

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of

Electronic Application of Bluegrass)
Water Utility Operating Company, LLC) Case No. 2020-00290
for an Adjustment of Rates and Approval)
of Construction)

**Applicant’s Reply in Support of
Motion to Alter the Commission’s 2/12/21 Order**

Comes the Applicant, Bluegrass Water Utility Operating Company, LLC (hereinafter “Bluegrass”), by counsel, and for its Reply in support of its Motion to Alter the Commission’s 2/12/21 Order, addresses some misleading statements and a significant omission from the Joint Intervenors’ Response filed on March 11, 2021:

1. As of March 9, 2021, Bluegrass has closed on all systems for which it received approval in Case No. 2020-00297. Regardless, Bluegrass maintained a vested property interest from the time it initially submitted its Application in the rate case on September 30, 2020, that was more than a “mere expectancy” due to the executed purchase agreements for the four 00297 systems. The case law cited by Joint Intervenors on page 2 of their Response, when examined in context and read in full, instead identifies that utility ratepayers have no vested property interest in the rates they must pay for a utility service despite the fact that it is provided by a regulated monopoly. *Kentucky Indus. Util. Customers, Inc. v. Kentucky Utilities Co.*, 983 S.W.2d 493, 497 (Ky. 1998).¹

¹ The U.S. Supreme Court cases cited by Joint Intervenors on pg. 2 of their Response address due process rights associated with non-utility matters, with little relevance to the Applicant’s argument. In both, the Court identified the absence of a nontenured educator’s property interest in continued employment with lack of formal contract or tenure. *See Perry v. Sindermann*, 408 U.S. 593, 599 (1972); *see also Board of Regents v. Roth*, 408 U.S. 564 (1972).

2. The Joint Intervenors’ point on page 3 of its Response regarding the Case No. 2020-00028 (“00028”) systems is irrelevant to the pending Motion to Alter.² The Order addressed by the Motion focused on the Case No. 2020-00297 (“00297”) systems, and the Motion presents reasons for including these fully in the pending rate matter. The 00297 acquisition Application (filed on 9/16/20) included notice of Bluegrass’s intention that these systems were part of the rate application as follows:

Bluegrass Water has filed a notice of intent to file an application for an adjustment of rates and for construction authority (Case No. 2020- 00290); the forecasted test year will include projections for these four systems and the proposed unified tariff rates would apply to them.

(00297 Application, p. 14 ¶ 37). As mentioned in the Motion to Alter, the contrast and complication with the 0028 systems is that these were non-jurisdictional prior to acquisition by Bluegrass, and it was appropriate to have rates that were scrutinized and set by the Commission as soon as possible — with an application therefore filed no later than 15 months from the date of acquisition.

3. The Joint Intervenors recognize the fully-forecasted test year and its components at the top of page 3 of its Response, but then go on to argue at the bottom of page 3 and on page 4 that Bluegrass has filed forward-looking data only and ignore the base period information Bluegrass provided. Furthermore, the Joint Intervenors imply that anything other than a historical test year would be inappropriate by the language on page 4 that Bluegrass may recover its “prudently incurred” (past tense) expenses. It also suggests (on page 4), contrary to both

² Joint Intervenors’ Response pg. 3, fn. 5 asserts that “In Response to several of Joint Intervenors’ initial Data Requests, Bluegrass quickly points out that it has no information about the systems prior to ownership of them.” This is an inaccurate statement. None of Bluegrass’s responses to the Joint Intervenors’ initial Data Requests, states that it has “no information” or makes an equivalent response (whether “quickly” or not).

actual fact and an appropriately forecasted test year, that Bluegrass must pretend in this case that it has only the customers and expenses that it had when the Application was filed.

4. The Joint Intervenors do not allege that the notice received about the proposed rate changes for their respective systems or for any other system was insufficient or that the notice to those in the 00297 systems was any less effective than for other systems. This omission supports Bluegrass's assertion that notice was appropriate and effective, and that there is no basis for excluding application of the proposed rate adjustment to the 00297 systems in this matter.

WHEREFORE, Bluegrass respectfully requests that the Commission alter its 2/12/21 Order and allow the Application to proceed to a decision about the proposed rate adjustment for all the systems.

Respectfully submitted,

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