

**COMMONWEALTH OF KENTUCKY**  
**BEFORE THE PUBLIC SERVICE COMMISSION**

IN THE MATTER OF:

THE ELECTRONIC APPLICATION OF BLUEGRASS	)	
WATER UTILITY OPERATING COMPANY, LLC	)	Case No.
FOR AN ADJUSTMENT OF RATES AND APPROVAL	)	2020-00290
OF CONSTRUCTION	)	

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**Joint Intervenors’  
Post-Hearing Brief**

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Come now The Homestead Home Owners Association, Inc. (“Homestead”), Longview Homeowners Association, Inc. (“Longview”), The Deer Run Estates Homeowners Association, Inc. (“Deer Run”), Arcadia Pines Sewer Association, Inc. (“Arcadia”), Carriage Park Neighborhood Association, Inc. (“Carriage Park”), Marshall Ridge Sewer Association, Inc. (“Marshall Ridge”) and Randview Septic Corporation (“Randview”) (collectively, “Joint Intervenors”), by counsel, pursuant to the Commission’s May 20, 2021 Order and other applicable law, and do hereby tender their Brief in opposition to several elements of the Application for an adjustment of rates and issuance of Certificates of Public Convenience and Necessity (“CPCNs”) filed by Bluegrass Water Utility Operating Company, LLC (“Bluegrass”) on November 19, 2020, respectfully stating as follows:

**I. INTRODUCTION**

Bluegrass’s business plan is to purchase small, often distressed, water and wastewater systems and quickly restore them to their former glory so as to allow for the safe and reliable provision of service to customers who are overwhelmingly residential in nature. Bluegrass thereby purports to bring efficiency and uniformity to these systems for the benefits of the systems’

customers and alleviates a constant source of headaches and frustrations for environmental, health, rate and service regulators who spend a disproportionate amount of time on small utilities.

In this case, however, Bluegrass's flawed execution of its business plan is substantially detrimental to the Joint Intervenors and other Bluegrass customers. In proverbial "putting the cart before the horse" fashion, Bluegrass tendered its rate case prematurely and as a forecasted test year – in violation of commitments it made to the Commission and before it even owned eight of the systems for which it sought to increase rates. Bluegrass then sought to impose a higher rate increase upon a smaller number of customers. Making matters worse, Bluegrass requests a premium return on its sole investor's equity. Numerous adjustments are necessary to Bluegrass's proposed rates, however, the record is replete with inconsistencies and corrections which make parsing the record very difficult. And with respect to the request for CPCNs, which were only formally identified for the first time on the second day of the hearing, Bluegrass has already violated Commission Orders and Kentucky law by commencing projects that will materially effect its financial condition and cause increased rates for its customers without first obtaining a CPCN. Moreover, Bluegrass has not shown that each of its proposed projects is the reasonable least cost option, nor has it demonstrated that many of capital projects it seeks to undertake are even necessary capital expenditures.

Bluegrass has failed to satisfy its burden of proof in many key aspects of its application. This case underscores the maxim that "bad facts make bad law." Rather than excuse Bluegrass for its many faults and failures, the Commission should dismiss Bluegrass's entire case without prejudice to be refiled in the future when it may keep its regulatory commitments and fully comply with Kentucky law.

## II. BACKGROUND

Bluegrass tendered its rate application on September 30, 2020, but, due to various deficiencies identified in the application, the application was not accepted as administratively complete and deemed filed until November 19, 2020. At that point, Bluegrass did not yet own any of the systems that were the subject of Case No. 2020-00297,<sup>1</sup> and had, only that same day, acquired the systems referenced in Case No. 2020-00028.<sup>2</sup> The Joint Intervenors were allowed to intervene by Order entered on February 8, 2021. Following four sets of information requests from Commission Staff, two sets of information requests from the Joint Intervenors and one set of information requests from the Attorney General, a hearing was held on May 18 – 20, 2021. Following additional post-hearing discovery, the matter is now ready to be briefed.

## III. ARGUMENT

### **A. Because Bluegrass Simultaneously Failed to Comply with its Prior Commitments and Basic Statutory Ratemaking Requirements, the Systems Acquired in Case No. 2020-000297 and Case No. 2020-00028 Should be Excluded in all Respects from any Rate Order and the Systems Acquired in Case No. 2019-00104 Should be Limited to Current Expenses**

#### **1. Systems Acquired in Case No. 2020-00297**

In an Order entered on February 12, 2021, the Commission correctly found that Bluegrass had not adopted the tariffs of the wastewater systems it was acquiring in Case No. 2020-00297 at the time its rate application was accepted for filing and, therefore, new rates could not be applied to the customers of these systems.<sup>3</sup> These systems represent a significant portion of Bluegrass’

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<sup>1</sup> These systems include Delaplain Disposal Company (“Delaplain”); Herrington Haven Wastewater Company, Inc. (“Herrington Haven”); Springcrest Sewer Company, Inc. (“Springcrest”); and Woodland Acres Utilities, LLC (“Woodland Acres”).

<sup>2</sup> These systems include Arcadia, Marshall Ridge, Carriage Park and Randview.

<sup>3</sup> See Order, Case No. 2021-00290 (Ky. P.S.C. Feb. 12, 2021).

proposed capital investments – just over \$2 million.<sup>4</sup> Although this case uses a forecasted test year where future investments are allowed to be recovered in base rates, the Commission should exclude the cost of all capital investments to be made through the end of the forecasted test year on each of the four systems in question.

First, these systems were not even owned by Bluegrass at the time that the rate application was originally tendered to the Commission or accepted for filing nearly two months later. The Joint Intervenors are unaware of any precedent by which a Kentucky utility has been allowed to utilize the forecasted test year process to raise rates on the customers of whole systems that were not yet owned by the applicant when the application was filed.

Second, the “used and useful” doctrine comes into play in this context. Unlike gas, electric and most water systems where all of a utility’s customers are served by a central source (i.e., a pipeline, generator or treatment facility), there is no central source of supply for the various systems owned by Bluegrass.<sup>5</sup> Each of these operates entirely independently of one another. Thus, while the Delaplain system might need over \$1 million in capital investment,<sup>6</sup> none of that will be used and useful for the customers served by the Brocklyn or Airview systems, for example. In this context, it is plainly clear that the doctrine bars charging the costs of investments in the systems acquired in Case No. 2020-00297 to the customers of the other systems. Of course, this does not bar Bluegrass from making the necessary investments in the Case No. 2020-00297 systems (subject to Commission approval under KRS 278.020) – the doctrine merely bars recovery of those costs from consumers who will never benefit from them.

