COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of

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

Applicant's Post-Hearing Response Brief

Applicant, Bluegrass Water Utility Operating Company, LLC ("Bluegrass"), hereby submits its response to the intervenors' post-hearing briefs filed June 3, 2021. The arguments made in the Attorney General's and the Joint Intervenors' respective briefs focus on narrow slices of the case made for a general adjustment of rates and for grant of any construction certificates needed for planned projects, often without addressing the overall consequences of the "rules" proposed or assertions made. Positions taken are inconsistent with each other's and sometimes internally inconsistent, which makes a point-by-point response difficult and incohesive. In addition, the Joint Intervenors' brief is rife with incorrect, misleading, and unsupported assertions — some that are relatively obvious and others that require digging through the record and comparison with source material[1] — which makes a direct response irrelevant. So, in an effort to assist the Commission with the decisions it must make, Bluegrass here gives a brief introduction and then summarizes record evidence and relevant precedent on issues raised in the intervenors' briefs.

[1] A relatively obvious example is the assertion at page 5 of the Joint Intervenors' brief that, "In fact, Bluegrass tendered its rate application even before it filed the acquisition application in Case No. 2021-00297 [*sic*]." In fact, the 00297 (acquisition) application was filed on September 16, 2020, and the 00290 (rates/construction) application was initially submitted on September 30, 2020.

RESPONSE

In its Application, initially submitted September 30, 2020, and deemed complete and filed as of November 19, 2020, Bluegrass requests a general adjustment of sewer and water rates and a construction certificate for any of its planned projects that requires one. The requested rates are calculated from a fully forecasted test year, as allowed under KRS 278.192, and Bluegrass has shown that the requested rates are required to enable it to continue providing safe, reasonable, and adequate service to its customers and to afford it a reasonable opportunity to earn a fair return on its investment in property used to provide that service and to attract necessary capital at reasonable rates. Bluegrass has also shown that its planned projects (some of which have been completed in the interim) are needed for the safe, reliable, and efficient provision of service and otherwise meet criteria of public convenience and necessity. Therefore, the proposed rates should be approved and any needed KRS 278.020(1) certificate should be granted.

The intervenors presented no evidence at all in this case, and often ignore evidence that they sought from Bluegrass through data requests or cross-examination of witnesses at the hearing held May 18-20, 2021. Bluegrass responds to the three main groups of issues in the intervenors' briefs — the use of a forecasted test year, other rate-making issues, and the planned repair, replacement, and improvement projects — as follows:

A. The forecasted test year is an appropriate basis for the adjustment of rates for all the systems that have been acquired by Bluegrass.

Bluegrass based its application for an adjustment of rates on a fully forecasted test year running from May 1, 2021, through April 30, 2022, with eight months of actual data for the 2020 base year. The adjustment to a unified rate was proposed for all systems forecast to be owned and operated by Bluegrass throughout the 2021-22 test year, including the four systems acquired pursuant to the final order in Case No. 2020-00297 ("the 00297 systems"). As forecast, these

were among the systems actually owned and operated by Bluegrass before the start of the test year. Bluegrass disputes the Commission's order to exclude those four systems from the rate adjustment[2] — but here neither waives nor repeats arguments against that exclusion. The Joint Intervenors revisit the exclusion decision to advance tendentious arguments purportedly in support of the Commission's decision, most notably a radical position that costs for necessary investment in treatment or collection/distribution infrastructure cannot be recovered from "consumers who will never benefit from them." (Jt. Int. Brief p.4). This "rule" would require individualized rates for each service location, and is violated every time rates are set, *e.g.*, for a long-established electric-utility customer that include the cost of new transmission and distribution lines to extend the service area or reach new residential, commercial, or industrial development. The Joint Intervenors do not advocate for non-unified rates — which would be ruinous for the customers of the smaller systems among their intervenor group — but this argument would require individualized rates for each service location. Neither law nor policy supports atomizing rates or de-averaging based on the nearest facilities and how close the customer is to them.

