

a customer if the request is not made more frequently than once each twelve (12) months.

(a) The customer shall be given the opportunity to be present at the requested test.

(b) If the tests show the as-found meter accuracy is within the limits allowed by 807 KAR 5:022, Section 8(3)(a)1., 5:022, Section 8(3)(b)1., 5:041, Section 17(1), or 5:066, Section 15(4), the utility may make a reasonable charge for the test.

(c) The commission-approved amount of the charge shall be established in the utility's filed tariff.

(d) The utility shall maintain a meter removed from service for testing, in a secure location under the utility's control, for a period of six (6) months from the date the customer is notified of the finding of the investigation and the time frame the meter will be secured by the utility or if the customer has filed a formal complaint pursuant to KRS 278.260, the meter shall be maintained until the proceeding is resolved, or the meter is picked up for testing by personnel from the commission's Meter Standards Laboratory.

(2) After having first obtained a test from the utility, a customer of the utility may request a meter test by the commission upon written application.

(a) The request shall not be made more frequently on one (1) meter than once each twelve (12) months.

(b) Upon request, personnel from the commission's Meter Standards Laboratory shall pick up the meter from the utility and maintain the meter for a minimum of six (6) months from the date the customer is notified of the finding of the investigation and the time frame the meter will be secured by the commission's Meter Standards Laboratory or if the customer has filed a formal complaint pursuant to KRS 278.260, the meter shall be maintained until the proceeding is resolved.

Section 20. Access to Property. The utility shall at all reasonable hours have access to meters, service connections, and other property owned by it and located on customer's premises for purposes of installation, maintenance, meter reading, operation, replacement, or removal of its property. An employee of the utility whose duties require him to enter the customer's premises shall wear a distinguishing uniform or other insignia, identifying him as an employee of the utility, and show a badge or other identification that shall identify him as an employee of the utility.

Section 21. Pole Identification. (1) Each utility owning poles or other structures supporting its wires shall mark every pole or structure located within a built-up community with the initials or other distinguishing mark by which the owner of every structure can be readily determined.

(2) Identification marks may be of any type but shall be of a permanent material and shall be easily read from the ground at a distance of six (6) feet from the structure.

(3) If a utility's structures are located outside of a built-up community, at least every tenth structure shall be marked as established in subsection (2) of this section.

(4) All junction structures shall bear the identification mark and structure number of the owner.

(5) Poles need not be marked if they are clearly and unmistakably identifiable as the property of the utility.

(6) A utility shall either number its structures and maintain a numbering system or use some other method of identification so that each structure in the system can be easily identified.

Section 22. Cable Television Pole Attachments and Conduit Use. (1) Each utility owning poles or other facilities supporting its wires shall permit cable television system operators who have all necessary licenses and permits to attach cables to poles and to use facilities, as cus-

tomers, for transmission of signals to their patrons.

(2) The tariffs of the utility shall establish the rates, terms, and conditions under which the utility's facilities may be used.

(3) With respect to a complaint before the commission in an individual matter concerning cable television pole attachments, final action shall be taken on the matter within a reasonable time, but no later than 360 days after filing of the complaint.

Section 23. System Maps and Records. (1) Each utility shall have on file at its principal office located within the state and shall file upon request with the commission a map or maps of suitable scale of the general territory it serves or holds itself ready to serve. The map or maps should be available preferably in electronic format as a PDF file or as a digital geographic database. The following data shall be available on the map or maps:

- (a) Operating districts;
- (b) Rate districts;
- (c) Communities served;
- (d) Location and size of transmission lines, distribution lines and service connections;
- (e) Location and layout of all principal items of plant; and
- (f) Date of construction of all items of plant by year and month.

(2) In each division or district office there shall be available information relative to the utility's system that will enable the local representative to furnish necessary information regarding the rendering of service to existing and prospective customers.

(3) In lieu of showing the above construction information in (1)(f) on maps, a card record or suitable digital data may be used.

(a) The construction data about a plant feature, such as a pipeline, may be stored in a table and linked to the geographic plant feature by a unique identifier that is present in both the table and the geographic database.

(b) For all prospective construction the records shall also show the date of construction by month and year.

Section 24. Location of Records. All records required by 807 KAR Chapter 5 shall be kept in the office of the utility and shall be made available to representatives, agents, or staff of the commission upon reasonable notice at all reasonable hours.

