

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'S
MOTION TO COMPEL**

WITH

**RESPONSE TO ATTORNEY GENERAL'S
MOTION TO COMPEL AND TO
AMEND THE PROCEDURAL SCHEDULE
RELATED TO DISCOVERY**

Comes now Scott County, Kentucky ("Scott County"), by and through counsel, and, pursuant to 807 KAR 5:001 Section 5, files this Motion to Compel Bluegrass Water Utility Operating Company, LLC ("Bluegrass Water" or "Company") to properly respond to six (6) request items from its Initial Requests for Information to Bluegrass Water: Scott County 1-18(a) and (b); Scott County 1-19(a) and (b); and Scott County 1-20(f) and (g). Scott County also files its Response to the Attorney General's Motion to Compel and to Amend the Procedural Schedule Related to Discovery.

MOTION TO COMPEL

Bluegrass Water submitted numerous objections to Scott County's Initial Request for Information. Without conceding any arguments as to the legitimacy of any of the other objections set forth in Bluegrass Water's Response, Scott County will focus upon the

objections that pertain to the items that are the subject of this motion and demonstrate, item-by-item, that Bluegrass Water's objections have no legitimate basis; therefore, the Commission should enter an Order compelling the production of the items.

Scott County 1-18(a) and (b)

Scott County 1-18 states:

Reference: Application, Exhibit 11, Direct Testimony of Timothy Lyons, Exhibit 1, Direct Schedule TSL-1. Please provide:

- a. From the testimonies summarized on pages 2 through 7, a copy of Timothy Lyons' testimony submitted in each docket in which water and/or wastewater rates were at issue in the proceeding; and
- b. For each of the testimonies identified in sub-part a (above), the date of the final order in the proceeding.

Foremost, the request does not seek Mr. Lyons' testimony for each of the approximate 65 dockets identified on Direct Schedule TSL-1. Scott County 1-18(a) and (b) are expressly limited to "a copy of Timothy Lyons' testimony in each docket ***in which water and/or wastewater rates were at issue in the proceeding*** (emphasis added) and the date of the final order [not the final order itself] in the proceeding. Scott County 1-18(a) and (b) are each narrowly tailored for the production of evidence directly related to Mr. Lyons' testimony placed into the record by Bluegrass Water.

Scott County has no interest in placing into the record in the instant case Mr. Lyons' testimony in matters such as the "de-tariff and deregulation of appliance repair service" in Rhode Island (Providence Gas Company, Docket No. 3100, Direct Schedule TSL-1, Page 5 of 7). Scott County, likewise, has no interest in placing into the record the

numerous testimonies in which Mr. Lyons' testimony was limited to supporting a Lead/Lag study. Such testimonies are clearly nonessential to matters at issue in the instant case.

Scott County does have an interest in instances in which Mr. Lyons' *may* have offered testimony in a docket in which water and/or wastewater rates were at issue. For the column "Sponsor" on pages 2 through 7 of Direct Schedule TSL-1, the words "wastewater" and "sewer" do not appear. Scott County, as well as the Commission, is entitled to examine testimony, if any, submitted by Mr. Lyons in a docket in which wastewater rates were at issue and the identification of the date of the final order in such a proceeding.

The word "water" appears in Direct Schedule TSL-1 four (4) instances: "Liberty Utilities (Pine Bluff Water)," "Main Water Company," "Lansing Board of Water & Light and Michigan State University," [two (2) instances]. Therefore, there may be approximately four (4) dockets, perhaps, containing responsive testimony. Scott County 1-18 is properly tailored to produce relevant evidence or material that may lead to relevant evidence. As importantly, and as the Commission is well aware, the request is completely consistent with the Commission's standard practices.

From KY PSC Case No. 2009-00548,¹ the pertinent section of the request below is for the witness on behalf of the Attorney General to review testimonies prepared by members of his firm (not simply the witness) on the rate treatment of identified subjects.