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<sup>4</sup> See Bluegrass Application, ¶ 25 (Sept. 30, 2020).

<sup>5</sup> See Cox Testimony, Hearing Video Record (“HVR”) 16:30:50 (May 20, 2021).

<sup>6</sup> The Joint Intervenors do not concede this point.

While this outcome may at first appear harsh, it springs entirely from a circumstance created exclusively by Bluegrass. In its haste to raise rates and create a unified rate structure, it prematurely filed its rate application before it even owned the four systems in question. In fact, Bluegrass tendered its rate application even before it filed the acquisition application in Case No. 2021-00297. Bluegrass will likely argue that this was done to mitigate the impact of the rate increase by spreading it over a larger customer base, however, such an argument flies in the face of the Commission's regulations concerning adopting tariffs, Bluegrass's commitments to the Commission regarding the timing of its initial rate increase and – as set forth above – the “used and useful” doctrine that has been an integral part of Kentucky utility jurisprudence for decades.

## **2. Systems Acquired in Case No. 2020-00028**

Ironically, Bluegrass closed on the acquisitions of the four systems at issue in Case No. 2020-00028 on the same day that its rate application was finally accepted for filing at the Commission. A more troubling circumstance arises in the context of these systems – Bluegrass violated its express commitment to the Commission with regard to the timing of its initial effort to increase the rates of these four systems. The Commission's Order in Case No. 2020-00028 accurately defines Bluegrass's commitment:

*The proposed changes in Bluegrass Water's tariff do not affect its existing customers' rates or other terms of service. As a part of its plan to integrate its Kentucky systems, Bluegrass Water anticipates that by mid-2021 it will be filing proposed revisions and adjustments to establish a unified tariff with uniform rates through its service area. Bluegrass Water advises that it will file for a general rate adjustment of the rates for the four subject systems – individually, as a group, or as part of a wider adjustment – within 15 months of the last acquisition closing on the Arcadia Pines, Carriage Park, Marshall Ridge, and Randview facilities, when Bluegrass Water will have a full year of data from owning and operating those systems.*

The Commission finds that the proposed initial rates for the acquired systems will be fair, just, and reasonable and should be approved.

We base this finding on a variety of factors, notably that the rates are currently being charged to the systems' customers and that the rates are lower than any existing rates for Bluegrass Water's current customers. *We also accept these rates based upon Bluegrass Water's assertion that it will file in mid-2021 for a unified rate for its various systems.*<sup>7</sup>

Bluegrass hangs its Stetson on the fact that it filed the application in this case “within fifteen months of the last acquisition closing” on the four systems at issue in Case No. 2020-00028. But that argument is misleading. Bluegrass closed the acquisition of these systems on November 19, 2020 – which is *the same day* its rate application was accepted for filing.<sup>8</sup> Thus, to the extent that the 15-month window is critical to interpreting the regulatory commitment, as Bluegrass will contend, it did not let any grass grow under its feet. Of the approximately 546 days it afforded itself to file a rate increase, it was deemed to have filed the application on day-one. Clearly, the 15-month window argument is a grasping, after-the-fact effort to justify the clearly premature nature of its actions.

The regulatory commitment expressed in Case No. 2020-00028 is better understood in its full context – the one where Bluegrass said it would “have a full year of data from owning and operating those systems” prior to filing a rate increase. Had Bluegrass not delayed in closing on the four systems,<sup>9</sup> such a first-year anniversary filing would have neatly coincided with the “mid-2021” timeframe referenced in the Order. It would have also allowed Bluegrass to answer Staff's

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<sup>7</sup> See *In the Matter of the Electronic Proposed Acquisition by Bluegrass Water Utility Operating Company, LLC of Wastewater System Facilities and Subsequently Tariffed Service to Users Presently Served by those Facilities*, Order, Case No. 2020-00028, pp. 19-20 (Ky. P.S.C June 19, 2020) (emphasis added).

<sup>8</sup> It is worth noting that Bluegrass tendered its application on September 30, 2020 – fifty (50) days *before* it acquired the systems in Case No. 2020-00028.

<sup>9</sup> Bluegrass has offered no evidence to suggest that its delay in closing on these four systems was in any way due to the actions or inactions of the predecessors in interest. Bluegrass could have completed the acquisitions of the systems much sooner had it been diligent in doing so.

data requests with something other than speculative responses based upon a lack of information.<sup>10</sup> Bluegrass’s efforts to reinterpret the Order, should be rejected.<sup>11</sup> Indeed, this is the very sort of mischief which KRS 278.192 expressly prohibits:

Any application utilizing a forward-looking test period shall 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.<sup>12</sup>

Bluegrass conveniently forgets the requirement that there be “not less than six (6) months of actual historical data” to support its filing. Since the base period ended on December 31, 2020 – which is only forty-two (42) days after it closed the acquisition on the four systems in Case No. 2020-00028, its forecasted test year application is statutorily deficient as applied to these systems.

Again, Bluegrass’s dilemma is clearly one of its own making. Bluegrass could clearly calculate the financial cost of its commitment to defer an initial rate increase for the Case No. 2020-00028 systems when it made the commitment to wait at least a year. It also controlled the timeline for completing the acquisitions. Based upon Bluegrass’s commitment, the Commission should reject Bluegrass’s request to increase the rates on these four systems and require Bluegrass to have at least one year of actual knowledge and experience with these systems before increasing their rates. Accordingly, the Joint Intervenors respectfully request the Commission to dismiss,

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<sup>10</sup> See, e.g., Bluegrass Supplemental Response to Staff-DR4-03(c)-(d) (May 28, 2021) (“Bluegrass does not have itemized data for this charge as listed....”); Bluegrass Supplemental Response to Staff-DR4-04(a) (“Due to the lack of data in the base year, the Company was not able to forecast these charges.”).

<sup>11</sup> Bluegrass has not yet adjusted to being regulated. In its initial response to Staff’s Fourth Set of Information Requests, Bluegrass simply chose not to answer and did not follow through on its promise to be prepared to respond at the hearing. See Bluegrass’s Objection and Response to Commission Staff’s Fourth Request for Information (May 12, 2021) (“Bluegrass has been preparing for the formal hearing in this matter scheduled to begin May 18, 2021, as well as attending to its continuing service and regulatory duties. It cannot additionally provide full responses to all these extra requests for information.”).