Section 25. Safety Program. Each utility shall adopt and execute a safety program, appropriate to the size and type of its operations. At a minimum, the safety program shall:

(1) Establish a safety manual with written guidelines for safe working practices and procedures to be followed by utility employees;

(2) Instruct employees in safe methods of performing their work. For electric utilities, this is to include the standards established in 807 KAR 5:041, Section 3; and

(3) Instruct employees who, in the course of their work, are subject to the hazard of electrical shock, asphyxiation, or drowning, in accepted methods of artificial respiration.

Section 26. Inspection of Systems. (1) A utility shall adopt inspection procedures to assure safe and adequate operation of the utility's facilities and compliance with KRS Chapter 278 and 807 KAR Chapter 5 and shall file these procedures with the commission for review.

(2) Upon receipt of a report of a potentially hazardous condition at a utility facility, the utility shall inspect all portions of the system that are the subject of the report.

(3) Appropriate records shall be kept by a utility to identify the inspection made, the date and time of inspection, the person conducting the inspection, deficiencies found, and action

taken to correct the deficiencies.

(4) Electric utility inspection. An electric utility shall make systematic inspections of its system in the manner established in this subsection to insure that the commission's safety requirements are being met. These inspections shall be made as often as necessary but not less frequently than established in this subsection for various classes of facilities and types of inspection.

(a) As a part of operating procedure, each utility shall continuously monitor and inspect all production facilities regularly operated and manned.

(b) At intervals not to exceed six (6) months, the utility shall inspect:

1. Unmanned production facilities, including peaking units not on standby status, and all monitoring devices, for evidence of abnormality;

2. Transmission switching stations if the primary voltage is sixty-nine (69) KV or greater, for damage to or deterioration of components including structures, fences, gauges, and monitoring devices;

3. Underground network transformers and network protectors in vaults located in buildings or under sidewalks, for leaks, condition of case, connections, temperature, and overloading; and

4. Electric lines operating at sixty-nine (69) KV or greater, including insulators, conductors, and supporting facilities, for damage, deterioration and vegetation management consistent with the utility's vegetation management practices.

(c) In addition to the requirements established in paragraph (b) of this subsection, all electric lines operating at sixty-nine (69) KV or greater, including insulators, conductors, and supporting facilities shall be inspected from the ground for damage, deterioration, and vegetation management consistent with the utility's vegetation management practices at intervals not to exceed:

1. Six (6) years for each electric line supported by a wood pole or other wood support structure; or

2. Twelve (12) years for each electric line supported by a pole or other support structure constructed of steel or other nonwood material.

(d) At intervals not to exceed one (1) year, the utility shall inspect:

1. Production facilities maintained on a standby status. Except for remotely controlled facilities, all production facilities shall also be thoroughly inspected; and

2. Distribution substations with primary voltage of fifteen (15) to sixty-nine (69) KV.

(e) At intervals not to exceed two (2) years, the utility shall inspect all electric facilities operating at voltages of less than sixty-nine (69) KV, to the point of service including insulators, conductors, meters, and supporting facilities from the ground for damage, deterioration, and vegetation management consistent with the utility's vegetation management practices.

(f) The utility shall inspect other facilities as follows:

1. Utility buildings shall be inspected for compliance with safety codes at least annually; and

2. Construction equipment shall be inspected for defects, wear, and operational hazards at least quarterly.

(g) Aerial inspections shall not be used as the basis for compliance with paragraphs (b)1. through 3., support facilities provisions in (b)4., (d)1., and (f) of this subsection.

(5) Gas utility inspection. A gas utility shall make systematic inspections of its system to insure that the commission's safety requirements are being met. These inspections shall be made as often as necessary but not less frequently than is prescribed or recommended by the Department of Transportation, 49 C.F.R. Part 192 Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards, for the various classes of facilities.

(a) The following maximum time intervals shall be established for certain inspections provid-

ed for in 49 C.F.R. Part 192 Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards, with respect to which intervals are not specified, and for certain additional inspections not provided for in the code.

1. At intervals not to exceed every fifteen (15) months but at least once each calendar year, the utility shall inspect and visually examine:

- a. Production wells, storage wells, and well equipment, including their exterior components;
- b. Pressure limiting stations, relief devices, pressure regulating stations, and vaults; and
- c. Accessibility of the curb box and valve on a service line.

2. At intervals not to exceed three (3) years, gas meters shall be manually inspected and visually examined for proper working condition.

3. The utility shall inspect other facilities as follows:

- a. Utility buildings shall be inspected for compliance with safety codes at least annually; and
- b. Construction equipment under the control of the utility shall be inspected for defects, wear, and operational hazards at least quarterly.

(b) At intervals not to exceed the periodic meter test intervals, individual residential customer service regulators, vents, and relief valve vents shall be checked for operable condition.