The Joint Intervenors, however, attempt to extend their logic to exclude from the rate adjustment the four Bluegrass service areas not formerly under the Commission's jurisdiction. In the full context of the proposed acquisition of those four systems in Case No. 2020-00028, the problem of what rate(s) should be charged upon acquisition stemmed from the fact that none of the systems had a tariff for Bluegrass to adopt, rates that had been approved by the Commission, or financial data of a quantity or quality to allow even an ARF-like estimate of an appropriate rate. In its 2/24/20 Application, Bluegrass proposed that its initial rates to the customers of each

[2] *Compare with, e.g.,* 6/27/19 Order, Case No. 2018-00358, pp.1-2, 52-53, 70-72, 89-90, approving a forecasted test year rate adjustment for, *inter alia,* service to the North Middleton system which had been acquired by Kentucky-American Water more than four months after the rate application was filed and after the base year had closed.

system be the rates that they were currently charged (2020-00028 App. ¶ 54). Bluegrass stated its intention to apply for a statewide unified rate for all its customers and that it anticipated it would file such an application by mid-2021 (*id.* ¶¶ 51, 62). However, to assure that it would not indefinitely charge legacy rates from the four systems' unregulated era, Bluegrass committed that it would apply to adjust the rates for the 00028 systems no later than 15 months after their acquisition. (*Id.* ¶ 62).[3] The intervenors are incorrect in stating that Bluegrass "originally indicated" (AG Brief. p.7) or made an "express commitment" or "regulatory commitment" (Jt. Int. Brief pp. 5-6) to wait until mid-2021 to file for an adjustment of rates for the 00028 systems or state-wide.

In its final 2020-00028 Order, the Commission approved Bluegrass's initiation of regulated-utility service to the four systems and use of the current charges on each system as the initial rates. *See* 6/19/20 Order, ordering ¶¶ 1-3. In the discussion portion of the Order (at pp. 19-20), the Commission paraphrased Bluegrass's Application statement about the anticipated application for an adjustment to a unified state-wide rate and commitment to apply for an adjustment of the four 00028 systems' rates within 15 months. The Order (p. 20) then stated the Commission's decision to accept the legacy rates and approve an initial tariff incorporating them. The Order based its finding that the legacy rates would be fair, just, and reasonable on the relatively low level of the legacy rates and what the Order described as a Bluegrass "assertion that it will file in mid-2021 for a unified rate for its various systems." (*Id.*) The Order did not condition Bluegrass's acquisition of the systems and initiation of service on filing a unified-rate application earlier or later than a particular point in time.

[3] At that point, there would be no justification for not coming into the Commission to have rates set; *inter alia,* Bluegrass would have a full year of providing service to the systems' customers and the data to have system-specific rates set.

Nonetheless, the Joint Intervenors focus on the stand-alone alternative to which Bluegrass committed (if it had not earlier filed for a state-wide rate adjustment to a unified rate), and argue that the KRS 278.192(2)(a) requirement that a forecasted test year application include a base period with no less than six months of actual historical data would have precluded filing a forecasted test year application for those four systems before June 2021. Assuming, *arguendo*, that this is true, it is an irrelevant hypothetical. Bluegrass did not file an adjustment of rates for a portion of its (forecasted) customers, but for all of them and included with its application tendered September 30, 2020, eight months of actual historical data in the required base year. At that point, Bluegrass even had a full year of owning and operating each of the systems acquired per the 2019-00104 final Order.[4] For any dynamic, growing utility there will be customers or areas to be served in the forecasted test year that were not served in part or all of the base year,[5] but neither the statute, nor Commission regulations or decisions, nor policy support an *ad hoc* rule that they be excluded from a forecasted test year adjustment of rates.[6] The Joint Intervenors (Brief pp. 7-8) and the Attorney General (Brief pp.7-8) are wrong to suggest that rates for all or

[4] At the Case No. 2019-00104 hearing, after explaining that "historical information is not necessarily informative," Josiah Cox answered a question about the timeline for seeking a unified rate with: "[W]e would run the systems for some period of time before we would come back and apply for a unified rate based on what our current costs are." (7/2/19 5:27:00, 5:28:09). In context, the statement is to distinguish such a rate filing from one based on the respective past owner-operators' ("historical") expenses. Furthermore, this rate case is based on Bluegrass's current expenses, due to inclusion of 2020 base year actuals. *See* Application ¶ 21, Exh. 8-D (B. Thies testimony) & referenced schedules; 3/19/21 base year update filing. There is no justification for prohibiting a rate adjustment through use of a forecasted test year from including the systems acquired in September 2019 per the 8/14/21 final Order in Case No. 2019-00104.

[5] *See, e.g.*, 6/27/19 Order, Case No. 2018-00358, in which forecasted-test-year rates were approved for a system and service area that Kentucky-American Water acquired after the base year closed.

