "will provide no service." This is incorrect. For any system assets acquired, Bluegrass Water will be the jurisdictional utility and will provide service. Like most of the transferring utilities, it will not directly employ people¹⁰; like all of the transferring utilities, Bluegrass Water will contract with third parties or have access within the CSWR Group for

⁶ E.g., R. Pulliam testimony, VTE 0:20:30 (worried about risk and capitalization; no financing available); A. Artis testimony, VTE 1:20:10 (capital needed to make actual repairs); L. Smither testimony, VTE 2:37:40 (no money to make improvements), 2:59:00, 3:08:25 (no money to replace a smashed lift station and can't get it; member-owners personally lend money to utilities for needed repairs); *see also* JA ¶¶ 42, 62; AG Exh. 01-09 (annual reports showing no notes payable and negative retained earnings or equity).

⁷ Compare JA Exh. L (2018 consolidated CSWR financials) with Response to AG Post-Hearing Request 05 (6/30/19 consolidated financials); compare Response to 1 PSC 09 JA_00198 (2018 Arkansas systems' consolidated financials) with JA_00199-212 (2017 financials); *also see* Response to 1 PSC 09(c) (narratives of rehabilitation and capital investment for each CSWR Group system in Missouri and Arkansas). Furthermore, CSWR Group has made that year-after-year commitment of capital without any distribution to equity owners. P. Macias testimony, 2019-07-02_17.22.40.729 VTE 8:30.

⁸ Thus, in response to a question from Vice-Chairman Cicero, Phil Macias testified that, in his professional opinion, Bluegrass Water has the wherewithal to continue to take on distressed utilities. VTE 6:20:52.

⁹ Environmental regulations require that a day-to-day system operator be located within a certain distance of the plant s/he operates; as a practical matter, this generally requires the operator to reside in Kentucky.

¹⁰ See Response to 1 PSC 01(a) (number of current employees).

functions that require (or benefit from) specialization.¹¹ The evidence is that this management model is and has been used by Kentucky utilities, and the Attorney General does not dispute that it is an efficient and effective way to provide reasonable service.

Nor does the Attorney General attempt to show that anything about managerial ability hinges on where CSWR Group personnel are sited or that the ability to provide reasonable service would be likely to be improved in any way if a CSWR Group manager was sited in Kentucky.¹² From their St. Louis area base, CSWR Group personnel have had and exercised the management ability for the Arkansas and Missouri utilities to provide reasonable service,¹³ and that is the best evidence that CSWR Group’s management model works. Finally, the Attorney General complains that there are not “agreements in place” with qualified third parties chosen to provide O&M and customer service functions. AG Brief p.4. As with the “just in time” arrangements and market searches for something superior to a “default” source with respect to funding, the arrangement for these functions will be made with the supplier who will provide the best combination of quality and cost. The suppliers for the Arkansas and Missouri utilities in CSWR group — Midwest Water Operations, LLC and Nitor Billing Services, LLC — have done a good

¹¹ See, e.g., G. Williams testimony, VTE 0:28:50 (CPA-bookkeeping services), 34:00 (operation); L. Smither testimony, VTE 3:20:30, 3:28:15, 3:43:48 (Lake Columbia use of contractors, including for billing and collection); see also AG Exhibits 01-09 (annual reports); Responses to AG Post-Hearing Requests 01 & 02 (third-party payments for services). Airview, Brocklyn, Fox Run, and Lake Columbia necessarily share the ownership oversight of Lawrence Smither and Martin Cogan with each other, as well as with those individuals’ related enterprises (e.g., Covered Bridge).

¹² “CSWR may have an experienced management team, but that team is and will be in Missouri.” AG Brief p.4. Neither efficiency nor cost effectiveness supports siting a CSWR Group person in Kentucky at this time. Nonetheless, the Attorney General implies that the planned geotagging of the systems is a poor substitute for Bluegrass Water having “employees of its own,” AG Brief p.10, as if any Kentucky based person could replicate the 24/7/365 monitoring and information-gathering from dispersed locations that geotagging would make possible. Also see A. Artis testimony, VTE 1:20:50 (need for monitoring system at treatment plant and lift station to give alert before problem becomes acute).