(c) At intervals not to exceed the periodic meter test intervals, the curb box and valve on the service line shall be inspected for operable condition.

(d) Aerial inspections shall not be used as the basis for compliance with paragraphs (a) through (c) of this subsection.

(6) Water utility inspections. Each water utility shall make systematic inspections of its system as established in paragraphs (a) through (c) of this subsection to insure that the commission's safety requirements are being met. These inspections shall be made as often as necessary but not less frequently than as established in paragraphs (a) through (c) of this subsection for various classes of facilities and types of inspection.

(a) The utility shall annually inspect all structures pertaining to source of supply for their safety and physical and structural integrity, including dams, intakes, and traveling screens. The utility shall semiannually inspect supply wells, their motors and structures, including electric power wiring and controls for proper and safe operation;

(b) The utility shall annually inspect all structures pertaining to purification for their safety, physical and structural integrity, and for leaks, including sedimentation basins, filters, and clear wells; chemical feed equipment; pumping equipment and water storage facilities, including electric power wiring and controls; and hydrants, mains, meters, meter settings and valves; and

(c) The utility shall monthly inspect construction equipment and vehicles for defects, wear, operational hazards, lubrication, and safety features.

(7) Telephone utility inspection. Each telephone utility shall make systematic inspections of its system as established in paragraphs (a) through (f) of this subsection to insure that the commission's safety requirements are being met. The inspections shall be made as often as necessary but not less frequently than as established in paragraphs (a) through (f) of this subsection for various classes of facilities and types of inspection.

(a) The utility shall inspect aerial plant for electrical hazards, proper clearance for electric clearances of facilities, vegetation management consistent with the utility's vegetation management practices, and climbing safety every two (2) years;

(b) The utility shall inspect underground plant for presence of gas, proper clearance from electric facilities, and safe working conditions at least annually;

(c) The utility shall inspect utility-provided station equipment and connections for external electrical hazards, damaged instruments or wiring, and appropriate protection from lightning and safe location of equipment and wiring when on a customer's premises;

(d) The utility shall inspect utility buildings for compliance with safety codes at least annually;

(e) The utility shall inspect construction equipment for defects, wear, and operational hazards at least quarterly; and

(f) Aerial inspections shall not be used as the basis for compliance with this subsection.

(8) Sewage utility inspection. Each sewage utility shall make systematic inspections of its system in the manner established in 807 KAR 5:071 to ensure that the commission's safety requirements are being met. The inspections shall be made as often as necessary but not less frequently than established in 807 KAR 5:071.

Section 27. Reporting of Accidents, Property Damage, or Loss of Service. (1) Within two (2) hours following discovery each utility, other than a natural gas utility, shall notify the commission by telephone or electronic mail of a utility related accident that results in:

(a) Death or shock or burn requiring medical treatment at a hospital or similar medical facility, or any accident requiring inpatient overnight hospitalization;

(b) Actual or potential property damage of \$25,000 or more; or

(c) Loss of service for four (4) or more hours to ten (10) percent or 500 or more of the utility's customers, whichever is less.

(2) A summary written report shall be submitted by the utility to the commission within seven (7) calendar days of the utility related accident. For good cause shown, the executive director of the commission, shall, upon application in writing, allow a reasonable extension of time for submission of this report.

(3) Natural gas utilities shall report utility related accidents in accordance with the provisions of 807 KAR 5:027.

Section 28. Deviations from Administrative Regulation. In special cases, for good cause shown, the commission shall permit deviations from this administrative regulation.

Section 29. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Annual Financial and Statistical Reports:

1. "FERC Form 1 – Annual Report of Major Electric Utilities, Licensees and Others", March 2007;

2. "Annual Reporting Form for Rural Electric Cooperative Corporations", July 2012;

3. "FERC Form 2 – Annual Report of Major Natural Gas Companies", December 2007;

4. "Annual Reporting Form for Class C and D Gas Utilities", August 2005;

5. "Annual Reporting Form for Local Exchange Carriers", August 2005;

6. "Annual Reporting Form for Local Exchange Carriers – Kentucky Operations Only", August 2004;

7. "Annual Reporting Form for Water Company – Class A & B", July 2012;

8. "Annual Reporting Form for Water Company – Class C", July 2012;

9. "Annual Reporting Form for Water Districts/Water Associations – Class A & B", July 2012;

10. "Annual Reporting Form for Water Districts/Water Associations – Class C", July 2012;

and

11. "Annual Reporting Form for Sewer Utilities", September 2005;

(b) Quarterly Meter Reports:

1. "Quarterly Meter Report-Electric", August 2011;

2. "Quarterly Meter Report-Water", July 2012; and

3. "Quarterly Meter Report-Gas", July 2007;

(c) Non-payment Disconnection/Reconnection Reports:

1. "Water Utility-Non-Payment Disconnection/Reconnection Report", February 2012;
2. "Electric Utility-Non-Payment Disconnection/Reconnection Report", September 2000; and
3. "Gas Utility Non-Payment Disconnection/Reconnection Report" September 2000;

(d) "Application for Appointment of Meter Testers", August 2012; and

(e) Gross Annual Operating Revenue Reports:

1. "Report of Gross Operating Revenues Derived from Intra-Kentucky Business", December 2010;
2. "Report of Gross Operating Revenues Derived from Intra-Kentucky Business Electric Utilities", October 2012;
3. "Report of Gross Operating Revenues Derived from Intra-Kentucky Business Long Distance Carriers and Operator Services", September 2010;
4. "Report of Gross Operating Revenues Derived from Intra-Kentucky Business Paging and Cellular", September 2010; and
5. "Report of Gross Operating Revenues Derived from Intra-Kentucky Business Local Exchange Carriers and Competitive Local Exchange Carriers", September 2010.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law at the commission's offices at 211 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m. This material may also be obtained at the commission's Web site at <http://psc.ky.gov>. (8 Ky.R. 791; 961; 1137; eff. 4-7-1982; 9 Ky.R. 217; 473; eff. 8-25-1982; 11 Ky.R. 790; 1048; eff. 1-7-1985; 12 Ky.R. 967; 1343; 1510; eff. 2-4-1986; 18 Ky.R. 1953; 2554; eff. 2-26-1992; TAm eff. 8-9-2007; 295; 1015; 1136; eff. 1-4-2013; TAm 1-30-2013; Crt eff. 3-27-2019.)

807 KAR 5:001. Rules of procedure.

RELATES TO: KRS 61.870-884, 61.931-934, 65.810, Chapter 74, 278.010, 278.020(3), 278.100, 278.180, 278.300, 278.410, 322.340, 365.015, 369.102, 424.300, 45 C.F.R. 160.103, 47 C.F.R. 36, 20 U.S.C. 1232g

STATUTORY AUTHORITY: KRS 278.040(3), 278.260(2), 278.310

NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.040(3) authorizes the commission to promulgate reasonable administrative regulations to implement the provisions of KRS Chapter 278. KRS 278.310 requires that all hearings and investigations before the commission shall be governed by rules promulgated by the commission. This administrative regulation establishes requirements with respect to formal and informal proceedings before the commission.

Section 1. Definitions. (1) "Affiliate" means an entity:

- (a) That is wholly owned by a utility;
- (b) In which a utility has a controlling interest;
- (c) That wholly owns a utility;
- (d) That has a controlling interest in a utility; or
- (e) That is under common control with the utility.

(2) "Case" means a matter coming formally before the commission.

(3) "Commission" is defined by KRS 278.010(15).

(4) "Controlling interest in" and "under common control with" mean a utility or other entity if the utility or entity:

(a) Directly or indirectly has the power to direct, or to cause the direction of, the management or policies of another entity; and

(b) Exercises that power:

1. Alone or through one (1) or more intermediary companies;
2. In conjunction with, or pursuant to an agreement;
3. Through ownership of ten (10) percent or more of the voting securities;
4. Through common directors, officers, stockholders, voting or holding trusts, or associated companies;
5. By contract; or
6. Through direct or indirect means.

(5) "Electronic mail" means an electronic message that is sent to an electronic mail address and transmitted between two (2) or more telecommunication devices, computers, or electronic devices capable of receiving electronic messages.

(6) "Electronic mail address" means a destination, commonly expressed as a string of characters, to which electronic mail can be sent or delivered, and consists of a user name or mailbox and a reference to an Internet domain.

(7) "Electronic signature" is defined by KRS 369.102(8).

(8) "Executive director" means the person appointed to the position established in KRS 278.100 or a person that he or she has designated to perform a duty or duties assigned to that position.

(9) "Paper" means, regardless of the medium on which it is recorded, an application, petition, or other initiating document, motion, complaint, answer, response, reply, notice, request for information, or other document that this administrative regulation or the commission directs or permits a party to file in a case.