<sup>12</sup> See KRS 278.192(2)(a).

without prejudice, that portion of the proposed rate increase that would apply to the systems acquired in Case No. 2020-00028. Even though they technically became customers of Bluegrass on the very day the utility's application was accepted for filing, the application was statutorily deficient with regard to each of these systems and in express violation of the applicant's commitments.

### **3. The Systems Acquired in Case No. 2019-00104 Should Not be Subject to a Forecasted Test Year**

Finally, it bears emphasis that Bluegrass has broken an additional commitment to the Commission by filing a rate case using a forecasted test year for the systems acquired in Case No. 2019-00104. As pointed out the hearing, Bluegrass testified in Case No. 2019-00104 that when it made its first rate filing it would do so based upon the Company's "current expenses."<sup>13</sup> However, by filing the present case using a forecasted test year, Bluegrass seeks to inject millions of dollars of additional rate base and operations and maintenance ("O&M") expense into its revenue requirement. This is patently unfair. Accordingly, Bluegrass's use of a forecasted test year with regard to the systems acquired in Case No. 2019-00104 should be rejected. If it is not possible for the Commission to determine the historical expenses attributable to these systems, then Bluegrass's case should be dismissed without prejudice in regard to these systems as well.

#### **B. Bluegrass's Request for an Adjustment of Rates Should be Adjusted in Several Key Respects**

Bluegrass seeks an increase of rates of approximately \$2.51 million over its current revenues of approximately \$1.24 million – a 200% increase.<sup>14</sup> The rate increase is driven to some degree by the amount of capital investment which Bluegrass has made and continues to make.

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<sup>13</sup> See Cox Testimony, HVR 10:02:50 (May 19, 2021).

<sup>14</sup> See *id.*, HVR 16:08:30 (May 18, 2021); Thies Direct Testimony, p. 5 (Sept. 30, 2020).



While starting with an original book value of approximately \$856,000,<sup>15</sup> Bluegrass’s President noted: “The amount of capital required to bring these systems back into compliance dwarfs the amount of existing net book value of the systems we’ve purchased.”<sup>16</sup> This rate increase is excessive under the circumstances and, based upon several errors with regard to the calculation of rate base and O&M expense – as well as problems with its calculated return – several adjustments are necessary.<sup>17</sup>

## 1. Rate Base

### a. Utility Plant in Service

Bluegrass’s application stated that it would invest approximately \$7.56 million (\$6.4 million for wastewater and \$1.16 million for water) in the various systems it had acquired in Kentucky.<sup>18</sup> All of this amount was projected to be invested prior to the end of the forecasted test year on April 30, 2022.<sup>19</sup> At the hearing Mr. Cox affirmed that the company’s rate hearing notice correctly stated that Bluegrass had already invested “more than \$5 million in improving water and wastewater infrastructure” in its Kentucky systems.<sup>20</sup> However, in response to post-hearing data requests from the Attorney General, Bluegrass only identified a little less than \$2 million that has actually been spent on construction across its entire system.<sup>21</sup> Even still, this more than doubles

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<sup>15</sup> See Cox Testimony, HVR 16:11:30 (May 18, 2021).

<sup>16</sup> See *id.*, HVR 16:12:25 (May 18, 2021).

<sup>17</sup> Resources did not permit the Joint Intervenors to retain a financial or engineering expert. Thus, the adjustments addressed herein are generally qualitative in nature.

<sup>18</sup> See Bluegrass Application, ¶¶ 25-26.

<sup>19</sup> See *id.*, ¶ 32.

<sup>20</sup> See Hearing Notice, p. 1; Cox Testimony, HVR 16:27:54 (May 18, 2021). Table 1, *infra.*, suggests that this number might be inflated.

<sup>21</sup> See Bluegrass Response to AG’s Post-Hearing Data Request, Excel Spreadsheet (May 28, 2021).

the amount of utility plant in service that Bluegrass uses to justify its rate base calculation in this proceeding.

Another problem identified with the utility plant in service for Bluegrass was the inclusion of charges for “Construction Design and Investigative Services” in each of its capitalized plant investments. In reality, Bluegrass is simply seeking to recoup the charges that it incurred as part of its pre-acquisition due diligence for each system by tacking them onto the post-acquisition construction work to be undertaken.<sup>22</sup> This is not appropriate for ratemaking purposes as Bluegrass’s customers have no duty to pay for the costs of Bluegrass determining whether to purchase these systems.<sup>23</sup> In total, the cost of these due diligence services amounts to \$1,885,327 according to the direct testimony of Mr. Jacob Freeman.<sup>24</sup> To the extent these costs are incurred by Bluegrass prior to acquisition of a system, they should be completely disallowed for recovery.

b. Plant Retirements/Efficiencies

In its Application, Bluegrass pledged that it would duly account for any plant retirements through the forecasted test year.<sup>25</sup> However, a casual glance at Bluegrass’s updated financials confirms that it recorded \$0 for plant retirements in both the base period and the forecasted test

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<sup>22</sup> See Cox Testimony, HVR 9:21:30 (May 19, 2021).

<sup>23</sup> The value of these investigative services is evidenced by the fact that Bluegrass’s standard operating procedures is to take the information to the Division of Water in order create Agreed Orders to remediate identified shortcomings. Presumably, an expenditure in compliance with an environmental regulator’s guidance is demonstrative of prudence on the part of the utility. Thus, Bluegrass has a vested interest in entering into Agreed Orders as a means to guaranteed future cost recovery of the capital investments necessary for compliance. As set forth in Section III, D., *infra.*, Bluegrass’s business process unwisely bypasses the Commission’s CPCN procedures and effectively nullifies any consideration of the rate impact of its investment decisions.

<sup>24</sup> See Direct Testimony of Mr. Jacob Freeman, pp. 4-55 (Sept. 30, 2020). Of this amount \$485,200 is attributable to the systems acquired in Case No. 2021-00297. Because all of the investment associated with that case should be excluded from Bluegrass’s rate base for ratemaking purposes, the amount of the adjustment to rate base should be \$1,400,127 to avoid duplication. The Construction Design and Investigative Services amounts are summarized in Table 1, *infra.*

<sup>25</sup> See Thies Testimony, p. 13 (Sept. 30, 2020).

year.<sup>26</sup> This is simply not credible and demonstrates a lack of attention to detail which is unacceptable for a regulated utility. Bluegrass again justifies this on the basis that the \$0 figure is a “net amount,” however, it lacks the accounting records necessary to demonstrate that this is in fact the case. Though the Joint Intervenors lack the information necessary to calculate what a suitable adjustment would be, some adjustment to rate base is likely necessary in this context.

c. Plant Acquisition Adjustments

In Case No. 2019-00104, Case No. 2019-00360, and Case No. 2020-00297, Bluegrass conceded that it paid more than the current book value for many of the systems it was acquiring.<sup>27</sup> The Commission has historically disallowed plant acquisition adjustments unless certain criteria are satisfied.<sup>28</sup> In this case, Bluegrass has not offered any justification to support a plant acquisition adjustment and none should be allowed.