[6] Among its consequences, such a rule would prevent a unified rate from being set and would lead to inequities between long-term and more-recent Bluegrass customers. It would also exacerbate the concerns the Attorney General expresses (Brief pp. 2-3) over the "rate shock" gap between the legacy rates these customers have been charged and rates sufficient to cover operating expenses and capital costs.

part of Bluegrass's customers must be limited to historical data or should await some point in the future when those particular customers have been served by Bluegrass for at least a year.

B. Bluegrass's proposed rates are fair just and reasonable.

1. Changes to its existing rates are necessary to enable Bluegrass to continue providing safe, reasonable, and adequate service to its customers.

In its application, Bluegrass proposed a unified sewer rate for residential service of $96.14 per month per dwelling across all its systems (App. Exh. 1-B). Bluegrass additionally proposed a unified water rate of $105.84 per single dwelling unit (App. Exh. 1-A) for the systems comprising its one water service area (Center Ridge). These unified rates were calculated with data for all the current systems, including the 00297 systems. The effect of removing the 00297 systems[7] on the calculation of the appropriate unified residential-service rate would be an increase in that rate to $116.77 per month. (5/18/21 Hrg. 14:17:22 (J. Cox); Response to INT ph DR 05).

The unified rates were designed for Bluegrass to address the needs of its customers across all the Kentucky systems, as most systems were distressed upon acquisition and required (or still requires) extensive repairs and rehabilitation immediately (or in the near future). (Response to 2 AG 02). Bluegrass is obligated, as any utility should be, to provide reliable service and to adequately fund and maintain the systems.[8] Because each system is different and the types and quantity of upgrades and improvements at closing differed – sometimes materially – if each system were to have an isolated rate, this would create great stress on each of the customers served

[7] The Commission ordered the exclusion of the 00297 systems from consideration for a rate adjustment in this matter in its 2/12/21 Order and affirmed this decision in its ruling on Bluegrass's Motion to Alter or Amend. In discussing this decision's consequences, Bluegrass does not waive its objection to the decision.

[8] *See* Case No. 2019-00104, 8/14/19 Final Order, Appx. Condition #4; this condition is echoed in other Bluegrass acquisition cases.

by many of those systems as the necessary rate increase to allow for needed repairs would exceed the proposed unified rate for most systems.[9] In the event that a system's individual rate would be lower than the unified rate, that situation would be temporary because the future capital needs of all the systems Bluegrass has acquired would equal out in the near future. (*See* Responses to 1 AG 15, 24). Therefore, a unified rate would allow for the financial burdens common to all systems to be distributed in a beneficial manner to each of the ratepayers, and allow the systems—which are historically distressed—to be brought into and kept in compliance and to continue providing safe and reliable service. The Commission has consistently supported the concept of a unified rate structure to encourage consolidation of systems and to improve the quality of service in the Commonwealth.[10] The Commission should adhere to this precedent in the instant matter and approve the unified rate structure proposed by Bluegrass.

2. Piecemeal updates and modifications proposed by intervenors, including for elements of the rate of return, fail to uniformly follow applicable principles.

Bluegrass complied with applicable law when utilizing a forward-looking test period for its proposed increase in rates, and any piecemeal updates and/or modifications to this forward-looking data after the time of application submission would violate the principles of applicable law. KRS 278.192 requires that the forecasted test year period must include a base period to be filed with the application, which begins not more than nine (9) months prior to the date of filing, consisting of not less than six (6) months of actual historical data and not more than six (6) months of estimated data at the time of filing. The statute then goes on to require that actual

[9] See estimates in Response to 1 AG 02 and accompanying worksheet. For example, the monthly single residential stand-alone rate for Arcadia Pines would be $186.36; for Brocklyn, $168.10; for Lake Columbia, $337.33.

[10] *See* Case No. 2018-00358, 6/27/19 Order, pp. 71-72, and Commission orders in water and wastewater cases cited therein.

results for the estimated months of the base year period must be filed no later than 45 days after the last day of the base period.