¹ *Application of Kentucky Utilities Company for an Adjustment of Base Rates*, First Data Request of Commission Staff to the Attorney General of the Commonwealth of Kentucky (filed May 6, 2010), Item 1(a) (hereinafter "2009-00548 Staff to OAG 1-____").

It also requests the “pertinent parts of the commission orders approving this [recommended] rate treatment.”

Refer to the testimony of Michael J. Majoros, Jr. (“Majoros Testimony”) at pages 1-5. On page 1, Mr. Majoros states that his firm, Snavely King Majoros O’Connor & Bedell, Inc. (“Snavely King”) has “participated in more than 1,000 proceedings before almost all of the state commissions.” On page 2, he states that he and other members of his firm specialize in the field of “public utility depreciation.” On pages 4 and 5, he states that it is appropriate to apply KU’s 2008 and 2009 deferred storm damage costs of \$2.195 million and \$57.237 million, respectively, against the asset removal costs that have been recovered in prior years through depreciation rates.

a. **Provide all testimony prepared by a Snavely King member** wherein a recommendation was made to apply deferred storm damage costs, or any other type of regulatory asset, to the asset removal costs accumulated by a utility through its depreciation rates (as suggested by Mr. Majoros in this case) in those cases in which the regulatory commission agreed to and accepted this position. In all such instances, **provide the pertinent parts of the commission orders approving this rate treatment.** (Emphasis added.)²

The request is actually much broader than Scott County 1-18 because it seeks not only testimony from the witness but also members of the firm and it requests not simply the date of the final orders of the relevant proceedings but the pertinent parts of the commission orders. Scott County 1-18 is well inside the parameters of what is permissible, normal Commission practice manifesting the respectful tailoring of the request.

² The information was, of course, provided. Case No. 2009-00548, Attorney General’s Responses to Discovery Requests of Kentucky Public Service Commission (filed May 19, 2010).

From KY PSC Case No. 2008-00409,³ the request below is for the witness on behalf of the Attorney General to review cases listed in an appendix to his testimony, identify cases in which he testified on behalf of certain subject, and “[p]rovide the testimony addressing the TIER issue submitted by Mr. Majoros [the witness] in each of the cases identified in response to” the pertinent part of the Staff Request. Specifically:

Refer to Appendix B of the Direct Testimony of Michael J. Majoros, Jr. (“Majoros Testimony”).

- a. Identify the cases in Appendix B in which Mr. Majoros testified on the overall revenue requirement of a generation and transmission (“G & T”) cooperative.
- b. Identify the cases in Appendix B in which Mr. Majoros testified on the appropriate Times Interest Earned Ratio (“TIER) for a G & T cooperative.
- c. Provide the testimony addressing the TIER issue submitted by Mr. Majoros in each of the cases identified in response to part b. of this request.

This request is remarkably similar to Scott County 1-18(a). Mr. Lyons attached a schedule to his testimony (Direct Schedule TSL-1) in which *he* supports his testimony in the instant case through reliance upon his testimony in other matters. Bluegrass Water in every sense of the phrase “opened the door” to examination of the items sought. Scott County seeks Bluegrass Water and Mr. Lyons to identify and provide testimonies through a permissible, normal Commission practice.

³ *General Adjustment of Electric Rates of East Kentucky Power Cooperative, Inc.*, First Data Request of Commission Staff to the Attorney General of the Commonwealth of Kentucky (filed Mar. 5, 2009), Item 1 (hereinafter “2008-00409 Staff to OAG 1-___”).

From the same docket,⁴ the request below is for the witness on behalf of the Kentucky Industrial Utility Customers, Inc., to review cases listed in an exhibit to his testimony, identify cases in which he testified on behalf of the appropriate TIER, and “[p]rovide the testimony addressing the issue of an appropriate TIER submitted by Mr. Kollen in each of the cases listed in response” to the request for identification.