¹³ JA ¶¶ 7, 8, 52, 62-64, 67, 69-70; Responses to 1 PSC 09(c) (narrative), 1 AG 14 (no current violations in any of the Missouri or Arkansas utilities).

job in the past, and the Attorney General does not challenge their ability to discharge such functions for Bluegrass Water or the standards to which they would be held.¹⁴ Those two firms set the respective baselines that another firm (or firms) would have to exceed in order to be chosen to supply the acquired Kentucky systems,¹⁵ but Bluegrass Water submits that it is a sign of managerial ability (rather than something “damning,” AG Brief p.4) that an adequate, familiar option is not automatically selected¹⁶ when a CSWR Group entity is beginning utility service in a new state or at new locations.

KRS 278.020(10) standard: “financial integrity to ensure the continuity of sewage service”

The language of subsection (10) indicates that it may not apply to asset-ownership transfers, as are proposed here; however, in an abundance of caution, the Joint Application cited and met this standard. Bluegrass Water cross-referenced information provided in JA Exhs. L and N and earlier paragraphs, then offered to provide further evidence of financial integrity to the extent the Commission required anything else. JA ¶¶ 79-80. No data request or questioning at the hearing called for such further evidence.¹⁷ Furthermore, the information provided in this proceeding establishes that although the transferring utilities do not have the necessary financial

¹⁴ See JA ¶¶ 50-51, 54, 69-70; Responses to 1 PSC 10, 11, 21.

¹⁵ J. Cox testimony, VTE 5:01:05 (search for customer service contractor); T. Thomas VTE 5:54:30 (operations always open to bid on standardized requirements; know that Midwest Water can provide the operations role).

¹⁶ When the Joint Application was submitted in mid-April 2019, it was the intent that existing arrangements with Midwest Water and Nitor would be extended to cover Bluegrass Water’s utility operations (subject to Midwest Water’s obtaining the necessary Kentucky license, *see* Response to 1 PSC 10(e)). JA ¶¶ 50-51. Bluegrass Water perhaps should have taken the opportunity presented by data requests about Midwest Water and Nitor (*e.g.*, 1 PSC 10 & 11), to explain that although those entities continued to be willing to be the suppliers, competitive alternatives were being considered.

¹⁷ In addition, none of the Attorney General’s Post-Hearing Requests for Commitments, filed 7/12/19, addressed the subsection (10) standard.

integrity as stand-alone entities,¹⁸ continuity of service is ensured by the combination of their systems in a Kentucky operating company and inclusion of that combination in the multi-state CSWR Group and the greater access to equity and debt capital that the Group has than its constituent parts.¹⁹ Comparison of the viability of the Arkansas and Missouri affiliate utilities individually versus consolidated with each other and with capital infused as needed²⁰ demonstrates that being part of the CSWR Group has actually ensured the continuity of service by these utilities.²¹

In a 2018 order approving a transfer of water-utility assets from a small single-system entity to a consolidated holder of systems that was itself part of a multi-state group, the Commission found that financial information about the acquirer supported a conclusion that the acquirer “has sufficient financial integrity to ensure the continuity of service.”²² Thus, contrary to the Attorney General’s assertion at page 8 of his Brief, evidence about an acquirer’s financial ability can be sufficient to meet this requirement, particularly when the to-be-acquired system no longer has to be viable as a stand-alone entity and will be part of a larger utility operation or group of

¹⁸ See JA ¶ 11; footnote 6 and related text, above; footnote 27 below (re need for rate increases).

