

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF BLUEGRASS)	
WATER UTILITY OPERATING COMPANY, LLC)	CASE NO.
FOR AN ADJUSTMENT OF SEWAGE RATES)	2022-000432

**SCOTT COUNTY, KENTUCKY REPLY TO
BLUEGRASS WATER UTILITY OPERATING COMPANY, LLC'S
RESPONSE TO SCOTT COUNTY'S MOTION TO INTERVENE**

Comes now Scott County, Kentucky ("Scott County"), by and through counsel, and, under 807 KAR 5:001 Section 5(3), files its Reply to Bluegrass Water Utility Operating Company, LLC's ("Bluegrass Water") Response to Scott County's Motion to Intervene. Scott County replies to certain points raised by Bluegrass Water.

1. Although the Response of Bluegrass Water provides an extensive discussion concerning the Attorney General's statutory right to intervene, the Attorney General's right to intervene is not at issue. The discretion of the Public Service Commission ("Commission") to grant permissive intervention to other parties such as Scott County is at issue. On this point: If the General Assembly had intended for the Attorney General's participation to preclude other parties from participating (as argued by Bluegrass Water), it would have enacted statutory provisions consistent with the arguments of Bluegrass Water. It did not. The General Assembly's creation of a statutory right of intervention for the Attorney General does not signal the preclusive or preemptive effect advocated by Bluegrass Water.

2. Bluegrass Water’s argument that the “Attorney General is the statutory advocate for consumers in rate cases and therefore adequately represents consumers interests like those of Scott County’s citizens,”¹ has no foundation in test for intervention set forth through the plain language of 807 KAR 5:001 Section 4(11). The pertinent administrative regulation does not contain that finding or otherwise create that presumption. If Bluegrass Water’s argument was correct, then no party other than the Attorney General could ever satisfy the test for permissive intervention. Instead, motions for permissive intervention are determined on a case-by-case basis, and the facts present in this Application demonstrate that the consumers’ interests differ by service area and support the finding of a special interest for Scott County.
3. Bluegrass Water’s argument that the General Assembly’s selection of the “Attorney General as the statutory advocate in rate cases” means that “Attorney General is well equipped to balance the diverse interests of consumers across the Commonwealth while advocating on their behalf in this case”² does not find support in the plain language of KRS 367.150(8). The statute creates a right for the Attorney General to represent and be heard on behalf of the consumers’ interest; however, the statute does not create a mandate for the Attorney General to appear, much less balance those interests in the manner suggested by Bluegrass Water. More importantly, the statute does not suggest that the Attorney General can balance the interests in the manner suggested by Bluegrass Water.

¹ Bluegrass Water Response, page 3, Numbered Paragraph 10.

² Bluegrass Water Response, page 6, Numbered Paragraph 17.

4. In its Motion to Intervene, Scott County identifies its special interests including among other things: “Scott County contains the only service area with metered service, a service area with commercial customers, and the customer group with the largest proposed increase in rates.”³ Further: “Scott County has a special interest in advocacy on behalf of its residents/customers because the proposed rates stand to impact rate affordability, health and safety, and economic development within Scott County.”⁴ Scott County’s representation of the residents/customers within Scott County is consistent with advocacy by other groups that have been granted intervention for the express purpose of representing the consumers’ interest of less than the entirety of a customer class or the entirety of a utility’s customer classes.
5. Scott County expressly states how it plans to present issues and develop facts to assist the Commission. “Scott County openly questions the reasonableness of the proposals in the Application including, but not limited to, the results of the Applicant’s cost of service study and the Applicant’s rate design in the instant proceeding and will present issues and/or develop facts that will assist the

³ Scott County Motion to Intervene, page 6, Numbered Paragraph 15.

⁴ *Id.* Further, Bluegrass Water’s confusion concerning who Scott County seeks to represent (Bluegrass Water Response, page 5, Numbered Paragraph 14) is addressed by, among other things, the plain language of Numbered Paragraph 15 in the Motion to Intervene. Scott County points out the fundamental disingenuity of Bluegrass Water which argues that Scott County should not be able to represent the residents/customers within the Scott County service territories of Bluegrass Water because they could seek intervention on their own and simultaneously opposes intervention of a resident of Scott County. See Bluegrass Water Utility Operating Company, LLC’s Response to Motion to Intervene (filed Apr. 19, 2023).

Commission in these areas.”⁵ Comparatively, from Case No. 2016-00367,⁶ relied upon by Bluegrass Water in its Response:⁷ “Petitioner [seeking intervention into that docket] cites his knowledge and experience as an electrician, he has not demonstrated that he is sufficiently knowledgeable about issues of utility ratemaking and rate structures to assist the Commission in fully considering this matter.” Bluegrass Water’s actual concern is that Scott County will do exactly as it states if granted intervention, namely present issues and develop facts concerning Bluegrass Water’s cost of service study and proposed rate design. The petitioner in Case No. 2016-00367 is clearly distinguishable from Scott County in the instant case.

6. Bluegrass Water’s discomfort at the prospect of addressing issues concerning its proposals⁸ is understandable; however, the test does not focus upon an applicant’s discomfort. The test is whether Scott County “is likely to present issues or develop facts that will assist the commission in fully considering the matter without unduly complicating or disrupting the proceedings.” Furthermore, setting aside Bluegrass Water’s questioning of the capacity or the integrity of Scott County as a litigant, Scott County simply observes the Commission has (for decades) quite capably

⁵ Scott County Motion to Intervene, page 6, Numbered Paragraph 18.