Refer to Exhibit-(LK-I) to the Kollen Testimony.

a. Aside from EKPC’s last base rate case, identify each of the cases in which Mr. Kollen submitted testimony on the appropriate Times Interest Earned Ratio (“TIER”) for an electric generation and transmission cooperative.

b. Provide the testimony addressing the issue of an appropriate TIER submitted by Mr. Kollen in each of the cases listed in response to part a. of this request.⁵

From the more recent KY PSC Case No. 2021-00190,⁶ the pertinent section of the request below is for the witness on behalf of the applicant in that proceeding to review the entire extent of his experience, identify whether he had made certain proposals, and provide, among other things, copies of the pertinent testimonies.

Refer to Duke Kentucky’s Response to Staff’s Second Request, Item 18, and to D’Ascendis Testimony, pages 44–48.

⁴ *General Adjustment of Electric Rates of East Kentucky Power Cooperative, Inc.*, First Data Request of Commission Staff to the Kentucky Industrial Utility Customers, Inc., (filed Mar. 5, 2009), Item 4 (hereinafter “2008-00409 Staff to KIUC 1-___”).

⁵ Note: Case No. 2008-00409 was resolved by a settlement tendered prior to responses to the identified requests. *Id.*, (Ky P.S.C. Mar. 31, 2009).

⁶ *Electronic Application of Duke Energy Kentucky, Inc. for 1) An Adjustment of the Natural Gas Rates; 2) Approval of New Tariffs, and 3) All other Required Approvals, Waivers, and Relief*, Commission Staff’s Third Request for Information to Duke Energy Kentucky, Inc. (filed Aug. 4, 2021) Item 10 (hereinafter “2021-00190 Staff 3-___”).

a. Explain whether Mr. D'Ascendis **has ever proposed** a negative size adjustment in any regulatory proceeding. If so, include in the response the docket/case number and copies of expert testimony and exhibits in PDF format. (Emphasis added.)

b. Explain whether Mr. D'Ascendis **has ever proposed** a negative credit risk adjustment in any regulatory proceeding. If so, include in the response the docket/case number and copies of expert testimony and exhibits in PDF format. (Emphasis added.)

From KY PSC Case No. 2004-00103,⁷ the below requests are among the requests similar in nature to Scott County 1-18(b).

2004-00103 Staff 2-10(d) which seeks a subsidiary-by-subsidary analysis of regulated utility ROE awards including, among other things, the date of the award.

d. List each RWE subsidiary that operates in the United States and that is a regulated public water utility, the state in which the subsidiary operates, the subsidiary's last return on equity ("ROE") award, **the date of such award**, and the amount or percentage of flotation cost used to calculate the subsidiary's cost of equity. (Emphasis added.)

2004-00103 Staff 2-18 which seeks a subsidiary-by-subsidary or affiliate-by-affiliate analysis of regulated utility rate adjustment requests including, among other things, the date on which the proceeding was initiated.

For each RWE subsidiary or affiliate that is a regulated water utility, identify each proceeding since January 1, 2002 in which the subsidiary or affiliate requested a rate adjustment, the regulatory commission in which the proceeding was conducted, the case number of the proceeding, and **the date on which the proceeding was initiated**. (Emphasis added.)

⁷ *Adjustment of the Rates of the Kentucky-American Water Company*, Commission Staff Second Set of Information Requests to Kentucky-American Water Company (filed Jun. 14, 2004) (hereinafter "2004-00103 Staff 2-___").

From the more recent KY PSC Case No. 2018-00358,⁸ the applicant in that docket was asked by Commission Staff to review all jurisdictions with an operating subsidiary of the parent, identify jurisdictions with

List the jurisdictions in which an American Water operating subsidiary's application to implement an infrastructure replacement tariff rider similar to Kentucky-American's proposed QIP was granted and **provide the most recent order** from the state's utility regulatory commission granting the requested infrastructure replacement tariff rider. (Emphasis added.)