(10) "Party" means a person who:

- (a) Initiates action through the filing of a formal complaint, application, or petition;

(b) Files a tariff or tariff sheet with the commission pursuant to KRS 278.180 and 807 KAR 5:011 that the commission has suspended and established a case to investigate or review;

(c) Is named as a defendant in a formal complaint filed pursuant to Section 20 of this administrative regulation;

(d) Is granted leave to intervene pursuant to Section 4(11) of this administrative regulation;
or

(e) Is joined to a commission proceeding.

(11) "Person" is defined by KRS 278.010(2).

(12) "Signature" means a manual, facsimile, conformed, or electronic signatures.

(13) "Tariff" means the schedules of a utility's rates, charges, regulations, rules, tolls, terms, and conditions of service over which the commission has jurisdiction.

(14) "Utility" is defined by KRS 278.010(3).

(15) "Water district" means a special district formed pursuant to KRS 65.810 and Chapter 74.

(16) "Web site" means an identifiable site on the internet, including social media, which is accessible to the public.

Section 2. Hearings. The commission shall provide notice of hearing in a case by order except if a hearing is not concluded on the designated day and the presiding officer verbally announces the date for continuation of the hearing. A verbal announcement made by the presiding officer shall be deemed proper notice of the continued hearing.

Section 3. Duties of Executive Director. (1) Upon request, the executive director shall:

(a) Advise as to the form of a paper desired to be filed;

(b) Provide general information regarding the commission's procedures and practices; and

(c) Make available from the commission's files, upon request, a document or record pertinent to a matter before the commission unless KRS 61.878 expressly exempts the document or record from inspection or release.

(2) The executive director shall reject for filing a document that on its face does not comply with 807 KAR Chapter 5.

Section 4. General Matters Pertaining to All Cases. (1) Address of the commission. All communications shall be addressed to: Public Service Commission, 211 Sower Boulevard, Post Office Box 615, Frankfort, Kentucky 40602.

(2) Case numbers and styles. Each case shall receive a number and a style descriptive of the subject matter. The number and style shall be placed on each subsequent paper filed in the case.

(3) Signing of papers.

(a) A paper shall be signed by the submitting party or attorney and shall include the name, address, telephone number, facsimile number, and electronic mail address, if any, of the attorney of record or submitting party.

(b) A paper shall be verified or under oath if required by statute, administrative regulation, or order of the commission.

(4) A person shall not file a paper on behalf of another person, or otherwise represent another person, unless the person is an attorney licensed to practice law in Kentucky or an attorney who has complied with SCR 3.030(2). An attorney who is not licensed to practice law in Kentucky shall present evidence of his or her compliance with SCR 3.030(2) if appearing before the commission.

(5) Amendments. Upon motion of a party and for good cause shown, the commission shall allow a complaint, application, answer, or other paper to be amended or corrected or an omission supplied. Unless the commission orders otherwise, the amendment shall not relate back to the date of the original paper.

(6) Witnesses and subpoenas.

(a) Upon the written request of a party to a proceeding or commission staff, subpoenas requiring the attendance of witnesses for the purpose of taking testimony may be signed and issued by a member of the commission.

(b) Subpoenas for the production of books, accounts, documents, or records (unless directed to issue by the commission on its own authority) may be issued by the commission or a commissioner, upon written request, stating as nearly as possible the books, accounts, documents, or records desired to be produced.

(c) A party shall submit a completed subpoena form with its written request as necessary.

(d) Every subpoena shall be served, in the manner prescribed by subsection (8) of this section, on a person whose information is being requested.

(e) Copies of all documents received in response to a subpoena shall be filed with the commission and furnished to all other parties to the case, except on motion and for good cause shown. Any other tangible evidence received in response to the subpoena shall be made available for inspection by the commission and all other parties to the action.

(7) Computation of time.

(a) In computing a period of time prescribed or allowed by order of the commission or by 807 KAR Chapter 5 or KRS Chapter 74 or 278, the day of the act, event, or default after which the designated period of time begins to run shall not be included.

(b) The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, a legal holiday, or other day commission offices are legally closed, in which event the period shall run until the end of the next day that is not a Saturday, a Sunday, a legal holiday, or other day commission offices are legally closed.

(8) Service.

(a) Unless the commission orders service upon a party and the party's attorney, service shall be made upon the party's attorney if the party is represented by an attorney.

(b) Service upon an attorney or upon a party by the commission shall be made by sending a copy by electronic mail to the electronic mail address listed on papers that the attorney or party has submitted in the case. A paper that is served via electronic mail shall comply with Section 8(4) of this administrative regulation and shall include the sending of an electronic mail message that contains an electronic version of the commission order or a hyperlink that enables the recipient to access, view, and download an electronic copy of the commission order from the commission's Web site.