This uniform application of the statute (which is echoed in the corresponding regulation 807 KAR 5:001 Section 16) ensures that a full and accurate picture of the data is provided to support the requested rate change, rather than narrow slices that fail to provide full context or suggested changes that fail to recognize any consequences of their hypothetical application. The statute is not discretionary and must be applied uniformly – no matter whether the effect is to increase or decrease rates. And a piecemeal updating of some elements of the revenue requirement while leaving remaining elements untouched would upset the balance contemplated by guidelines for governing the use of a forecasted test period. Bluegrass's fully forecasted test year is supported by base year data, including the updates filed in mid-March 2021. Included therein are the necessary allocations, operating and maintenance expenses, and other information showing in great detail how Bluegrass determined the requested rates. (*See* 3/19/21 Base Year Update).

Bluegrass plans to achieve a capital structure of 50% debt and 50% equity, and therefore proposed the use of such a capital structure for ratemaking purposes in this case. The cost of debt should be calculated at the forecasted rate of 9.5%, which reflects the debt market's perception of the risks associated with small, distressed utilities like Bluegrass that cannot attract traditional financing from commercial lenders. (*See* App. Exh. 8-F (J. Nelson Testimony, as adopted by D. D'Ascendis); *see also* 5/19/21 Hrg. 11:38:19 (D. D'Ascendis)). Because the forecast looks at future possibilities or prospects, this calculation reflects the various factors in play at the time of submission and should not be altered to reflect a lower amount due to any perceived fluctuations

in the market or the systems.[11] (*Id*.). Thus, the proposed 9.5% is a fair and reasonable rate and should be approved by this Commission.[12]

Any piecemeal adjustment for the requested return on equity must also be avoided for the same reason – that the rate adjustment must be looked at in whole. The proposed common equity cost rate of 11.80% is adjusted for the appropriate business risk due to Bluegrass's size and market conditions at the time the analysis was made. (*See* App. Exh. 8-D (D'Ascendis Testimony) p. 6).[13] Compared across models and adjusted to reflect its small size and the distressed rate of the systems, the proposed return on equity is reasonable and reflects the market conditions and rate environment at the time of application submission. (*Id*.). Any fluctuation in the interim should not allow a piecemeal adjustment. Other examples of piecemeal proposals by the other parties to this matter include the unsupported assertion that the O&M allocated amount for Midwest to be considered for ratemaking purposes should only be that of the most recent contract rate (Jt. Int. Brief p. 15) and a request "that <u>any difference</u> between actual costs [of projects] and the estimates provided at the time of filing serve to <u>reduce</u> the proposed rates (AG Brief p.4 (emphases added)). These suggestions should not be followed due to the requirement of uniform application of data for forecasted test periods.

[11] There is no support for the Joint Intervenors' statement that Bluegrass is similarly situated to other CCC-rated companies in the 6-6.97% range as asserted in their brief. (Jt. Int. Brief, p. 10) Bluegrass provided testimony at the hearing why Bluegrass was situated differently, and why the 9.5% must stand despite any recent change in the rate environment. (5/19/21 Hrg 13:25:47 (D. D'Ascendis)).

[12] Josiah Cox testified to discussions with a lender for debt financing that Bluegrass believes will be at 6%, conditioned on the outcome of the rate case (5/19/21 Hrg. 9:35:05). The water and sewer rates in this case approved by the Commission would need to provide adequate recovery of expenses and capital invested, as well as provide for adequate debt service, in order for the possible 6% rate to be realized.

[13] Studies confirm the need for a company-specific risk adjustment in order to determine a fair rate of return. *See, e.g.,* Roger A. Morin, UTILITIES' COST OF CAPITAL (Public Utilities Reports 1984) at p. 212, and studies cited therein.

3. Intervenors' positions on revenue requirement and rate base are similarly without merit.

Bluegrass has provided extensive proof that its expenses for the systems are reasonable and allocated common costs appropriately for purposes of ratemaking. Despite this, the intervenors oftentimes ignored relevant proof (sometimes even provided in response to their own data requests or questions at the hearing) when crafting arguments in their respective post-hearing briefs, and therefore lack merit. For example, Bluegrass is required to have operators on site at the systems each day, so even though remote monitoring systems would be in place, it still must comply with this legal requirement. *See* 807 KAR 5:071 §7(4). Therefore, this amount for Midwest's daily visits must not be disallowed.[14] As another example, the work done by Elasticity provides a material benefit to Bluegrass's customers (5/20/21 Hrg. 9:08:51 (B. Thies)) and expenses related to this material benefit are allowable pursuant to 807 KAR 5:016 § 3(2).