The applicant in Case No. 2018-00358, of course and unremarkably, provided a comprehensive response.⁹ Scott County 1-18(b) seeks the date of the final order in relevant proceedings, and this request is well inside of what is permissible, normal Commission practice manifesting the respectful tailoring of the request.

Bluegrass Water's objection is that the request is "unduly burdensome." Bluegrass Water fails to even estimate the number of items from Direct Schedule TSL-1 that might be responsive let alone any estimate of the volume of material or time necessary to prepare the response. Bluegrass Water's foundation for the request being unduly burdensome is merely that Bluegrass Water believes that it could be unduly burdensome under its own subjective standard, not by reference to permissible, normal Commission practice. As for the premise that the availability of an item in public records renders pursuit of the item through a request for information unduly burdensome: Staff Requests from the

⁸ *Electronic Application of Kentucky-American Water Company for an Adjustment in Rates*, Commission Staff's Second Request for Information to Kentucky-American Water Company, (filed Jan. 9, 2019), Item 58 (hereinafter "2018-00358 Staff 2-___").

⁹ *Id.*, Kentucky-American Water Company Response to Commission Staff's Second Request for Information to Kentucky-American Water Company, (filed Jan. 25, 2019), Item 59 [PDF 346-636 of 784].

above dockets, among the vast body of similar instances of which the Commission may properly take administrative notice, readily demonstrate that premise to be unsound.

Unfortunately for the Commission and Scott County, Bluegrass Water declined to identify this objection as an issue during its May 8th and 9th communications with Scott County. In plain terms, Bluegrass Water did not suggest a problem much less seek any type of work-around. For example, if Bluegrass Water had identified this specific concern regarding the production of the information, it is entirely likely that Counsel for Scott County would have advised (under the assumptions that Mr. Lyons has submitted testimonies falling into the scope of the request and that the records are actually “public records readily available”) that a response containing a link to the testimony or testimonies was a sufficient response to Scott County 1-18(a). Regrettably, Bluegrass Water did not seek to engage in a discussion of this matter by raising the issue opting instead for a continued path of hostility and confrontation towards Scott County.¹⁰

In sum, Bluegrass Water’s objection to Scott County 1-18(a) and (b) is against the clear weight of permissible, normal Commission practice (and the objective of transparency and saving the Commission’s time at an evidentiary hearing). Bluegrass Water should be compelled to respond to the request just as other parties before this Commission are required to respond to similar requests.

Scott County 1-19(a) and (b)

Scott County 1-19 states:

¹⁰ In passing: Bluntly enough, had Bluegrass Water been candid and stated that it planned to object to Scott County 1-18(a) and (b), 1-19(a) and (b), and 1-20(f) and (g), the disclosure might likely have saved this Commission from having to rule upon Bluegrass Water’s subsequent Motion for an Extension (filed May 10, 2023).

Reference: Application, Exhibit 3, Central States Water Resources Corporate Entity Organization Chart; and Exhibit 11, Direct Testimony of Timothy Lyons, pages 4 and 5. Please provide:

a. For any other entity appearing on Exhibit 3 operating in another jurisdiction (“CSWR, LLC Entity”), provide the most recent cost of service study for any entity using a “traditional class cost of service study” in support of an application to adjust rates; and

b. For the commercial/non-residential class and multifamily class equivalencies identified on page 5 at lines 1 through 3, identify any other CSWR, LLC Entity operating in another jurisdiction that uses equivalencies that differ from either or both equivalencies proposed for Kentucky through the instant application and identify and provide the other equivalencies.

First, Scott County 1-19(a) does not seek the disclosure of all cost of service studies; rather, it is limited to “traditional cost of service” studies submitted in support of an application. Second, Scott County 1-19(b) does not seek information concerning all entities in other jurisdictions; instead, it seeks “equivalencies that differ from either or both equivalencies proposed for Kentucky.” Scott County 1-19(a) and (b) are narrowly tailored for the production of evidence directly related to Mr. Lyons’ testimony placed into the record by Bluegrass Water and the position taken by Bluegrass Water in the instant case.