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<sup>26</sup> See Bluegrass Base Period Update, Schedule B-2 (March 19, 2021).

<sup>27</sup> See *In the Matter of the 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 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.*, Order, Case No. 2019-00104, pp. 20-21 (Ky. P.S.C. Aug. 14, 2019); *In the Matter of the Electronic Proposed Acquisition by Bluegrass Water Utility Operating Company, LLC of Ownership and Control of Assets by Center Ridge Water District, Inc., Joann Estates Utilities, Inc. and River Bluffs, Inc.*, Order, Case No. 2019-00360, p. 16 (Ky. P.S.C. Feb. 17, 2020); *In the Matter of the Electronic Proposed Acquisition of Bluegrass Water Utility Operating Company, LLC and the Transfer of Ownership and Control of Assets by: Delaplain Disposal Company; Herrington Haven Wastewater Company, Inc. Springcrest Sewer Company, Inc. and Woodland Acres Utilities, LLC*, Order, Case No. 2020-00297, p. 13 (Ky. P.S.C. Jan. 14, 2021).

<sup>28</sup> See *In the Matter of an Adjustment of Rates of Delta Natural Gas Company, Inc.*, Order, Case No. 9059 (Ky. P.S.C. Sept. 11, 1995) (“To establish that it is entitled to recover the plant acquisition adjustment, a utility must present evidence that shows “that the purchase price was established upon arms-length negotiations, the initial investment plus the cost of restoring the facilities to required standards will not adversely impact the overall costs and rates of the existing and new customers, operational economies can be achieved through the acquisition, the purchase price of utility and nonutility property can be clearly identified, and the purchase will result in overall benefits in the financial and service aspects of the utility’s operations.”).

## 2. Operations & Maintenance Expense

### a. Corporate Allocations

Bluegrass proposed the use of the Massachusetts Formula for developing the factor to be applied to CSWR, LLC's ("CSWR") total corporate budget when determining the amount of corporate overhead to be allocated to Bluegrass. Once again, Bluegrass's methodology ignores several critical facts which should reduce the allocated amount.

First, while Bluegrass allocated a portion of CSWR's overhead to business development activities and excluded that amount from the total corporate overhead to be allocated under the Massachusetts Formula, the hearing established that Bluegrass failed to include all business development expenses in determining the excluded amount. Bluegrass indicated that it had accounted for the wages, salaries, benefits and travel expenses associated with the business development function, but conceded that it had not taken into account the information technology infrastructure, office rents, insurance, legal and payroll taxes associated with the business development function.<sup>29</sup> These additional amounts – and any other expenses not related to the provision of service to Bluegrass customers – should be excluded from corporate overhead that is allocated to Bluegrass.<sup>30</sup>

Second, CSWR offers health insurance and life insurance at very little cost to its employees. The Commission has addressed the sharing of employee insurance benefit costs in several recent orders and should act consistently in this case to disallow a portion of the corporate allocation related to health and life insurance costs.

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<sup>29</sup> See Thies Testimony, HVR 15:23:00 (May 19, 2021).

<sup>30</sup> See Bluegrass Response to Joint Intervenors Post-Hearing Data Request 10 (May 31, 2021).

Third, CSWR provides bonuses and discretionary 401(k) contributions to its officers and employees, but has no formal criteria or written policy by which such amounts are awarded.<sup>31</sup> The Commission has historically disallowed incentive compensation that is tied to earnings. Until such time as CSWR and Bluegrass can demonstrate that their bonus and discretionary 401(k) contributions system does not violate the Commission's ratemaking standards, such bonus payments should be disallowed from the corporate allocation for ratemaking purposes.

Fourth, it is not clear that the Massachusetts Formula is appropriate in this case. Bluegrass benefits from taking assets that are fully depreciated or distressed and rehabilitating them. Since this is the first rate case Bluegrass has filed, its utility plant in service remains very low as a percentage of the total system.<sup>32</sup> In contrast, Bluegrass produces a significantly higher amount of revenue on a percentage basis when compared to other operating subsidiaries of CSWR.<sup>33</sup> This suggests that Bluegrass's revenues are proportionately higher compared to utility plant of other operating companies in the CSWR hierarchy. And given the redundancy inherent in the contracting costs discussed below, it is not clear that Bluegrass's direct labor expenses afford a fair perspective on the true corporate costs attributable to Bluegrass.<sup>34</sup> The Joint Intervenors believe that that the very unique circumstances of this case suggest that a better allocation

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<sup>31</sup> See Bluegrass Response to Joint Intervenors Post-Hearing Data Requests 6 and 7 (May 31, 2021).

<sup>32</sup> See Bluegrass Test Year Update, p. 17 (March 19, 2021).

<sup>33</sup> See *id.*

<sup>34</sup> Of note, the "Direct Labor" component dramatically increased in Bluegrass' Response to the Joint Intervenors' post-hearing data requests. See Bluegrass Response to Joint Intervenors' Post-Hearing Data Request 11 – Confidential (June 1, 2021). This underscores the fact that even a minor incremental change in O&M expenses can have a hugely disproportionate impact upon the corporate allocation.

methodology would be to compare Bluegrass's total customer connections to the total number of connections within the CSWR family, which would be approximately 4.0%.<sup>35</sup>

b. Contractor Expenses

Careful scrutiny should also be given to Bluegrass's contractor expenses because contractors are whom Bluegrass's customers are most likely to interface with. In fact, only in the event that a customer escalates a billing or service dispute beyond the normal level of service or reaches out directly to Bluegrass would they ever have contact with a Bluegrass employee.<sup>36</sup> Bluegrass's records indicate that the company will have less than one direct contact with a customer per month on average.<sup>37</sup>

A significant portion of Bluegrass's O&M expense is spent on a single contractor – Midwest Water Operations, LLC (“Midwest”). Despite paying for expensive mission control remote monitoring devices,<sup>38</sup> Bluegrass still pays Midwest for having a technician visit each system each day.<sup>39</sup> Ironically, the person visiting the systems on Midwest's behalf today are the same individuals who were previously providing operations and maintenance services on behalf of the prior owner,<sup>40</sup> which suggests that retaining Midwest may not be the financial panacea that was promised. Thus, in addition to the capital costs of the mission control system, Bluegrass is also paying for the O&M expenses associated with the mission control subscription and the cost

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<sup>35</sup> The Joint Intervenors believe Bluegrass's 3,400 Kentucky customers would equate to approximately 4.0% of CSWR's projected test year customer base of 85,000 connections. *See* Cox Testimony, HVR 16:04:50 (May 18, 2021).