¹⁹ See footnotes 4 & 7 and related text, above, and footnotes 20, 21, & 34 below. Furthermore, Bluegrass Water has undertaken the Attorney General’s requested commitment that, “post-closing, it will adequately fund and maintain the transferred systems.” 7/19/19 Response to Attorney General’s Post-Hearing Requests for Commitments p.2 (#27). See also footnote 8 above.

²⁰ Compare JA Exh. L (2018 consolidated CSWR financials) with Response to AG Post-Hearing Request 05 (6/30/19 consolidated financials; Response to 1 PSC 09 JA_00198-212 (Arkansas systems’ consolidated financials).

²¹ CSWR Group has shown the strength of that financial integrity by taking utilities in Missouri out of state-appointed receivership. J. Cox testimony, 2019-07-02_15.42.16.804 VTE 25:27. In addition, it has kept the Arkansas and Missouri utilities operating even though they do not collectively turn a profit. See JA Exh. L.

²² 1/19/18 final Order, page 12 ¶ 6, in Case No. 2017-00383, *KAWC-Eastern Rockcastle Transfer Case*. KAWC cited historical financial data as its evidence that it had the “financial integrity and ability to ensure the continuity of water service to Eastern Rockcastle’s customers as required by KRS 278.020(10).” *Id.* p.5; see also Verified Joint Application ¶ 7, filed 9/22/17 in Case No. 2017-00383.

companies. In addition, the Attorney General does not appear to consider whether evidence shows financial resources sufficient to “ensure interim service continues should Bluegrass UOC [itself, on a stand-alone basis] be unable to provide reasonable service” or to otherwise “cover six (6) months of operations” of the systems by an O&M contractor — the goal for the Attorney General’s suggested condition of an “insurance product, bond, sinking fund, or other funding mechanism.” AG Brief p.9.²³ Financial integrity has been shown; there is no need for the suggested condition on approval of the transfers.

KRS 278.020(7) standard: proposed acquisition of control “is to be made in accordance with law, for a proper purpose, and is consistent with the public interest.”

Unlike subsection (6), KRS 278.020(7) does not refer to transfers by sale of assets, but only to transfers of control of the utility entity “furnishing utility service in this state.”²⁴ It is questionable whether this subsection applies to the proposed asset-ownership transfer; however, the standards for a subsection (7) control acquisition have also been met in this case. Of the three standards, the Attorney General disputes only the requirement that the acquisition “is consistent with the public interest.”²⁵ He does not show that the transaction as proposed fails to meet the test for consistency with the public interest:

²³ Nonetheless, Bluegrass Water would not reject out of hand a short-term requirement that it post a bond before closing, in the form of a Certificate of Deposit (or other low-risk, interest bearing instrument) in a proportionate dollar amount (*e.g.*, up to \$100,000). Such a condition should expire when Bluegrass Water files its first annual report (for a portion of 2019) with the Commission.

²⁴ *See, generally*, J. Park, Comment, *Public Utility Takeovers in Kentucky: A Rare Breed Gets Rarer*, 78 KY. L.J. 181 (1989-90) (analyzing what is now codified at KRS 278.020(7), (8)). Some asset transfers that are not covered by KRS 278.020(7) are subject to a similar standard — “is for a proper purpose and is consistent with the public interest” — by KRS 278.218(2).

²⁵ Under the heading “in accordance with the law and for a proper purpose,” the Attorney General expresses concern with Bluegrass Water’s “plan to not have an office located in the Commonwealth.” AG Brief p.5. This, however, is only the lead-in to his contention that there should be conditions relating to such an office (addressed on page 11, below) in addition to the 28 listed in his Appendix.