⁶ *Application of Nolin Rural Electric Cooperative Corporation for a General Rate Increase*, (Ky P.S.C. Mar. 14, 2017).

⁷ Bluegrass Water Response, pages 1 and 2, Numbered Paragraph 3.

⁸ Bluegrass Water Response, page 5, Numbered Paragraph 15.

and effectively resolved discovery disputes and otherwise kept parties within the boundaries of proper advocacy.

7. Bluegrass Water's identification of Case No. 2018-00348⁹ is interesting because it demonstrates the point that a finding by the Commission that a party "will present issues and develop facts that will assist the Commission" satisfies the conditions for intervention even if a petitioner fails to establish a special interest.¹⁰
8. Further, on this point, in Case No. 2007-00134, as another example, the Commission granted the Bluegrass Water Supply Commission ("BWSC") full intervention into a certificate of public convenience and necessity application filed by the Kentucky-American Water Company ("KAWC").¹¹ BWSC was not a rate customer of KAWC; in fact, its interest concerned the **potential** co-ownership of certain facilities.¹² BWSC did not have an interest in a rate or service of KAWC. Moreover, BWSC, as a water supply commission created pursuant to KRS 74.420 to 74.520,¹³ was statutorily exempt from the Public Service Commission's jurisdiction.¹⁴ The PSC, therefore, had no authority over BWSC's interest in the

⁹ Bluegrass Water Response, page 6, Numbered Paragraph 16.

¹⁰ *Electronic 2018 Joint Integrated Resource Plan of Louisville Gas and Electric Company and Kentucky Utilities Company*, (Ky. P.S.C. Sep. 19, 2019) at page 7.

¹¹ Case No. 2007-00134, *The Application of Kentucky-American Water Company for a Certificate of Convenience and Necessity Authorizing the Construction of the Kentucky River Station II, Associated Facilities and Transmission Main*, Order (Ky. P.S.C. May 3, 2007).

¹² Case No. 2007-00134, BWSC Motion to Intervene (filed Apr. 20, 2007), page 2.

¹³ *Id.*, at page 1.

¹⁴ KRS 74.510

facilities. Nonetheless, intervention into a formal adjudicatory proceeding to a non-customer was granted because the Commission determined that BWSC was “likely to present issues and develop facts that will assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings.”¹⁵ Scott County’s Motion to Intervene demonstrates that it satisfies both tests, and Commission precedent demonstrates that it only needs to satisfy one.

9. Bluegrass Water takes issue with the fact that Scott County’s Motion to Intervene “does not set forth ***new issues or facts*** that would assist the Commission in fully considering the matter (emphasis added).”¹⁶ Foremost, Bluegrass Water fails to state the proper test. The Motion to Intervene is for obtaining the rights of a party to, among other things, conduct discovery. It is unremarkable that Scott County would not provide the Commission with its post-hearing brief prior to Bluegrass Water’s response to the Commission Staff’s initial request for information. Scott County’s Motion to Intervene reasonably explains the issues and facts that it seeks to develop to assist the Commission in this proceeding. Scott County’s Motion to Intervene satisfies the Commission’s “likely to present issue or develop facts” standard (and was not required to satisfy Bluegrass Water’s presentation of “new issues or facts” standard).

¹⁵ Case No. 2007-00134, Order (Ky. P.S.C. May 3, 2007) (Order granting BWSC intervention).

¹⁶ Bluegrass Water Response, page 4, Numbered Paragraph 11.

10. The Commission's Order in Case No. 2020-00160 denying a school district intervention into that rate proceeding¹⁷ merits three (3) comments. First, that petition did not articulate the representation of a special interest for a customer or customer group. The petition did not demonstrate how intervention was likely to present issues and develop facts to assist the Commission. Finally, another Order from that proceeding which granted intervention to the City of Clinton, Kentucky is the more persuasive guidance upon comparing the characteristics of the petitioners in that proceeding with Scott County in the instant case.

11. Regarding other points by Bluegrass Water in its Response, Scott County's lack of comment is not a concession. Scott County's Motion to Intervene adequately demonstrated grounds through which the Commission's requirements for permissive intervention have been met.

WHEREFORE, Scott County respectfully replies to Bluegrass Water's Response and requests the Commission grant it intervention into the instant case with full rights of a party to the proceeding.

Respectfully submitted,

/s/ David E. Spenard

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¹⁷ *Electronic Application of Water Service Corporation of Kentucky for a General Adjustment in Existing Rates*, (Ky. P.S.C. Aug. 7, 2020).

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NOTICE AND CERTIFICATION FOR FILING

Undersigned counsel provides notice that the electronic version of the paper has been submitted to the Commission by uploading it using the Commission's E-Filing System on this 25th day of April, 2023, in conformity with the Commission's April 14, 2023 Order of procedure in the instant case. Pursuant to the Commission's Orders in Case No. 2020-00085, *Electronic Emergency Docket Related to Novel Coronavirus Covid-19*, the paper, in paper medium, is not required to be filed.

/s/ David E. Spenard

NOTICE AND CERTIFICATION CONCERNING SERVICE

No party has been excused from the electronic filing procedures in the instant proceeding.

/s/ David E. Spenard