

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 REPLY TO
BLUEGRASS WATER UTILITY OPERATING
COMPANY, LLC'S RESPONSE**

Comes now Scott County, Kentucky ("Scott County"), by and through counsel, and, in reply to Bluegrass Water Utility Operating Company, LLC's ("Bluegrass Water" or "Company") Response to Scott County's Motion to Compel states that all elements of 807 KAR 5:001 Section 4(e) are demonstrated in the Motion to Compel. In reply, Scott County states as follows:

- 1. The Motion to Compel identifies each item sought; therefore, 807 KAR 5:001 Section 4(e)1 is satisfied.**
- 2. The Motion to Compel contains statements of reasons why the information is relevant to the issues in the case; therefore, 807 KAR 5:001 Section 4(e)2 is satisfied.**

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

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. ... 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.¹

...

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.²

For 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.³

...

Discovery upon a multi-state utility’s operations in other 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.⁴

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

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 **[including those set forth in reply above for Scott County 1-19(a) and (b)]** by reference for Scott County 1-20(f) and (g) and moves for an Order

¹ Scott County Motion to Compel, page 2.

² Scott County Motion to Compel, page 5.

³ Scott County Motion to Compel, page 10.

⁴ Scott County Motion to Compel, pages 13 and 14.

compelling Bluegrass Water to provide the information sought.⁵

In each instance, Scott County's Motion to Compel satisfies 807 KAR 5:001 Section 4(e)2 by providing reasons why the information is relevant to the proceedings.

3. The Motion to Compel contains adequate discussion of efforts to resolve a discovery dispute; therefore, 807 KAR 5:001 Section 4(e)3 is satisfied.

Bluegrass Water did not want to produce responses to Scott County's initial requests for information pursuant to the Commission's Order of procedure. Bluegrass Water contacted Scott County on May 8, 2023, with a request that Scott County agree to shorten the amount of time for review of Bluegrass Water's response to its initial request for information. At the time of the request, Bluegrass Water either knew or should have known of its position concerning Scott County's items 1-18, 1-19, and 1-20(e) and (f), that it would not provide them. Bluegrass Water did not disclose its positions.

As a result of the request, Scott County agreed to review all requests for information and prioritize its requests such that any request that did not require the full two weeks for review would be deferred without any change in the Order of procedure.⁶ Because Bluegrass Water mischaracterizes Scott County's position and communication, the electronic mail message at issue is attached as an Exhibit "A" to this Reply.

Bluegrass Water approached Scott County requesting accommodation. Scott County made a good faith effort to reach an agreement upon the request. The fact that Bluegrass Water did not put its cards on the table in requesting the accommodation is not

⁵ Scott County Motion to Compel, page 14.

⁶ In fact, Scott County was agreeable to deferring production of Scott County 1-20(e) and (f).

the fault of Scott County. In its Motion to Compel, Scott County stated its position.⁷ Scott County would likely have offered to accept a link to the relevant testimonies. In its Response, Bluegrass Water confirms that it is not agreeable to such a workaround.⁸ Bluegrass Water cannot properly allege as prejudicial a failure of Scott County to offer an accommodation that Bluegrass Water confirms it would have rejected. Kentucky law does not require Scott County engage in an exercise in futility.⁹ Scott County's Motion to Compel contains adequate discussion of efforts to resolve the dispute over its initial requests for information.

4. The Kentucky Public Service Commission has not adopted the Federal Rules of Civil Procedure, and there is no statute or rule of procedure through which the position of Bluegrass Water is substantiated.

The Kentucky Public Service Commission has not adopted the Federal Rules of Civil Procedure. Further, there is no principle of Federalism through which a state administrative agency is required to follow the procedural rules of the Federal District Court. The reference cited by Bluegrass Water pertains to a matter in the Federal court system which operates under a separate set of rules. It is neither binding nor persuasive.

There is no statutory provision in KRS Chapter 278 nor an administrative regulation of the Commission substantiating the position of Bluegrass Water. It is unremarkable that Bluegrass Water fails to identify a Commission Order substantiating its position. Instead, as demonstrated by the Commission's discovery requests set out in the Motion to

⁷ Motion to Compel, page 9.

⁸ Bluegrass Water Response, pages 2 and 3.

⁹ See, *for comparison*, Kentucky Retirement Systems v. Lewis, 163 S.W.3d 1, 3 (Ky. 2005) (continuation of an administrative process is not required if it would amount to an exercise in futility).

Compel, Scott County's requests were within the parameters of normal Commission practice.

5. Summary

Scott County's requests for information to Bluegrass Water are properly tailored for presenting issues and developing facts to assist the Commission in fully considering the matter without unduly disrupting or complicating the proceedings. The requests are well within the parameters of Commission discovery. Scott County's Motion to Compel satisfies the requirements of 807 KAR 5:001 Section 4(e).

WHEREFORE, Scott County files its Reply.