[A]ny party seeking approval of a transfer of control must show that the proposed transfer will not adversely affect the existing level of utility service or rates.... The acquiring party should also demonstrate that the proposed transfer is likely to benefit the public through improved service quality, enhanced service reliability, the availability of additional services, lower rates, or a reduction in utility expenses to provide present services. Such benefits, however, need not be immediate or readily quantifiable.²⁶

This is a comparative test, viewing the prospects post-acquisition against the existing level of service and rates. The evidence in the record is that there will be no adverse effects from the transfer of ownership²⁷ and the likely beneficial effects include improved service quality, enhanced service reliability, availability of additional services, and reduction in expenses to provide present services.²⁸

The Attorney General instead skips straight to an argument that “any potentially adverse effects can be avoided through the Commission’s imposition of [28] conditions on the acquiring party” that he believes must be imposed on Bluegrass Water. AG Brief pp. 5-6. For all but “a

²⁶ 7/1/02 Order on Rehearing p.9, in Case No. 2002-00018, *Application for Approval of the Transfer of Control of Kentucky-American Water Company to RWE Aktengesellschaft and Thames Water Aqua Holdings GmbH*, quoting the 5/30/02 final Order in case approving the transaction subject to 56 merger conditions.

²⁷ The Attorney General ignores that one of his requested commitments that Bluegrass Water undertook was that, “after it closes on a transferring utility’s assets, the customers served by those assets will experience no adverse change in service.” 7/19/19 Response to Attorney General’s Post-Hearing Requests for Commitments p.1 (#20). Although Bluegrass Water anticipates that increases to the existing utility rates will be necessary, *see* Response to 1 PSC 08:

- those increases would be necessitated not by the transfer itself, but by significant post-acquisition expenditures to repair, replace, and improve existing plant and equipment, *see* JA Exh. N p.1; Response to AG Post-Hearing Request 07 (construction estimates); and
- witnesses for some of the transferring utilities testified that an increase was needed to existing rates anyway, *e.g.*, G. Williams testimony, VTE 0:35:05 (rate increase needed); A. Artis testimony, VTE 1:22:15 (Great Oaks revenue not covering basic operating expenses; estimated \$10/month increase needed); L. Smither testimony, VTE 3:09:15 (Fox Run’s current rates not sufficient to cover operating costs; rate increase needed).

²⁸ JA ¶¶ 7-8, 42, 47, 54056, 77-78; Responses to 1 PSC 07, 1 PSC 13, JA_00163-97 (engineering reports); J. Cox testimony, VTE 5:07:15, 2019-07-02_15.42.16.804 VTE 24:00 (business model). *See also* M. Duncan testimony, VTE 6:31:40, explaining that efficiencies and economies of scope and scale have in the past permitted CSWR Group utilities to provide enhancements, improvements, and additions to the level of service at an expense that would not be obtainable by any component system standing alone.

selected number,” the Attorney General does not even attempt a justification of these conditions. In general, their number, breadth, and intrusiveness make the conditions he claims must be imposed both unreasonable and inappropriate (or possibly unlawful) from a regulatory perspective. Many would subject Bluegrass Water — *ad hoc* — to different requirements than those expressly stated in generally-applicable statutes and regulations.²⁹ Other conditions (*e.g.*, ## 3, 5, 9, 10, 12, 17) represent a prejudgment or extra-statutory (or regulatory) constraint on hypothetical applications for rate adjustments or issuance of indebtedness. Some will likely prove to be merely irrelevant or superfluous (*e.g.*, # 6, 19, 23) but others will constitute violations of due process to the extent that they present actual constraints.

From the perspective of Bluegrass Water, the mass of conditions and many of the individual ones would tip its risk-benefit analysis decisively against the proposed acquisition. Bluegrass Water has not been scared off by some unfavorable developments, such as the Energy and Environment Cabinet’s institution of a lawsuit seeking appointment of a receiver for the Great Oaks system,³⁰ because it still sees an opportunity to provide reasonable service on a long-term, sustainable basis. Confidence that viability or sustainability can be achieved is necessarily diminished without the flexibility to respond to conditions and events, *e.g.* to obtain construction loans and prioritize replacement or rebuilding of the Great Oaks wastewater treatment plant (even if that causes Bluegrass Water’s debt proportion of total capital to exceed some benchmark or goal for a time). Without flexibility, risks are less manageable and the innovation that is a vital part of CSWR Group’s business plan is destroyed or unduly hampered.