(c) If good cause exists, and upon the filing of a motion by a party to excuse a party from receiving service by electronic mail from the commission, the commission shall order service of papers on the party to be made in accordance with paragraph (d)1. or 2. of this subsection.

(d) Service upon an attorney or upon a party by the parties in a case shall be made by:

1. Delivering a copy to the attorney or party;

2. Mailing a copy by United States mail or other recognized mail carrier to the attorney or party at the last known address; or

3. Sending a copy by electronic mail to the electronic mail address listed on papers that the attorney or party has submitted in the case. A paper that is served via electronic mail shall comply with Section 8(4) of this administrative regulation.

(e) Service shall be complete upon mailing or electronic transmission. If a serving party learns that the mailing or electronic transmission did not reach the person to be served, the

serving party shall take reasonable steps to immediately re-serve the party to be served, unless service is refused, in which case the serving party shall not be required to take additional action.

(9) Filing.

(a) Unless electronic filing procedures established in Section 8 of this administrative regulation are used, a paper shall not be deemed filed with the commission until the paper:

1. Is physically received by the executive director at the commission's offices during the commission's official business hours; and

2. Meets all applicable requirements of KRS Chapter 278 and KAR Title 807.

(b) The executive director shall endorse upon each paper or document accepted for filing the date of its filing. The endorsement shall constitute the filing of the paper or document.

(10) Privacy protection for filings.

(a) If a person files a paper containing personal information, the person shall encrypt or redact the paper so that personal information cannot be read. Personal information shall include a business name; an individual's first name or first initial and last name; personal mark; or unique biometric or genetic print or image, in combination with one (1) or more of the following data elements:

1. The digits of a Social Security number or taxpayer identification number;

2. The month and date of an individual's birth;

3. The digits of an account number, credit card number, or debit card number that, in combination with any required security code, access code, or password, would permit access to an account;

4. A driver's license number, state identification card number, or other individual identification number issued by any agency;

5. A passport number or other identification number issued by the United States government;

6. "Individually identifiable health information" as defined by 45 C.F.R. 160.103, except for education records covered by the Family Educational Rights and Privacy Act, as amended, 20 U.S.C. 1232g; or

7. The address, phone number, or email address of an individual who is not a party and has not requested to be a party.

(b) To redact the paper, the filing party shall replace the identifiers with neutral placeholders or cover the identifiers with an indelible mark that so obscures the identifiers that the identifiers cannot be read.

(c) The responsibility to review for compliance with this section and redact a paper shall rest with the party that files the paper.

(11) Intervention and parties.

(a) A person who wishes to become a party to a case before the commission may, by timely motion, request leave to intervene.

1. The motion shall include the movant's full name, mailing address, and electronic mail address and shall state his or her interest in the case and how intervention 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.

2. The motion may include a request by movant for delivery of commission orders by United States mail and shall state how good cause exists for that means of delivery to movant.

(b) The commission shall grant a person leave to intervene if the commission finds that he or she has made a timely motion for intervention and that he or she has a special interest in the case that is not otherwise adequately represented or that his or her intervention is likely to

present issues or to develop facts that assist the commission in fully considering the matter without unduly complicating or disrupting the proceedings.

(c) Unless electronic filing procedures established in Section 8 of this administrative regulation are used in the case, a party shall serve a person granted leave to intervene with all papers that the party submits in the case after the order granting intervention, but the party is not required to provide any papers submitted prior to the issuance of that order unless the commission otherwise orders.

(d) Unless the commission finds good cause to order otherwise, a person granted leave to intervene in a case shall, as a condition of his or her intervention, be subject to the procedural schedule in existence in that case when the order granting the person's intervention is issued.

(e) A person who the commission has not granted leave to intervene in a case may file written comments regarding the subject matter of the case.

1. These comments shall be filed in the case record.

2. A person filing written comments shall not be deemed a party to the proceeding and need not be named as a party to an appeal.

(12) Requests for information.

(a) If permitted by administrative regulation or by order of the commission, a party may in accordance with this section request information from another party to the case. The requesting party shall serve its request upon the party from which it seeks the requested information and shall also file its request with the commission.

(b) Commission staff, through the commission's executive director, may request information from any party to a case on the commission's behalf.

(c) Unless otherwise established in administrative regulation, the commission shall establish by order in a case the time for parties to issue and to respond to requests for information.

(d) Responses to requests for information.