Respectfully submitted,

/s/ David E. Spenard

Randal A. Strobo
David E. Spenard
STROBO BARKLEY PLLC
730 West Main Street, Suite 202
Louisville, Kentucky 40202
Phone: 502-290-9751
Facsimile: 502-378-5395
Email: rstrobo@strobobarkley.com
Email: dspenard@strobobarkley.com

Cameron R. Culbertson
Scott County Attorney
198 E. Washington St.
Georgetown, KY 40324
Email: cameron.culbertson@scottky.gov

Counsel for Scott County

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 30th 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

Exhibit A

David Spenard <dspenard@strobobarkley.com>

KY PSC Case No. 2022-00432

9 messages

David Spenard <dspenard@strobobarkley.com>

Tue, May 9, 2023 at 1:48 PM

To: tip.depp@dinsmore.com, brooks.herrick@dinsmore.com, Randal Strobo <rstrobo@strobobarkley.com>, cameron.culbertson@scottky.gov

Mr. Depp,

Good afternoon.

Thank you for contacting me. You ask whether Scott County, Kentucky is willing to agree to a delay of one week from May 12th to May 19th for the filing of the responses by Bluegrass Water Operating Utility Company, LLC to Scott County's initial requests for information. (Bluegrass Water does not propose a change in the procedural schedule. Scott County's supplemental requests will remain due on May 26th.)

After discussing the matter with my client and reviewing our initial requests for information, we are agreeable (contingent upon the arrangement being acceptable to the Kentucky Public Service Commission) to following:

1. Scott County seeks responses to Items 5, 16, 18, and 19 from its first request for information on May 12, 2023 (because we reasonably anticipate needing the full two weeks to review the items in preparing out supplemental requests); therefore, Bluegrass Water will supply Scott County with these responses on the existing schedule.
2. Scott County is willing to wait until May 19, 2023 for responses to Items 1, 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 17, 20, and 21.
3. Although we reasonably believe that Scott County will be able to file all of our supplemental requests for information on or before May 26, 2023, we ask that Bluegrass Water agree to accommodate Scott County regarding any of the delayed responses (should there be an issue associated with preparing a supplemental request).

This arrangement is contingent upon getting guidance from the Kentucky Public Service Commission (and its Staff) that the arrangement is acceptable to the Commission and does not create any issues for either of our clients. If Scott County's proposal is acceptable to Bluegrass Water, my suggestion is that we reach out to Commission Staff (as soon as reasonable). If you reach out to Staff, you are authorized to convey that Scott County has agreed to the arrangement described in this message. My suggestion is to find out what the Commission Staff wants filed into the record on May 12th regarding this matter. If you have any questions or concerns, please contact me. (Note: For the remainder of the week, you will need to contact me at my cellular number: [REDACTED])

Two other points:

Please forward a copy of the proposed protective agreement for access to information that is receiving confidential treatment.

Second, please include (on the reply) anyone else at your firm that needs to be on the distribution lists for these types of messages.

Thank you; and I hope that we are able to come to an arrangement.

Best regards,

--

David Spenard

STROBO BARKLEY PLLC

730 West Main Street, Suite 202

Louisville, KY 40202

(502) 290-9751 - telephone

(502) 378-5395 - facsimile

dspenard@strobobarkley.com

www.strobobarkley.com

Herrick, Brooks <Brooks.Herrick@dinsmore.com>

Tue, May 9, 2023 at 3:42 PM

To: David Spenard <dspenard@strobobarkley.com>, "Depp,Tip" <tip.depp@dinsmore.com>, Randal Strobo <rstrobo@strobobarkley.com>, "cameron.culbertson@scottky.gov" <cameron.culbertson@scottky.gov>

David,

Thanks for your prompt response. However, we do not believe Bluegrass Water will be able to agree to the Scott County proposal. We will probably need to file a Motion for Extension.

Thanks,

Brooks

Dinsmore

R. Brooks Herrick

Partner

Dinsmore & Shohl LLP • Legal Counsel

101 South Fifth Street

Suite 2500

Louisville, KY 40202

T (502) 540-2376 • F (502) 585-2207

E brooks.herrick@dinsmore.com • dinsmore.com

[Quoted text hidden]

NOTICE: This electronic mail transmission from the law firm of Dinsmore & Shohl may constitute an attorney-client communication that is privileged at law. It is not intended for transmission to, or receipt by, any unauthorized persons. If you have received this electronic mail transmission in error, please delete it from your system without copying it, and notify the sender by reply e-mail, so that our address record can be corrected.

David Spenard <dspenard@strobobarkley.com>

Tue, May 9, 2023 at 3:49 PM

To: "Herrick, Brooks" <Brooks.Herrick@dinsmore.com>

Cc: "Depp,Tip" <tip.depp@dinsmore.com>, Randal Strobo <rstrobo@strobobarkley.com>, "cameron.culbertson@scottky.gov" <cameron.culbertson@scottky.gov>

Mr. Herrick,

Thank you for the information. (I am sorry that we could not get this matter to work out.)

And, as noted, please forward a copy of your proposed protective agreement.

Best regards,

David Spenard

Strobo Barkley PLLC

[Quoted text hidden]