<sup>36</sup> *See* Cox Testimony, HVR 16:06:50 (May 18, 2021).

<sup>37</sup> *See* Bluegrass Response to Joint Intervenors' Post-Hearing Data Request No. 1 (May 31, 2021).

<sup>38</sup> Based upon Commission precedent, the installation of these \$5,000 - \$10,000 units without a CPCN is itself confirmation that Bluegrass has violated KRS 278.020 by not timely seeking CPCNs. *See* Note 69, *infra*.

<sup>39</sup> *See* Cox Testimony, HVR 10:30:00 (May 19, 2021); Thomas Testimony, HVR 11:45:45 (May 20, 2021).

<sup>40</sup> *See* Bluegrass Response to Joint Intervenors Post-Hearing Data Request 8 (May 31, 2021).

of Midwest's daily visits. This is unnecessarily duplicative, and the Commission should disallow either the capital and O&M expenses associated with the mission control system (which was not the subject of a CPCN) or the costs of Midwest's daily visits.

Bluegrass also confirmed at the hearing that the average cost of the Midwest service agreements are likely to fall at the end of the test year as the oldest contracts expire and are replaced with contracts at a lower rate.<sup>41</sup> The Commission should take into account this adjustment and allow only the contract rate that has been most recently negotiated for Midwest. This adjustment is particularly appropriate in light of Bluegrass's failure to undertake any analysis as to whether the retention of contracts is less expensive than hiring employees to perform the work.

A significant portion of Bluegrass's other outside expenses arise from services provided by Elasticity, LLC, a public relations and marketing firm. The majority of the work Elasticity appears to have done for Bluegrass appears to have been promotional in nature. Therefore, it should also be excluded.<sup>42</sup>

### **3. Return**

#### **a. Capital Structure**

For purposes of calculating Bluegrass's return, the Joint Intervenors agree with Bluegrass's proposal to impute an equity to debt ratio of 1:1,<sup>43</sup> meaning that Bluegrass will be deemed to be capitalized at 50% equity and 50% debt for ratemaking purposes.

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<sup>41</sup> See Cox Testimony, HVR 9:23:45 (May 19, 2021).

<sup>42</sup> See 807 KAR 5:016.

<sup>43</sup> See Jennifer Nelson Direct Testimony, p. 3 (Sept. 30, 2020).

b. Interest Rates

Bluegrass forecasts a long-term interest rate of 9.5%,<sup>44</sup> however, the testimony at the hearing demonstrated that the rate environment for debt has improved since the application was first tendered.<sup>45</sup> At the hearing, Bluegrass agreed that updated interest rates for similarly situated CCC-rated companies were approximately 6.0% to 6.97%.<sup>46</sup> Thus, instead of using the 9.5% requested by Bluegrass, the Commission should ascribe no more than a 6.0% to 6.97% interest rate for Bluegrass's debt capital.

c. Return on Equity

As to the equity component of its return, Bluegrass proposes a base return of 10.05%, based upon a range of 9.74% to 10.41%.<sup>47</sup> Bluegrass then proposes to add an additional 1.75% small company risk adjustment premium to its requested return.<sup>48</sup> The Joint Intervenors urge the Commission to deny the request for the premium adder on the basis that Bluegrass has failed to demonstrate that such a premium is necessary to attract investment. As an initial matter, the facts are clear that Bluegrass has not had trouble attracting equity. It is fully capitalized with equity that was invested even though the business plan called for Bluegrass to lose money for a period of time following the acquisition of the various systems.<sup>49</sup> Moreover, Bluegrass has not conducted any analysis to demonstrate that its business is any more risky than other similarly situated companies in the market. It has not conducted a study regarding the elasticity of pricing for water and

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<sup>44</sup> See Bluegrass Application, ¶ 32.

<sup>45</sup> See D'Ascendis Testimony, HVR 13:44:09 (May 19, 2021).

<sup>46</sup> See Cox Testimony, HVR 9:34:50; (May 19, 20201); D'Ascendis Testimony, HVR 13:50:10 (May 19, 2021).

<sup>47</sup> See Direct Testimony of Dylan D'Ascendis, p. 6 (Sept. 30, 2021).

<sup>48</sup> See *id.*

<sup>49</sup> See Cox Testimony, HVR 16:14:38 (May 18, 2021); D'Ascendis Testimony, HVR 13:30:40 (May 19, 2021).



wastewater services,<sup>50</sup> and it concedes that such services are essential which most consumers are likely to pay for ahead of discretionary goods and services.<sup>51</sup> Moreover, Bluegrass's customers are overwhelmingly residential in nature, meaning that the loss of any single customer is unlikely to have a material impact upon Bluegrass's financial condition.<sup>52</sup> No actual predicate has been established to support the award of small company risk premium for equity and Bluegrass's request should be denied.

**C. Bluegrass's Unified Rate Proposal Results in a Rate Design that  
is Unfair, Unjust and Unreasonable.**

The centerpiece of Bluegrass's rate case is the imposition of a unified rate design that applies to all customers regardless of system based upon them being regarded as a single system.<sup>53</sup> While this objective is administratively appealing, it most certainly gives rise to significant examples of customers of some systems subsidizing the costs of other systems. Bluegrass justifies this on the basis that its customer base is overwhelmingly homogenous in character and, over time, any initial inequities will balance themselves out.<sup>54</sup> The problem with this, of course, is that Bluegrass is not a single system served by a central source. It is a collection of over a dozen unique systems that all have their particular characteristics. While achieving a unified rate may be an appropriate goal over a period of years, it is unfair, unjust and unreasonable to make the leap to a unified rate in a single proceeding. The Joint Intervenors urge the Commission to apply a limiting factor – such as 10% - to the amount of any single system's total capital expense that may be

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<sup>50</sup> D'Ascendis Testimony, HVR 13:22:25 (May 19, 2021).

