

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 OPPOSING INTERVENOR’S
MOTION TO EXCUSE CERTAIN WITNESSES
FROM THE EVIDENTIARY HEARING**

Scott County, Kentucky (“Scott County”), by and through counsel, tenders its Reply to Bluegrass Water Utility Operating Company, LLC’s (“Bluegrass Water”) Response Opposing Intervenor’s Motion to Excuse Certain Witnesses from the Evidentiary Hearing (“Response”). Scott County replies:

1. The Response is Built Upon an Assumption that Has Not Been Proven.

Bluegrass Water alleges that Scott County made “a decision to support rate protections for commercial customers on the backs of residential customers.”¹ It is the single allegation identified by Bluegrass Water in support of seeking the attendance of Scott County officials. Bluegrass Water fails to identify a foundation in the record of the instant case for this assumption. It is an unproven and unreasoned assumption.

Scott County’s position through a summary of the filed testimony of its expert, Ariel E. Miller, is that Bluegrass Water fails to supply evidence to support a departure from the

¹ Response at page 1.

current rate structure allocation.² No testimonial statement in Scott County's responses to the various requests for information suggests or supports Bluegrass Water's allegation.

2. The Response Assumes a Legal Duty Concerning Trial Strategy and Privilege that Does Not Exist.

Scott County sought intervention to "present issues and develop facts that will assist the Commission in fully considering this matter and can do so without unduly complicating or disrupting the proceedings."³ The Commission granted intervention.⁴ Scott County is sponsoring the testimony of its expert, Ariel E. Miller, which addresses the treatment of certain assets and rate design.⁵ Ms. Miller has responded to various requests for information and will testify at the scheduled hearing. Scott County's participation in the instant case is consistent with the Commission's conditions for granting intervention and normal practices in rate adjustment proceedings. The allegation that Scott County seeks the rights of a party "without any corresponding responsibilities"⁶ is false.

Bluegrass Water now seeks to expand the hearing by questioning Scott County officials upon positions taken through its expert.⁷ Bluegrass Water fails to identify any statute, administrative regulation, or Order of the Commission which requires an intervenor in a rate adjustment proceeding to sponsor such supervisory testimony. There

² Testimony of Ariel E. Miller, (filed June 30, 2023), at pages 9 and 10.

³ Scott County Motion to Intervene (filed Apr. 14, 2023), page 6, Paragraph 17.

⁴ Order granting intervention (Ky. P.S.C. May 5, 2023).

⁵ Testimony of Ariel E. Miller (filed June 30, 2023).

⁶ Response at page 2.

⁷ Response at pages 1 and 2.

is no legal duty by statute, regulation, or Order for a political subdivision or agency to sponsor testimony of elected officials upon a grant of intervention to explain trial strategy or discuss privileged matters.

3. The Commission’s Order in Case No. 2022-00147 is Readily Distinguishable.

Bluegrass Water cites the Commission’s November 7, 2022 Order in KY PSC Case No. 2022-00147.⁸ In that proceeding, the applicant sought to excuse Shawn Elicequi, Executive Vice President of Risk Management of the Corix Group of Companies, and Patrick Baryenbruch, President of the consulting firm Baryenbruch & Company, LLC.⁹ Each witness supplied filed testimony in support of the application upon topics directly relating to the rates and services of the applicant, which had the burden of proof.¹⁰

Comparatively, in the instant proceeding, Ariel E. Miller is the only witness sponsored by Scott County. The Judge/Executive and the Magistrates did not file testimony; instead, they responded to requests for information from Bluegrass Water during discovery. A review of the responses supplied by the Magistrates demonstrates

⁸ *In the Matter of: Electronic Application of Water Service Corporation of Kentucky for a General Adjustment in Existing Rates and a Certificate of Public Convenience and Necessity to Deploy Advanced Metering Infrastructure*, (filed Jun. 13, 2022) (also “WSCK”).