1. Responses to requests for information shall be appropriately bound, tabbed, and indexed.

2. Each response shall:

a. Include the name of the witness responsible for responding to the questions related to the information provided; and

b. Be answered under oath or, for representatives of a public or private corporation, a partnership, an association, or a governmental agency, be accompanied by a signed certification of the preparer or person supervising the preparation of the response on behalf of the person that the response is true and accurate to the best of that person's knowledge, information, and belief formed after a reasonable inquiry.

3. If the requested information has previously been provided in the case, a responding party may, in lieu of providing the requested information, provide a reference to the specific location of the requested information in the case record.

4. A responding party shall make timely amendment to its prior response if the party obtains information that indicates that the response was incorrect when made or, though correct when made, is subsequently incorrect in any material respect.

5. If a party served with a request for information fails or refuses to furnish all or part of the requested information, the party shall provide a written explanation of the specific grounds for the failure to completely and precisely respond.

6. The responding party shall file with the commission the party's response to a request for information and shall serve it upon all parties to a case.

(e) A party shall compel compliance with the party's request for information by motion to the commission, which shall include:

1. A description of the information requested;

2. The reasons why it is relevant to the issues in the case; and

3. The efforts taken to resolve any disagreement over the production of the requested information.

(13) Each report, specification, drawing, and plan that a professional engineer or professional land surveyor prepared and that is filed with the commission shall contain the seal or stamp and signature of that professional engineer or land surveyor in accordance with KRS 322.340.

(14) Consolidation of cases.

(a) The commission may order two (2) or more proceedings involving a similar question of law or fact to be consolidated if rights of the parties or the public interest will not be prejudiced.

(b) Upon ordering the consolidation of cases, the commission shall specify into which case the other case shall be consolidated.

(c) All papers received after the order of consolidation has been issued shall be filed in the record of the designated case.

(d) Papers filed prior to the order of consolidation shall remain in their respective case files.

Section 5. Motion Practice. (1) All requests for relief that are not required to be made in an application, petition, or written request shall be by motion. A motion shall state precisely the relief requested.

(2) Unless the commission orders otherwise, a party to a case shall file a response to a motion no later than seven (7) days from the date of filing of a motion.

(3) Unless the commission orders otherwise, a party shall file a reply no later than five (5) days of the filing of the most recent response to the party's motion. The reply shall be confined to points raised in the responses to which they are addressed, and shall not reiterate an argument already presented.

Section 6. Proof of Service. (1) Except as provided in Section 8 of this administrative regulation, all papers filed in a case shall contain proof of the date and manner of service of the papers on all parties.

(2) Proof shall be made by certificate of the filer's attorney, by affidavit of the person who served the papers, or by a comparable proof.

(3) The certificate or affidavit shall identify by name the person served and the date and method of service.

(4) Proof of electronic service shall state the electronic notification address of the person served.

Section 7. Filing Procedures. (1) Unless the commission orders otherwise or the electronic filing procedures established in Section 8 of this administrative regulation are used, if a paper is filed with the commission, an original unbound and ten (10) additional copies in paper medium shall be filed.

(2) Each paper filed with the commission shall conform to the requirements established in this subsection.

(a) Form. Each filing shall be printed or typewritten, double spaced, and on one (1) side of the page only.

(b) Size. Each filing shall be on eight and one-half (8 1/2) inches by eleven (11) inches paper.

(c) Font. Each filing shall be in type no smaller than twelve (12) point, except footnotes, which may be in type no smaller than ten (10) point.

(3) Except as provided for in Section 8 of this administrative regulation, a filing made with the commission outside its business hours shall be considered as filed on the commission's next business day.

(4) A paper submitted by facsimile transmission shall not be accepted.

Section 8. Electronic Filing Procedures. (1) Upon an applicant's timely election of the use of electronic filing procedures or upon order of the commission in a case that the commission has initiated on its own motion, the procedures established in this section shall be used in lieu of other filing procedures established in this administrative regulation.

(2) At least seven (7) days prior to the submission of its application, an applicant shall:

(a) File with the commission written notice of its election to use electronic filing procedures using the Notice of Election of Use of Electronic Filing Procedures form; and

(b) If the applicant does not have an account for electronic filing with the commission, register for an account at <http://psc.ky.gov/Account/Register>.

(3) All papers shall be filed with the commission by uploading an electronic version using the commission's E-Filing System at <http://psc.ky.gov>. In addition, the filing party shall file one (1) copy in paper medium with the commission as required by subsection (12)(a)2. of this section.

(4)(a) Audio or video files.