<sup>51</sup> See *id.*, HVR 13:21:50 (May 19, 2021).

<sup>52</sup> See *id.*, HVR 13:28:30.

<sup>53</sup> See Cox Testimony, HVR 16:28:30 (May 18, 2021).

<sup>54</sup> See Cox Direct Testimony, pp. 72-73 (Sept 30, 2020).

shared with customers from other systems. In subsequent cases, as the overall health of the Bluegrass system improves, this factor may be upwardly adjusted to arrive at a unified rate provided that Bluegrass demonstrates sufficient progress towards achieving the promised financial and operational efficiencies. Such a rate design would prevent massive subsidies of systems that have historically been poorly run while also aligning the interest of customers to have low rates with Bluegrass to optimize and expand its system.

**D. Bluegrass' Request for Certificates of Public Convenience and Necessity are not Supported by Adequate Evidence and are Inconsistent with Kentucky Law**

The Joint Intervenors have three principal concerns with Bluegrass's request for Certificates of Public Convenience and Necessity ("CPCNs"). First, such requests are based upon an incorrect understanding of Kentucky law and have led exactly to the sort of rate shock which customers abhor and the Commission sought to prevent through the four acquisition case orders. Second, Bluegrass has not demonstrated that its proposed capital investments are in fact the reasonable least cost options and, accordingly, the Commission should not issue CPCNs until such time as Bluegrass can sustain its burden of proof. Third, the fact that Bluegrass has not entered into Agreed Orders with the Kentucky Division of Water for several of the systems it now owns suggests that many of the proposed improvements are unnecessary or are better characterized as routine maintenance activities. The Joint Intervenors offer Table 1 to support this analysis:

**Table 1 – Bluegrass Water Utility Operating Company**

<b>System</b>	<b>Original Estimated Improvement Cost<sup>55</sup></b>	<b>Less Construction Design &amp; Investigation<sup>56</sup></b>	<b>Less Previously Invoiced Work<sup>57</sup></b>	<b>Unexpended</b>
Airview	\$ 418,900	\$(119,000.00)	\$ (146,251)	\$ 153,649
Arcadia Pines	\$ 61,000	\$ (26,000.00)	\$ -	\$ 35,000
Brocklyn	\$ 1,014,350	\$(155,850.00)	\$ (262,637)	\$ 595,863
Carriage Park	\$ 106,000	\$ (31,000.00)	\$ -	\$ 75,000
Fox Run	\$ 321,450	\$ (76,950.00)	\$ (160,611)	\$ 83,889
Golden Acres	\$ 239,900	\$ (55,900.00)	\$ (64,608)	\$ 119,392
Great Oaks	\$ 241,850	\$ (58,350.00)	\$ (104,303)	\$ 79,197
Timberland	\$ 442,900	\$(119,900.00)	\$ (94,663)	\$ 228,337
Kingswood	\$ 129,100	\$ (48,100.00)	\$ (67,122)	\$ 13,878
Lake Columbia	\$ 308,800	\$ (75,800.00)	\$ (106,605)	\$ 126,395
LH	\$ 138,450	\$ (48,950.00)	\$ (59,920)	\$ 29,580
Marshall Ridge	\$ 81,000	\$ (31,000.00)	\$ -	\$ 50,000
Randview	\$ 324,650	\$ (68,150.00)	\$ (10,933)	\$ 245,567
Persimmon Ridge	\$ 260,183	\$ (85,017.00)	\$ (140,131)	\$ 35,035
River Bluff	\$ 302,700	\$ (88,700.00)	\$ (460,365)	\$ (246,365)
Center Ridge #1	\$ 229,455	\$ (75,405.00)	\$ (62,685)	\$ 91,365
Center Ridge #2	\$ 336,650	\$ (75,150.00)	\$ (108,655)	\$ 152,845
Center Ridge #3	\$ 363,800	\$ (95,800.00)	\$ (69,380)	\$ 198,620
Center Ridge #4	\$ 226,155	\$ (65,105.00)	\$ (49,729)	\$ 111,321
<b>Subtotal:</b>	<b>\$ 5,547,293</b>	<b>\$ (1,400,127)</b>	<b>\$ (1,968,600)</b>	<b>\$ 2,178,566</b>
Delaplain	\$ 1,181,700	\$(284,700.00)	\$ -	\$ 897,000
Herrington Haven	\$ 244,700	\$ (67,500.00)	\$ -	\$ 177,200
Springcrest	\$ 127,000	\$ (51,000.00)	\$ -	\$ 76,000
Woodland Acres	\$ 457,500	\$ (82,000.00)	\$ -	\$ 375,500
<b>Subtotal:</b>	<b>\$ 2,010,900</b>	<b>\$ (485,200)</b>	<b>\$ -</b>	<b>\$ 1,525,700</b>
<b>Total:</b>	<b>\$ 7,558,193</b>	<b>\$ (1,885,327)</b>	<b>\$ (1,968,600)</b>	<b>\$ 3,704,266</b>

**1. None of Bluegrass’s Past or Proposed Capital Investments Qualify as Ordinary Extensions of Existing Systems in the Usual Course of Business**

Inconsistencies abound with regard to the nature and status of Bluegrass’s work to rehabilitate the various systems. For instance, in its application, Bluegrass stated that it had submitted, or was preparing to submit, Construction Permit Applications (“CPAs”) for Airview,

<sup>55</sup> See Bluegrass Application, ¶¶ 25-26.

<sup>56</sup> See Freeman Direct Testimony, pp. 4 – 55.

<sup>57</sup> See Bluegrass Response to AG’s Post-Hearing Data Request, Excel Spreadsheet (May 28, 2021).

Brocklyn, Fox Run, Delaplain, Golden Acres, Great Oaks, Herrington Haven, Timberland and Woodland Acres.<sup>58</sup> Citing 401 KAR 5:005, Section 1(2)(a), Bluegrass claimed CPAs were not necessary for Kingswood, Lake Columbia, Longwood/Homestead, Persimmon Ridge and River Bluffs “because they are maintenance-replacement for components of an existing facility or are changes that do not affect the treatment process of a facility.”<sup>59</sup>

What is patently obvious is that Bluegrass has equated the standards for obtaining a CPA under 401 KAR 5:005, Section 1(2)(a) with the ordinary course exception for seeking a CPCN under 807 KAR 5:001, Section 15(3). They are completely separate and the latter is what controls in a Commission context:

A certificate of public convenience and necessity shall not be required for extensions that do not create wasteful duplication of plant, equipment, property, or facilities, or conflict with the existing certificates or service of other utilities operating in the same area and under the jurisdiction of the commission that are in the general or contiguous area in which the utility renders service, **and** *that do not involve sufficient capital outlay to materially affect the existing financial condition of the utility involved, or will not result in increased charges to its customers.*<sup>60</sup>

Bluegrass falsely relied upon the premise that none of its projects would create wasteful duplication of plant, equipment, property or facilities or conflict with the service of other utilities operating in the same area.<sup>61</sup> Yet it completely overlooked the additional criteria that a project must “not involve sufficient capital outlay to materially affect the existing financial condition of the utility involved” or “result in increased charges to its customers.” These requirements in the

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<sup>58</sup> See Bluegrass Application, ¶¶ 29, 31.