Scott County’s arguments concerning Scott County 1-18 likewise address and refute Bluegrass Water’s position and are incorporated by reference as applicable to the analysis of Scott County 1-19(a) and (b). Contrary to Bluegrass Water’s representation to this Commission, inquiry into other jurisdictions (as demonstrated above and further demonstrated below) is permissible, normal Commission practice, particularly when the applicant is proposing something new, novel, or non-traditional.

From KY PSC Case No. 2018-00358 Staff 2-57, 2-58, and 2-59:

(57) List **each American Water subsidiary** that currently uses an infrastructure replacement tariff rider similar to Kentucky-American's proposed QIP. (Emphasis added.)

a. For **each American Water subsidiary** listed, state the frequency of its general rate adjustment proceedings for the ten years prior to implementing the infrastructure replacement tariff rider. (Emphasis added.)

b. For **each American Water subsidiary** listed, state the frequency of its general rate adjustment proceedings since adopting the infrastructure replacement tariff rider. (Emphasis added.)

(58) List the **jurisdictions in which an American Water operating subsidiary's** application to implement an infrastructure replacement tariff rider similar to Kentucky-American's proposed QIP was denied and provide the most recent order from the state's utility regulatory commission denying the requested infrastructure replacement tariff rider. (Emphasis added.)

(59) List the **jurisdictions in which an American Water operating subsidiary's** application to implement an infrastructure replacement tariff rider similar to Kentucky-American's proposed QIP was granted and provide the most recent order from the state's utility regulatory commission granting the requested infrastructure replacement tariff rider. (Emphasis added.)

From KY PSC Case No. 2004-00103 Staff 2-29, 2-30, 2-33, and 2-34:

(29) a. List **each American Water Works Company affiliate or subsidiary** that has established a Low Income Tariff or similar program. (Emphasis added.)

b. For each entity listed above,

(1) Provide a copy of the tariff and all policies or operating procedures for the operation of the tariff.

(2) Describe the results of the entity's tariff. Provide all reports, audits, or regulatory commission reviews of the entity's tariff.

(30) List each American Water Works Company affiliate or subsidiary that has established a voluntary assistance or

contribution program and describe the results of that program. The description should include the level of monies collected in 2003 and a discussion of the efforts to publicize and promote such program.

(33) Identify **each American Water Works Company subsidiary** that assesses an activation fee, provide a copy of its tariff sheet setting forth such fee, and describe how the fee is calculated. (Emphasis added.)

(34) List **all non-American Water Works Company water utilities** of which Coleman Bush is aware that assess an activation fee. (Emphasis added.)

From KY PSC Case No. 2018-00358 Staff 2-57, 2-58, and 2-59:

(57) List **each American Water subsidiary** that currently uses an infrastructure replacement tariff rider similar to Kentucky-American's proposed QIP. (Emphasis added.)

a. For **each American Water subsidiary** listed, state the frequency of its general rate adjustment proceedings for the ten years prior to implementing the infrastructure replacement tariff rider. (Emphasis added.)

b. For **each American Water subsidiary** listed, state the frequency of its general rate adjustment proceedings since adopting the infrastructure replacement tariff rider. (Emphasis added.)

(58) List the **jurisdictions in which an American Water operating subsidiary's** application to implement an infrastructure replacement tariff rider similar to Kentucky-American's proposed QIP was denied and provide the most recent order from the state's utility regulatory commission denying the requested infrastructure replacement tariff rider. (Emphasis added.)

(59) List the **jurisdictions in which an American Water operating subsidiary's** application to implement an infrastructure replacement tariff rider similar to Kentucky-American's proposed QIP was granted and provide the most recent order from the state's utility regulatory commission granting the requested infrastructure replacement tariff rider. (Emphasis added.)