Examples also include the following. CSWR does offer health and life insurance to its employees, but each employee must pay in part for that insurance. (*See* Responses to 1 PSC 19-21; 2 PSC 24, and 2 AG 11). While the Joint Intervenors object to inclusion of this amount in the corporate allocations, they fail to cite any applicable decisions or guidance other than their own conclusory statement that a portion of this should be disallowed. 401(k) contributions are not discretionary; instead, these are matched to a certain point and rather are dependent on how much the employee or officer chooses to invest personally. (5/19/21 Hrg. 11:24:35 (J. Cox); Responses to 3 PSC 18-19). The Massachusetts Formula remains the most appropriate allocation methodology and allows a consistent analysis to be performed, rather than some arbitrary and unclear "test" with no basis in the data provided. (Responses to 2 INT 09-10).

[14] *See* Argument C, p. 19 of this Brief for a discussion of remote monitoring.

Bluegrass has not offered any justification to support a plant acquisition adjustment because it is not seeking a plant acquisition adjustment[15]. Josiah Cox stated that Bluegrass had expended over $5 million (total) on purchase, investment, and operations of the Kentucky systems. (5/18/21 16:28:02). The Joint Intervenors' Brief (p. 9) incorrectly asserts that Bluegrass starts with "an original book value of approximately $856,000…."[16] That dollar number given for system acquisition is the approximate total of consideration transferred on the systems' closings; original book values are provided in response to INT ph DR 12(a).

Furthermore, construction expenditures are for projects still in process or planning stages. In p. 9 and fn. 21 of their Brief, the Joint Intervenors assert that Bluegrass "identified a little less than $2 million that has actually been spent on construction across its entire system" in response to AG ph DR 01. However, the data request and response cited in support of that statement relate to the planned projects itemized in J. Freeman's direct testimony (App. Exh. 8-C) that were partially or fully completed at the time of his hearing testimony, not expenditures for projects on the entire Bluegrass system since September 2019.

Additionally, in response to Joint Intervenors' assertions on p. 10 of their brief that due diligence costs incurred prior to system acquisition "should be completely disallowed for recovery," Bluegrass notes that NARUC's USoA guidelines provide for preliminary survey and investigation charges to be added to the value of plant assets when capitalized work is done on them. Both intervenors also assert that there must have been retirements from utility plant in service and that there must be net subtractions for such retirements in the base or forecasted test years. (AG Brief pp. 4-5; Jt. Int. Brief pp. 10-11). However, neither acknowledges or addresses

[15] Joint Intervenors' Brief p. 11, fn. 21 asserts that Bluegrass has not met the criteria to allow a plant acquisition adjustment.

[16]Citing 5/18/21 Hrg. 16:11:30 and 5/19/21 Hrg.10:10:50 (J. Cox).

the explanation that was given by Brent Thies at the hearing (5/20/21 9:11:00) for the $0 net amounts. The above-listed examples show that many of the intervenors' arguments lack merit.

4. Rates should go into effect without phase-in.

Finally, the Attorney General's suggestion that the Commission consider phasing-in the rates (Brief pp. 1-3) is not appropriate in these circumstances. These systems are distressed and are in need of current, or in the very near future, significant repair and rehabilitation to operate safely. As soon as feasible upon acquisition, Bluegrass began working to ensure that customers were and continue to be provided with safe and reliable service. The systems were, for the most part, poorly managed prior to acquisition, and the rates were artificially low. (Response to 1 AG 32). The legacy rates are unsustainable and do not address the needs of the entire Bluegrass system or any of its service areas, and these must be rectified to ensure continuity of service and the ability to address replacements and needed repairs in the future. Although the initial increase may be considered a shock, that is because the legacy rates for the systems have been too low to function as originally intended. In fact, if these systems were "siloed" out and treated individually, many of the rates would be even higher. (*See* Response to 1 AG 02 and fn. 9, above). In its project decisions and seeking unification of the rates, Bluegrass has worked to mitigate rate shock to the customers. (5/18/21 Hrg.14:19:15 (J. Cox)). KRS 278.030(1) provides that Bluegrass has a right to collect and receive fair, just, and reasonable rates for its service, and a phased-in approach for rates for these systems would thwart Bluegrass's right under the statute.