<sup>59</sup> See *id.*, ¶ 29.

<sup>60</sup> 807 KAR 5:001, Section 15(3) (emphasis added).

<sup>61</sup> See Cox Testimony, HVR 10:10:20 (May 19, 2021).

regulation are impossible to reconcile with Bluegrass’s dramatic increase in rate base and its commitments to the Commission. These investments are admittedly material to Bluegrass’s financial condition,<sup>62</sup> and that they will result in increased rates.<sup>63</sup>

Only on the second day of the hearing did Bluegrass first unequivocally assert that it was in fact requesting CPCNs for Airview, Brocklyn, Fox Run, Lake Columbia, Persimmon Ridge, Delaplain, Herrington Haven and Woodland Acres.<sup>64</sup> The basis for the new declaration was that these systems involved “new tanks or processes” and, therefore, did not qualify for the ordinary course exception for first seeking a CPCN prior to commencing construction on a project.<sup>65</sup> In this, another after-the-fact justification, Bluegrass parses the expense attributable to each system so as to de-emphasize its overall financial significance at the same time that it is proposes to unify the entire system under a single rate structure. Nevertheless, the record confirms that Bluegrass has already begun this work. Indeed, the video it showed at the outset of the hearing included graphics highlighting how it “repaired *and upgraded*” the Airview system and others.<sup>66</sup> Bluegrass is millions of dollars past the point where CPCNs should have been sought.

The point of the requirement in KRS 278.020 for a regulated utility to seek and obtain a CPCN prior to commencing construction is self-evident – ratepayers are expected to bear the burden of cost recovery. The CPCN process assures that utility expenditures are prudently

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<sup>62</sup> See Cox Testimony, HVR 10:10:50 – 10:13:10 (May 19, 2021).

<sup>63</sup> See *id.*

<sup>64</sup> See Cox Testimony, HVR 9:39:50 (May 19, 2021). To be clear, however, Bluegrass’s position on what is actually to be constructed still remains unclear. In post-hearing data requests, it affirmed that it would be changing its planned capital projects for Center Ridge Districts 1 and 3, Lake Columbia and Persimmon Ridge. See Bluegrass Response to Joint Intervenors’ Post-Hearing Data Request 3 (May 31, 2021).

<sup>65</sup> See *id.*

<sup>66</sup> See Cox Testimony, HVR 14:06:37 (May 18, 2021).

incurred. Indeed, this was emphasized in identical language in *every single order* approving the acquisition of a system by Bluegrass:

Bluegrass Water shall not *begin the construction of any plant, equipment, property, or facility* for furnishing wastewater or water services to the public, except ordinary extensions of existing systems in the usual course of business, until Bluegrass Water has obtained a Certificate of Public Convenience and Necessity from the Commission.<sup>67</sup>

The exception to this rule – ordinary extensions of existing systems in the usual course of business – has been specifically and narrowly defined in 807 KAR 5:001, Section 15(3) to avoid ambiguity and – more importantly – the exact sort of rate shock that Bluegrass’s customers are faced with in this proceeding.<sup>68</sup> This is illustrated no more clearly than in a recent case involving one of the very sewer utilities Bluegrass acquired in Case No. 2021-00297. In a 2014 case filed by Springcrest, the utility sought permission to install a remote monitoring device that would cost between \$1,500 and \$5,200. The Commission considered the cost of the system in the context of the applicant’s net utility plant and held:

A proposal to purchase and install remote monitoring equipment would likely represent an addition of more than 10 percent to Springcrest's net utility plant. The Commission notes that, given the size of the likely increase in Springcrest's net utility plant consequent to the installation of remote monitoring equipment, such a project would materially affect Springcrest's financial condition, would not be an extension in the ordinary course, and would require Springcrest to obtain a Certificate of Public Convenience and Necessity.<sup>69</sup>

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<sup>67</sup> Order, Case No. 2020-00297, Ordering ¶ 13 (Ky. P.S.C. Jan. 14, 2021); Order, Case No. 2020-00028, Ordering ¶ 9 (Ky. P.S.C. June 19, 2020); Order, Case No. 2019-00360, p. 16 (Ky. P.S.C. Feb. 17, 2020); Order, Case No. 2019-00104, Ordering ¶ 16 (Ky. P.S.C. Aug. 14, 2019) (emphasis added).

<sup>68</sup> See Cox Testimony, HVR 14:16:20 (May 18, 2021).

<sup>69</sup> See *In the Matter of: Springcrest Sewer Co., Inc. Request for Deviation from 807 KAR 5:071, Section 7(4)*, Order, Case No. 2014-00277, p. 5 (Ky. P.S.C. Dec. 16, 2014). The cost for the mission control units installed by Bluegrass range from \$5,000 to \$10,000 by contrast and are only expected to have a useful life of ten years. See Cox Testimony, HVR 9:42:15, 9:44:40 (May 19, 2021).

It is simply not credible for Bluegrass to argue that its actual construction expenditures to date did not require a CPCN. Bluegrass has increased its rate base from less than \$1 million to approximately \$5 million in less than two years,<sup>70</sup> and it proposes to nearly double its utility plant investment from the end of the base period through the end of the forecasted test year.<sup>71</sup> Its claim that only the remaining work to be done is what requires a CPCN is absurd. Bluegrass has made structural improvements and replaced major components of its newly acquired systems to a degree that materially affects the financial condition of the utility,<sup>72</sup> and it now seeks to pass the consequence of that on to its customers in the form of higher rates in direct violation of KRS 278.020, 807 KAR 5:001, Section 15(3) and the Commission's repeated admonishments in the acquisition cases.