²⁹ For example, *compare* conditions ## 1, 5, 11, 13, 14, 16, 23 & 27 *with* the statutes governing accounting, the separation of regulated and nonregulated activities, and transactions between a utility and its affiliates, KRS 278.220 – 278.2219.

³⁰ Commonwealth of Kentucky Energy and Environment Cabinet v. Allen Artis, Franklin Circuit Court Action No. 19-CI-00633.

For the five conditions he does discuss, the Attorney General claims only to provide “context and explanation” (AG Brief p.6) rather than a reason the condition is necessary or appropriate. Thus, this Response here comments only briefly on each condition:

1. **Requiring an office in Kentucky** (AG Brief pp. 5, 9; *cf.* condition #15): The Attorney General lists regulations (p.5) “that indicate a requirement that a utility maintain an office in Kentucky” (p.9), and urges the Commission to consider setting conditions “possibly requiring regular office hours and an office location located in the Commonwealth” (p.9). As the Attorney General tacitly concedes, no statute or regulation actually requires that a utility maintain an office in Kentucky. Bluegrass Water has shown that its requirements and plans for customer access and communication meet the “letter and intent” of regulations about hours kept, etc.³¹ The Attorney General does not address and cannot show that maintenance of an office somewhere in Kentucky would improve service to any customer,³² let alone be a cost-effective or prudent expense. Similarly, there is no requirement that a utility’s books, accounts, papers, or records be maintained within Kentucky, as in would be required by AG Brief condition #15. Indeed, KRS 278.230(2) expressly provides for the Commission’s inspection and examination of such documents and information if they “are not within the state.” Bluegrass Water will not be “an out-of-state entity with no presence in Kentucky” (AG Brief p.9),³³ and the Attorney General’s demand for other forms of physical presence is anachronistic, unhelpful, and unsupported.

³¹ *See, e.g.*, JA ¶ 50-51, 54 (24-hour emergency service line; customer service rep availability; on-line bill payment); J. Cox testimony, VTE 5:02:40 (customer service).

³² An “office location located in the Commonwealth” could be in Ashland, Kentucky — over 100 miles from the nearest customer of any of the systems to be acquired. Even an office sited near one of the treatment plants would be at least 100 miles away from customers on other systems.

³³ Bluegrass Water is a Kentucky corporation, and after the proposed transfer will be a Kentucky jurisdictional utility, operating and owning plant and equipment located in Kentucky, to provide service to customers at Kentucky locations. In addition, there are no parallels in this case to the particular local-control

2. Range for debt to capitalization ratio (AG brief pp. 6-7; condition #12): One of the ways in which the Attorney General wants to constrain Bluegrass Water's flexibility to meet challenges the systems may pose is to mandate that the ratio of debt and equity to total capitalization be kept strictly in the range of 40-60% and that Bluegrass Water submit "post-closing, a detailed plan to ensure the range is maintained." From the varying debt/equity ratios for individual Arkansas and Missouri utility operating companies shown in response to 1 PSC 05, the Attorney General apparently concludes that the 50/50 capital structure developed for Bluegrass Water is chimerical and that a range condition is necessary to "ensure that the utility is not too risky ... and ... the weighted cost of capital is not too high." AG Brief pp. 6-7. The 50-50 benchmark for Bluegrass Water was developed after the individualized acquisition of and investment in the Arkansas and Missouri operating utilities³⁴; nonetheless, those utilities as a group have an equity-capitalization ratio within the 35-45% range specified in the RWE-KAWC divestiture approval order.³⁵ Furthermore, the presence of a capitalization-ratio condition in the Case No. 2006-00197 order does not itself justify a similar condition in this case, and the Attorney General makes no attempt to show that the facts or circumstances that justified the condition in that case are present here. In future (hypothetical) rate cases, the Commission can review terms and the balance of debt/equity financing and determine if they are reasonable or should be adjusted for ratemaking purposes.

issues that were present and may have occasioned the conditions preserving KAWC's existing local autonomy that were included in the approval orders for the RWE acquisition and de-acquisition of control over KAWC as the ongoing utility service provider, Case Nos. 2002-00018 & 2006-00197.