An order that phases in the rates over time would also threaten Bluegrass's constitutional rights. In *Federal Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591, 603 (1944), the U.S. Supreme Court expressly stated that rates must produce "enough revenue not only for operating expenses but also for the capital costs of the business." In *Bluefield Water Works Improvement Co. v. Public Serv. Comm'n*, 262 U.S. 679, 690 (1922), the Court expressly stated "[r]ates which

are not sufficient to yield a reasonable return on the value of the property used at the time it is being used to render the service are unjust, unreasonable, and confiscatory" because they deprive "the public utility company of its property in violation of the Fourteenth Amendment." Phased-in rates violate these requirements because only when the final phase is implemented will rates be sufficient to both cover operating costs and provide a fair rate of return. As a result, all prior phases are confiscatory. The Commission must approve the unified rate in full to go into effect without phase-in to meet the standard that Bluegrass continue providing safe, reasonable, and adequate service to its customers and to afford it a reasonable opportunity to earn a fair return on its investment in property used to provide that service while attracting necessary capital at reasonable rates.

C. The planned projects are necessary, and their costs should be recovered in the adjusted rates.

For each of the systems that it owns and operates as of the start of the forecasted test year (5/1/21), Bluegrass identified in its application the repairs, replacements, and improvements planned to be completed by the end of the forecasted test year (4/30/22) and their estimated cost. (Application ¶¶ 24-26 & Exh. 8-C (J. Freeman Testimony)). Bluegrass noted that all or most of the individual projects would not be categorized as new construction or extensions for which a KRS 278.020(1) certificate is needed — the projects do not extend its service area, do not create a wasteful duplication, or conflict with the service offered by other utilities. (*Id*. ¶ 24). In the alternative, Bluegrass requested a certificate for any project that needed one, and established that public convenience and necessity required the listed projects. (*Id.* ¶¶ 27-28).

Most of the identified projects are needed to maintain capacity and basic functionality of the system or to achieve compliance with environmental regulations. (Application ¶ 28). For sewer systems, environment compliance requires adherence to Division of Water discharge

permit conditions and keeping "non-discharging" facilities from discharging into the waters of the Commonwealth. If compliance had been maintained and worn-out parts replaced over time as they depreciated, the question of whether such maintenance and replacement projects required a KRS 278.020(1) certificate would not arise. Because routine repair, maintenance, and replacement were neglected, the individual projects accumulated and require work done over a relatively short timeframe, and that intensified activity and expenditure have a cumulative magnitude that may seem equivalent to new construction. The projects, however, do not lose their character as repairs or replacement of worn-out or non-functioning facilities.

The uncontroverted facts developed in this case show that the identified projects do not have to be certificated. None are "construction" within the meaning of KRS 278.020(1)(a), and none is an extension of the existing system for which being "ordinary" and "in the usual course of business" indicates that it is construction but of a type excepted from the certificate requirement by KRS 278.020(1)(a)(2). All are necessary to bring systems into compliance with service, safety, and environmental compliance and none will increase service capacity. (5/20/21 Hrg. 10:09:24, 10:12:48 (J. Freeman)). In the alternative, however, Bluegrass has proposed a standard by which some of the projects identified in its application could be construed to involve "construction of [a] plant, equipment, property, or facility" for furnishing wastewater or water service and thus require a certificate. These are the projects that are beyond fixing or repairing the existing systems as they are designed and involve something new — usually new tankage or a new process. (5/19/21 Hrg. 9:38:30 (J. Cox)). At the hearing (5/19/21 Hrg. 9:40:00 (J. Cox);

5/20/21 Hrg. 10:15:20 (J. Freeman)), Bluegrass witnesses identified planned projects that would go beyond fixing or repairing the existing systems as they are designed:[17]

System*	**Project**
Airview (p.4)	Install flow equalization storage Influent pumps from flow eq
Brocklyn (pp.8-9)	new treatment facility • Influent lift station • MBBR Activated Sludge • Clarifier • Peroxyacetic Acid disinfection • Yard piping and miscellaneous piping • Cat walk
Fox Run (p.13)	Install flow equalization storage Sludge Holding tank
Lake Columbia (p.24)	Flow equalization and pumping system Sludge digestor tank & blower
Delaplain (pp.46-47)	MBBR treatment process upgrade • Supplemental blower addition • MBBR Media • MBBR Diffusers • Aluminum Sulfate feed system Tertiary auto-strainer project • Tertiary auto-strainer • Strainer Feed pump system • Building (250 sf) • Site work and yard piping
Herrington Haven (p.50)	MBBR treatment process upgrade • Install Roughing MBBR Manhole • MBBR media, sieves, diffusers • Install Aluminum Sulfate feed and storage system
Woodland Acres	MBBR treatment process upgrade • Install Baffles for 3-Stage MBBR • MBBR media, sieves, diffusers • Install Aluminum Sulfate feed and storage system

* page references are to Jacob Freeman's direct testimony (App. Exh. 8-C)

[17] The witnesses listed Persimmon Ridge as a system with such a project, but the project is one that has been determined to be necessary only recently and was included neither in the Application listing of planned projects (App. Exh. 8-C pp.) nor the request for any required construction certificate.

