

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 EXCUSE CERTAIN WITNESSES
FROM THE EVIDENTIARY HEARING**

Scott County, Kentucky (“Scott County”), by and through counsel, moves the Commission for an Order excusing certain witnesses from the scheduled evidentiary hearing. In support of the motion, Scott County states:

Numbered Paragraph 3 of the Commission’s May 18, 2023 Order establishing a hearing date in the instant case contains the following instruction. “Witnesses who sponsor schedules, testimony, or responses to requests for information shall participate in person at the September 19, 2023–September 22, 2023 hearing.”

Scott County’s recommendations upon the Bluegrass Water application are through the pre-filed testimony of its retained expert, Ariel E. Miller (as corrected and updated). Ms. Miller has responded to a Commission Staff request for information as well as requests from Bluegrass Water Utility Operating Company, LLC (“Bluegrass Water”). Ms. Miller will attend the hearing and will be presented as a witness for cross-examination. Cross-examination of Ms. Miller affords the parties to the instant case the opportunity to test evidence offered by Scott County in support of its positions.

Although no pre-filed testimony of any local official of Scott County was placed into the record, local officials provided responses to fourteen (14) requests for information put forward to Scott County by Bluegrass Water. Scott County Judge/Executive Joe Pat Covington responded to all fourteen (14) requests.¹ Members of the Fiscal Court provided responses for two (2) of the requests.²

The Bluegrass Water requests for information from Scott County's local officials do not bear upon Ms. Miller's testimony. The requests are inquiries into matters that are collateral to this proceeding. Scott County, rather than the Judge/Executive and the members of the Fiscal Court individually, is the party to the instant case. Any issue concerning financial interests and land ownership of local officials, in their individual capacity, is a matter assigned by statute, KRS 65.003, to an ethics board and is, therefore, outside the jurisdiction of the Commission. The information does not concern the rates and service of Bluegrass Water.

The Fiscal Court acts as a collegial body, and its exercise of discretion is not a proper matter for Bluegrass Water to review or attempt to supervise through this forum. There is good cause to excuse all the members of the Fiscal Court from appearing at the scheduled hearing because their responses to Bluegrass Water 1-1 and 1-27 do not concern Ms. Miller's testimony and are not proper subjects for examination in the instant case as they concern matters outside of the Commission's jurisdiction. There is, further,

¹ Scott County Responses to Bluegrass Water's First Request for Information (filed July 28, 2023), Items 1, 2, 13, 14, 15, 16, 17, 19, 27, 28, 29, 30, 31, and 32 (hereinafter "Scott County Response to Bluegrass Water, 1-___").

² Scott County Responses to Bluegrass Water 1-1 and 1-27.

good cause to excuse all the members of the Fiscal Court from appearing at the scheduled hearing because requiring their attendance presents an undue burden in that they did not pre-file testimony, are not offered as witnesses for Scott County, and the time and expense of appearing is substantial (particularly since their responses do not concern matters before the Commission).

Scott County also requests that its Judge/Executive be excused from participating in the upcoming hearing. As with the members of the Fiscal Court, he did not pre-file testimony, and the recommendations of Scott County are through its expert witness. Inquiry into Scott County's deliberative process is not an appropriate matter for this forum, and any challenge to Scott County's intervention has been exhausted if not procedurally defaulted. It presents an undue burden upon the Judge/Executive. Therefore, there is good cause to excuse the Judge/Executive. There is, further, good cause to excuse the Judge/Executive in that the time and expense of his appearing is substantial and creates an undue burden.

Scott County, while reserving its right to object to questions, respectfully requests, in the alternative that if the Commission requires attendance of a local official at the hearing, that the Scott County Judge/Executive be permitted to attend as a witness on behalf of all local officials and that the Fiscal Court members be excused. The Judge/Executive responded to all fourteen (14) requests for information, and the matters within Bluegrass Water's requests 1-1 and 1-27 (to which Fiscal Court members responded) are clearly outside the scope of the Commission's jurisdiction.

WHEREFORE, Scott County respectfully requests an Order from this Commission excusing the members of the Fiscal Court and the County Judge/Executive from

appearing at the upcoming evidentiary hearing. In the alternative, Scott County requests that all local officials other than the County Judge/Executive be excused.

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 6th day of September, 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