³⁴ As Phil Macias testified (beginning at 2019-07-02_17.22.40.729 VTE 2:28), those various levels reflect the individual opportunity presented for acquisition and difficulties in obtaining financing; he also explained how shifts made within CSWR Group improved access to funding, such that he knew capital was available to maintain the 50-50 split (*id.* 4:18-5:21).

³⁵ By weighted average or totals of the 4/30/19 amounts shown in Response to 1 PSC 05, the combined debt/equity ratio for the Arkansas and Missouri subsidiaries is 1.86 and the equity-to-capitalization percentage is 35%.

3. Prohibition on being employer/purchase of last resort for affiliates (AG brief pp. 7; condition #23): Like condition #11 (re costs insulation), Bluegrass Water does not think this condition is sufficiently well-defined; each condition, however, appears addressed to affiliate transactions or to the separation of regulated vs. unregulated operations. As such, the proposed conditions are either superfluous because of the generally-applicable standards in statutes and regulations or are an impermissible, *ad hoc* addition to those standards.³⁶ Furthermore, any “last resort” hiring of affiliates’ employees³⁷ or “leakage” of costs from nonjurisdictional operations will be reviewable by the Commission in future (hypothetical) rate cases, if Bluegrass Water does try to foist unnecessary costs and expenses (of whatever type) on consumers.

4. No savings at expense of degrading service adequacy or reliability (AG brief pp. 7-8; condition #19): Other than the addition of suggestions for extra reports and Commission development of “the most relevant metrics for discharge and inspection purposes,” this proposed condition appears to be a generic rephrasing of the “in the public interest” standard. It also ignores that Bluegrass Water did commit (as the Attorney General requested) to there being “no adverse change in service” (condition #18),³⁸ as well as the evidence that adequacy and reliability of service will be improved, not degraded.³⁹ Any savings from anticipated efficiencies in providing existing levels of service⁴⁰ thus will not be “at the expense of” degraded service.

³⁶ Again, the inclusion of such a condition in a 2007 order for a control-acquisition case does not itself support imposing such a condition on Bluegrass Water.

³⁷ The Attorney General does not explain the leap from his repeated complaint that Bluegrass Water will have no employees and no “real” operations (AG Brief pp. 3-4, 9) to a contention that it is a necessary condition for any approval that Bluegrass Water be constrained from hiring employees or purchasing products from its affiliates under certain circumstances.

³⁸ 7/19/19 Response to Attorney General Post-Hearing Requests for Commitments, p.1 #20).

³⁹ *See, e.g.*, J. Cox testimony, VTE 5:07:15 (economies of scale; increased level of service); *see also* footnotes 12 & 31; footnote 28 and related text, above.

⁴⁰ Response to 1 PSC 07; M. Duncan testimony, VTE 6:31:40 (net savings not inevitable from more-efficient provision of an increased level of service).

5. Immediate “mechanism” to cover 6 months of operations (AG brief p.9):

Please refer to the material at footnote 23 and related text, above.

WHEREFORE, Applicants respectfully request that the Commission issue a final order:

- a. Granting this Joint Application as submitted or, in the alternative, with appropriate terms and conditions prescribed;
- b. Permitting Bluegrass UOC after the proposed acquisition/transfer to operate the transferred utility assets in accordance with the respective tariffs, adopted by Bluegrass UOC;
and
- c. Relieving each transferring utility of any further utility service obligations after it has transferred its assets.

Respectfully submitted,

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