## **2. No CPCNs Should Be Awarded for Additional Capital Investment Until Bluegrass Certifies the Actions it has Taken to Explore Reasonable Alternatives**

A consistent theme of the hearing was that Bluegrass would claim to have explored all options for serving the needs of its customers, but, when pressed, could not provide details on what connections to other systems might be available or when such discussions might take place in the future. In post-hearing data requests, Bluegrass confirmed the Joint Intervenors' suspicions. The projects for which Bluegrass now seeks a CPCN are all systems within one mile of another system.<sup>73</sup> Based upon the original construction estimates and the amounts previously invoiced,

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<sup>70</sup> See Cox Testimony 10:05:50 (May 19, 2021).

<sup>71</sup> See Bluegrass Financial Update, Schedule B-2 (filed March 19, 2021).

<sup>72</sup> See Cox Testimony, HVR 14:04:30 – 14:40:30 (May 18, 2021) (describing structural modification and upgrades at many of the systems for which it now seeks a CPCN); See Cox Testimony, HVR 10:10:50 – 10:13:10 (May 19, 2021).

<sup>73</sup> See Bluegrass Response to Joint Intervenors Post-Hearing Data Request 6 (May 31, 2021). These systems include: Airview, Brocklyn, Fox Run, Delaplain, Woodland Acres and Randview.

Bluegrass appears poised to spend just over \$3.7 million in new capital. Before the Commission issues any CPCNs to authorize such work, Bluegrass should be required to affirmatively demonstrate that its proposed investment is indeed the reasonable least cost option. The Joint Intervenors do not believe that the record supports such a finding and, therefore, respectfully requests the Commission to: (1) either deny the request for CPCNs or further capital investment for these systems without prejudice; or (2) keep this portion of Bluegrass’s case open and pending for further action following the entry of a rate order within the suspension period.

**3. The Commission Should Not Grant Any CPCNs for Work Where Bluegrass Lacks an Agreed Order with the Division of Water Involving Capital Projects**

While Bluegrass seeks to enter into Agreed Orders (“AOs”) for the rehabilitation of its systems with the Kentucky Division of Water as soon as part of its due diligence prior to acquiring such systems,<sup>74</sup> the evidence at hearing confirmed that several such systems do not require AOs. However, not everything should be capitalized – even if it is part of an AO with the Division of Water. Accordingly, the Commission should not authorize CPCNs for any systems for which Bluegrass has not entered into a AO and, for those systems where an AO is in place, Bluegrass should be required to report to the Commission as part of any application for a CPCN whether each aspect of the AO is to be capitalized or properly expensed as O&M.

**E. The Commission Should Limit Bluegrass’s Ability to Unreasonably Enrich CSWR, LLC at Customers’ Expense**

The hearing identified at least two gaps in the governance and accountability of Bluegrass. In the company’s Operating Agreement, its sole member – CSWR – retains the right to reorder the priority of making both regular and capital distributions and distributions upon the dissolution of

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<sup>74</sup> See *Cox Testimony*, 16:13:10, et seq. (May 18, 2021).



the company.<sup>75</sup> Though it is probably unlikely to happen, the governing documents expressly permit CSWR to take advantage of Bluegrass and, by extension, their customers. The Commission should act within the scope of its jurisdiction to protect Bluegrass's customers from any exploitive distributions.

The hearing also confirmed that it would be possible for Mr. Cox and other officers of CSWR and Bluegrass to earn compensation both through the corporate allocation process and the rate of return awarded to Bluegrass.<sup>76</sup> The Commission should similarly assure that this is not abused in the future.

#### **IV. CONCLUSION**

Bluegrass's business model may yet yield long-term value for its customers, however, its initial foray towards integrating several unique systems into a cohesive system under a unified rate structure have been fraught with difficulties. The four systems acquired in Case No. 2020-00297 and all investments and expenses associated with those systems must be excluded for ratemaking purposes. Likewise, the four systems acquired in Case No. 2020-00028 are included in this case in contravention of Bluegrass's representations to the Commission and also lack the requisite base period experience required for a forecasted test year under KRS 278.192. They too must therefore be excluded, along with the associated investment. The systems acquired in Case No. 2019-00104 are now subject to a forecasted test year with millions more in expense sought for recovery than would have been the case with the historic test year rate case that was previously committed to by Bluegrass. These systems' customers should be afforded the respect due them by virtue of

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<sup>75</sup> See Bluegrass Application, Exhibit 4-B; Cox Testimony, HVR 16:41:50 (May 18, 2021).

<sup>76</sup> See Cox Testimony, HVR 11:15:40 (May 19, 2021).

Bluegrass's commitments. With regard to the remaining systems, it is clear that Bluegrass has failed to make required adjustments to its rate base and operations and maintenance expense.

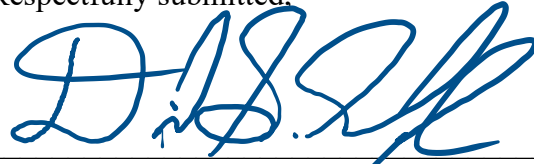
The Commission should also account for the fact that Bluegrass violated Commission Orders and Kentucky law in making hugely significant capital investments without first seeking any CPCNs. Finally, the Commission should pump the breaks on further capital investment by Bluegrass to assure that its plans are in fact the reasonable lost cost options for servicing its customers and that what are in reality O&M expenses are not capitalized.

This is a hard case to untangle due and the best solution may well be to dismiss the entire case without prejudice and allow Bluegrass to refile it in a manner that is consistent with its regulatory commitments. The Joint Intervenors thank the Commission for being afforded the opportunity to participate in this case and hope that their participation has been helpful in developing the facts and issues necessary to adjudicate the case.

WHEREFORE, on the basis of the foregoing, the Joint Intervenors' respectfully request the Commission to: (1) dismiss the case without prejudice in its entirety; or (2) enter an Order consistent with the adjustments and exclusions set forth herein and taking other appropriate action with regard to Bluegrass's premature commencement of construction activities and unsupported requests for CPCNs.

This 3<sup>rd</sup> day of June 2021.

Respectfully submitted,



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### **CERTIFICATE OF SERVICE**

This will certify that the foregoing document was filed via the Commission's electronic filing system today. The undersigned hereby certifies that the electronic filing is a true and accurate copy of the documents being filed in paper medium; the electronic filing was transmitted to the Commission on June 3, 2021; there are currently no parties that the Commission has excused from participation by electronic means in this proceeding; paper copies of this information will be hand-delivered to the Commission within thirty (30) days of the lifting of the present State of Emergency relating to the COVID-19 pandemic.



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*Counsel for Joint Intervenors*