⁹ Case No. 2022-00147, Motion to Excuse Witnesses or to Testify Virtually (filed Oct. 25, 2022).

¹⁰ Case No. 2022-00147, Application (tendered May 31, 2022), Exhibit 9. The purpose of Elicequi’s testimony is presented at page 4 of the testimony and can be summarized as discussing Corix services provided to WSCK, cost allocations to WSCK, and the Corix Cost Allocation Manual filed into that proceeding as part of the application. The purpose of Baryenbruch’s testimony is presented at page 4 of the testimony and can be summarized as discussing services WSCK receives from the service company of its parent organization and the reasonableness of associated cost allocations.

the responses are limited to their financial interests in utilities operating in the Commonwealth of Kentucky and real estate ownership.¹¹ The information does not bear upon the Miller Testimony or the rates and service of Bluegrass Water.

Individuals who, as intervenors, respond to requests for information upon matters other than rates and service are qualitatively different from individuals who supply testimony in support of an application for an adjustment in rates. The latter are clearly necessary for a robust record while the former are not. Bluegrass Water does not identify any testimonial statement in a response by a local official which places into the record a fact or issue directly bearing upon its rates and service or the instant application.

The Magistrates' responses to Bluegrass Water Items 1 and 27 do not place into the record a fact or issue directly bearing upon the rates and service of the applicant or the issue of fair, just, and reasonable rates. The WSCK Order is readily distinguishable from the facts of the instant case.

As to the Judge/Executive, while he supplied more responses than the Magistrates, a review of the responses demonstrates that they are of the same character as the Magistrates. For example, the amount of American Rescue Plan Act of 2021 ("ARPA") funds received by Scott County¹² may be of some general interest; however, it is not subject to the Commission's jurisdiction, does not pertain to the rates and service of Bluegrass Water, and is not the basis for or otherwise incorporated into the recommendations of Scott County's expert through her testimony.

¹¹ Scott County Response to Bluegrass Water First Request for Information (filed July 28, 2023), Items 1 and 27.

¹² Scott County Response to Bluegrass Water First Request for Information (filed July 28, 2023), Item 29.

4. There is No Due Process Concern Arising from Scott County's Motion.

Bluegrass Water cites two (2) judicial opinions, in a footnote, in its Response.¹³ *Turrell v. Bd. Of Educ.*, 441 S.W.2d 767, 770 (Ky. 1969) does not construe hearings under KRS Chapter 278 and concerns statutory notice rather than cross-examination. *Mayfield Gas Co. v. Public Serv. Comm'n*, 259 S.W.2d 8, 11 (Ky. 1953) discusses the Commission and states: "We agree with the reasoning of the New Mexico and Wisconsin courts that the term 'public hearing' means a completed public hearing." The dicta of *Turrell* and *Mayfield*, though, supports Scott County because it did not present testimony of these individuals as witnesses in opposition to Bluegrass Water. Their testimony was, instead, invited into the record by Bluegrass Water.

Kentucky Utilities Co. v. Public Serv. Comm'n, 390 S.W. 2d 168 (Ky. 1965), decided after *Mayfield*, is far more instructive. In *Kentucky Utilities* a party argued that a study presented by a witness was incompetent because it "was not prepared by him or by persons working under his supervision."¹⁴ In pertinent part, in rejecting the claim of error, the Opinion states: "[T]here is no showing that there is any probability of error in the study or that an opportunity to cross-examine the field men would have been of any significant value."¹⁵ *Kentucky Utilities* is far closer. There is no showing that an opportunity to cross-examine the Scott County officials would be of any significant value regarding the Miller Testimony. It would unduly complicate the hearing through inviting into the proceeding complications and disruptions concerning matters other than rates and service.

¹³ Response, page 2, footnote 2.

¹⁴ *Kentucky Utilities*, 390 S.W.2d at 173.

¹⁵ *Id.*

WHEREFORE, Scott County respectfully submits its Reply.

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 15th 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