Work has not begun on these projects. (5/20/21 Hrg. 10:16:45 (J. Freeman)). The projects that Mr. Freeman testified were fully or partially completed (*id.* 9:53:45 to 10:12:01, generally), were not ones that, by this standard, would require construction approval (*id.* 10:16:55).

Note that although new-tankage or new-process projects might be categorized as "construction," they might nonetheless qualify for the certificate requirement exception in KRS 278.020(1)(a)(2) for "ordinary extensions of existing systems in the usual course of business." In approving Bluegrass's acquisition of the systems it currently owns and operates the Commission generally required that Bluegrass adequately fund and maintain the systems,[18] and that ordinary utility obligation has involved a great deal of work fixing the systems to function as designed. The Joint Intervenors in particular seem to argue that the magnitude of the project costs in the aggregate or of the costs relative to the existing depreciated value of facilities at a single site means that there must be something that requires a certificate and that nothing can be an extension in the ordinary course. Commission and caselaw precedent, however, show that large-scale replacement or repair of facilities are properly categorized as "ordinary course" work excepted from the certificate requirement because the individual projects are relatively small compared to the utility's overall value or investment.[19] Those fundamentals are not altered by the Commission statements cautioning Springcrest (12/16/14 Order, Case No. 2014-00277, p.5)[20] that a project to purchase and install remote monitoring equipment — in the context of that

[18] *See, e.g.*, 8/14/19 Order, Appendix condition #4, Case No. 2019-00104.

[19] *See, e.g., American Dist. Tel. Co. v. Utility Reg. Com'n*, 619 S.W.2d 504 (Ky. App. 1981) (affirming Commission decision that no certificate was required for massive, year-after-year South Central Bell expenditure on maintenance and upgrades to its service); 8/6/14 Order in Case No. 2014-00171 (determining that No. Ky. Water District's $1.5 million structural lining project for rehabilitating 8500 linear feet of water main was exempt from certificate requirement; "proposed construction is an improvement to its existing system that may properly be classified as a maintenance or replacement project" (p.5)).

[20] The Joint Intervenors mischaracterize Case No. 2014-00277 as one in which Springcrest "sought permission to purchase and install a remote monitoring device…." (Brief p.22) Instead, the utility sought a deviation from the daily inspection requirement for a year, and supported that request with the

wastewater utility's precarious finances and vanishingly small undepreciated rate base — would likely require a certificate.

Intervenors' briefs do not propose a standard to use to distinguish certificate-required projects from other planned projects. No one argues that all of the planned projects require a KRS 278.020(1) certificate or that, for example, replacing or repairing a fence (see App. Exh. 8-C pp. 4, 7, 11, 13, 17, 24, 28, 30, 36, 40, 42)) or removing sludge or detritus (see *id.* pp. 4, 9, 17, 22, 24, 30, 33) or smoke testing a collection system (*id.* pp. 5, 9, 13, 15, 17, 22, 24, 26, 32) is "construction." Despite fulminations to the contrary in the Joint Intervenors' brief (*see* pp. 20-23), Bluegrass does not use the need (or not) for a Division of Water permit as a proxy for when a certificate might be required or granted or suggest that a project that needs a DoW construction permit under 401 KAR 5:005 § 1(2)(a) qualifies *a fortiori* under 807 KAR 5:001 § 15(3) for the "extension in the ordinary course" exception to the need for a KRS 278.020(1) certificate. If anything, Bluegrass's standard uses the need for a DoW permit as weighing in favor of a conclusion that a project involves "construction" — beyond maintenance-replacement or changes that do not affect process at the facility — that could be subject to KRS 278.020(1) certification. (*See, e.g.,* 5/20/21 Hrg. 10:16:35 (J. Freeman)).