From Case KY PSC Case No. 2020-00160,¹¹ Staff 2-36, 2-37, 2-43, and 2-62:

(36) For **each Water Service subsidiary** that provides retail water service, provide for the calendar year ended December 31, 2020: (Emphasis added.)

- a. The subsidiary's total uncollectibles;
- b. The subsidiary's total water sales; and
- c. The subsidiary's uncollectibles stated as a percentage of total water sales.

(37) Provide the total uncollectable rate for **all of Utilities Incorporated (Utilities) operating companies** for the calendar year ended December 31, 2020 (Emphasis added.)

(43) State whether Water Service Corporation's **other subsidiaries** currently have leak adjustment policies. Provide the subsidiary, the policy, and a statement to whether it is similar to what Water Service Kentucky is proposing. (Emphasis added.)

(62) For **each Water Service subsidiary** that provides retail water service, provide the following: (Emphasis added.)

- a. A cite to the last fully litigated rate case and a copy of the section of the Order discussing the WCC and ROE; and
- b. The last authorized Weighted Cost of Capital and ROE.

Scott County will forego additional references from the numerous Commission proceedings that readily demonstrate that Scott County's requests through 1-19(a) and (b) are within the bounds of permissible, normal Commission practices. There is no legitimate basis for Bluegrass Water's objection to Scott County 1-19. The requests are properly and narrowly tailored. Discovery upon a multi-state utility's operations in other

¹¹ *Electronic Application of Water Service Corporation of Kentucky for a General Adjustment of Rates*, Commission Staff's Second Request for Information to Water Service Corporation of Kentucky, (filed Aug. 5, 2020) (hereinafter "Case No. 2020-00160 Staff 2-___").

jurisdictions on subject-matter at issue in the Commonwealth of Kentucky is proper. Practices by subsidiaries and affiliates in other jurisdictions can clearly be informative. Bluegrass Water should be compelled to provide a response to Scott County 1-19.

Scott County 1-20(f) and (g)

Scott County 1-20(f) and (g) state:

Reference: Exhibit 11, Direct Testimony of Timothy Lyons, pages 6 through 8. Please provide:

...

f. For any other CSWR, LLC Entity operating in another jurisdiction, identify each instance in which an entity has proposed a rate design that incorporates principles of gradualism, preventing rate shock, economic development and/or affordability and provide a copy of the pertinent section of the application and/or docket through which the proposal was made.

g. For any regulatory agency, commission, or board that has jurisdiction over the rates of a CSWR, LLC Entity operating in another jurisdiction, identify each instance in which a regulatory authority has entered a final order in which the principles of gradualism, preventing rate shock, economic development and/or affordability have been incorporated into the rates approved for the entity and, for each instance, provide a copy of the pertinent section(s) of the order discussing the application of the principle(s).

Scott County's requests through 1-20(f) and (g) are narrowly tailored and well inside permissible, normal Commission practice concerning requests for information as demonstrated above in discussing Scott County 1-18 and 1-19. Scott County incorporates those arguments by reference for Scott County 1-20(f) and (g) and moves for an Order compelling Bluegrass Water to provide the information sought.

**RESPONSE TO ATTORNEY GENERAL'S MOTION TO COMPEL AND TO AMEND
THE PROCEDURAL SCHEDULE RELATED TO DISCOVERY**

Scott County joins in support of the Attorney General's Motion to Compel. Bluegrass Water is missing the mark. Bluegrass Water should be required to follow permissible, normal practices. As to the procedural schedule, the Commission has already entered an Order amending the procedural schedule, and Scott County is appreciative of the additional time already afforded.

WHEREFORE, Scott County respectfully submits its Motion to Compel Bluegrass Water to properly respond to six (6) request items from its Initial Requests for Information and submits its Response to the Attorney General's Motion to Compel and to Amend the Procedural Schedule Related to Discovery.

Respectfully submitted,

/s/ David E. Spenard

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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 24th day of May, 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