Joint Intervenors then somewhat inconsistently propose a "rule" that the Commission "should not authorize CPCNs for any systems for which Bluegrass has not entered into an A[greed] O[rder]" with the Division of Water. (Jt. Int. Brief p.24).[21] This ignores the undisputed fact that some systems will not have an AO because they are categorized as non-

suggestion that the year would allow it to get its finances in order sufficiently to be able to afford the improvement and maybe qualify for a permanent deviation.

[21] Bluegrass agrees that not everything should be capitalized for a project "even if is part of an AO" (Jt. Int. Brief p.24). Costs for all the projects itemized in Application Exh. 8-C were included as appropriate in the rate base (capitalized) or operating expenses (not capitalized) in requesting the rate adjustment. *See* Application ¶ 24.

discharging and so are not regulated by the Division of Water. It is not clear whether the Joint Intervenors contemplate that no KRS 278.020(1) certificate would be required for a project on such a system or that no certificate would ever be available for such a system.[22] Their proposed "rule" is unsupported by law, precedent, or logic and would imprudently make a utility construction decision dependent on the existence of a particular type of environmental regulatory order.

The Joint Intervenors also ignore the distinction between ratemaking and certificate decisions by arguing that a project constitutes "construction" subject to the certificate requirement if it may result in increased charges to customers. Although cost and efficiency considerations may factor into a decision whether to grant a needed certificate,[23] the courts have cautioned against conflating the construction and ratemaking decisions.[24] The Commission's regulation for the "extension in the ordinary course" exception to the certificate requirement, 807 KAR 5:001 § 15(3), depends in part on whether the extension project will affect rates; however, a likely effect on rates cannot convert something into a "construction project" simply because it would fail to be an ordinary-course extension if it were construction in the first place. Grant of a construction certificate does not itself confer a particular ratemaking treatment, and a rate case allows for scrutiny of all manner of expenses and investments regardless of whether they require a construction certificate.

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[22] Joint Intervenors suggest that, without an AO, "many of the proposed improvements are unnecessary or are better characterized as routine maintenance activities." (Brief p.18) The former would be grounds for denying a certificate if one were required; the latter, a reason that no certificate was required.

[23] *See, e.g., Kentucky Utilities Co. v. Public Service Comm'n*, 252 S.W.2d 885, 890 (Ky. 1952) ("'duplication' also embraces the meaning of an excessive investment in relation to productivity or efficiency").

[24] *See, e.g., Blue Grass State Tel. Co. v. Public Service Comm'n*, 382 S.W.2d 81 (Ky. 1964) (overturning certificate denial because of disparity between cost basis and acquisition price); *American Dist. Tel. Co. v. Utility Reg. Com'n*, 619 S.W.2d 504, 505, 507 (Ky. App. 1981) (describing distinctness of inquiries for rate and construction-certificate cases).

A project type that both intervenors suggest might involve unwarranted costs is the installation of Mission alarms and remote monitoring systems at facility locations. The Attorney General suggests that "[i]f contractors will be physically present at each system daily, remote monitoring may constitute unnecessary duplication" (Brief p.4). The Joint Intervenors assert in their brief (p.15) that "the Commission should disallow either the capital and O&M expenses associated with the mission control system … or the costs of Midwest's daily visits." The evidence on this point is that the once-a-day inspection of mechanical equipment required by 807 KAR 5:071 § 7(4) is not a substitute for the continual monitoring of key facilities by the installed systems,[25] and that the remote monitoring of key facilities might be a reliable substitute for the daily personal inspection of all mechanical equipment at a site after all the projects are done, the system is stable, and Bluegrass's long-term data showed how well the remote monitoring alone sustaining the ability to perform service. (5/19/21 Hrg. 11:06:30 (J.Cox)). Once stability has been achieved, remote monitoring may be a reliable alternative to daily inspections and Bluegrass can ask the Commission for a waiver of the daily inspection requirement.

CONCLUSION

WHEREFORE, Bluegrass Water Utility Operating Company, LLC, respectfully requests that this Commission (1) grant its application request for a general adjustment of rates for all its customers and (2) either (a) declare that the planned projects itemized in Application Exh. 8-C do not require a construction certificate or (b) grant a construction certificate for any project for which it is required.

[25] For example, the continual monitoring alerts personnel of system/operations problems 24/7/365, allowing for a response before those problems adversely affect customers or cause an environmental violation. See 5/19/21 Hrg. 9:46:45 11:08:05, for Josiah Cox testimony about the cost savings and service improvements from installation and use of the remote monitoring systems.

Respectfully Submitted,

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