1. A file containing audio material shall be submitted in MP3 format.

2. A file containing video material shall be submitted in MPEG-4 format.

(b) Except as established in paragraph (a) of this subsection, each file in an electronic submission shall be:

1. In portable document format;

2. Search-capable;

3. Optimized for viewing over the Internet;

4. Bookmarked to distinguish sections of the paper, except that documents filed in response to requests for information need not be individually bookmarked; and

5. If scanned material, scanned at a resolution of 300 dots per inch.

(c) If, pursuant to Section 4(12) of this administrative regulation, a party is requested to provide information in the form of an electronic spreadsheet, the file containing the spreadsheet shall be submitted in an Excel spreadsheet format.

(5)(a) Each electronic submission shall include an introductory file in portable document format that is named "Read1st" and that contains:

1. A general description of the filing;

2. A list of all material to be filed in paper or physical medium but not included in the electronic submission; and

3. A statement that the materials in the electronic submission are a true representation of the materials in paper medium.

(b) The "Read1st" file and any other material that normally contains a signature shall contain a signature in the electronically submitted document.

(c) The electronic version of the cover letter accompanying the paper medium filing may be substituted for a general description.

(6)(a) An uploading session shall not exceed twenty (20) files or 100 megabytes.

(b) An individual file shall not exceed thirty (30) megabytes.

(c) If a submission exceeds the limitations established in paragraph (a) of this subsection, the filer shall make electronic submission in two (2) or more consecutive uploading sessions.

(7) If filing a paper with the commission, the filing party shall certify that:

(a) The electronic version of the paper is a true and accurate copy of each paper filed in paper medium;

(b) The electronic version of the paper has been submitted to the commission; and
(c) A copy of the paper in paper medium has been mailed to all parties that the commission has excused from electronic filing procedures.

(8)(a) Upon completion of an uploading session, the commission shall notify all parties of record by electronic mail that an electronic submission has been made.

(b) Upon a party's receipt of this notification, each party shall be solely responsible for accessing the commission's Web site at <http://psc.ky.gov> to view or download the submission.

(9) Unless a party objects to the use of electronic filing procedures in the party's motion for intervention, the party shall:

(a) Be deemed to have consented to the use of electronic filing procedures and the service of all papers, including orders of the commission, by electronic means; and

(b) File with the commission within seven (7) days of the date of an order of the commission granting the party's intervention a written statement that the party, or the party's authorized agent, possesses the facilities to receive electronic transmissions.

(10) In cases in which the commission has ordered the use of electronic filing procedures on its own motion, unless a party files with the commission an objection to the use of electronic filing procedures within seven (7) days of issuance of the order directing the use of electronic filing procedures, the party shall:

(a) Be deemed to have consented to the use of electronic filing procedures and the service of all papers, including orders of the commission, by electronic means; and

(b) File with the commission within seven (7) days of the date of an order directing the use of electronic filing procedures a written statement that the party, or the party's authorized agent, possesses the facilities to receive electronic transmissions.

(11) If a party objects to the use of electronic filing procedures and good cause exists to excuse the party from the use of electronic filing procedures, service of papers on and by it shall be made by mailing a copy by United States mail or other recognized mail carrier to the attorney or party at the last known address.

(12)(a) A paper shall be considered timely filed with the commission if:

1. It has been successfully transmitted in electronic medium to the commission within the time allowed for filing and meets all other requirements established in this administrative regulation and any order of the commission; and

2. The paper, in paper medium, is filed at the commission's offices no later than the second business day following the successful electronic transmission.

(b) Each party shall attach to the top of the paper medium submission a copy in paper medium of the electronic notification from the commission confirming receipt of its electronic submission.

(13) Except as established in this section, a party making a filing in accordance with the procedures established in this section shall not be required to comply with Section 4(8) of this administrative regulation.

Section 9. Hearings and Rehearings. (1) Unless a hearing is not required by statute, is waived by the parties in the case, or is found by the commission to be unnecessary for protection of substantial rights or not in the public interest, the commission shall conduct a hearing if:

(a) An order to satisfy or answer a complaint has been made and the person complained of has not satisfied the complaint; or

(b) A request for hearing has been made.

(2) Publication of notice.

(a) Upon the filing of an application, the commission may order an applicant to give notice on all persons who may be affected by serving a copy of the application upon those persons or by publishing notice of the filing.

1. The applicant shall bear the expense of providing the notice.

2. If the notice is provided by publication, the commission may designate the contents of the notice, the number of times and the time period in which the notice shall be published, and the newspaper in which the notice shall be published.

(b)1. The commission may order an applicant to give notice to the public of any hearing on the applicant's application, and shall order an applicant for a general adjustment of rates or reduction or discontinuance of service to give notice of any hearing on its application.

2. If notice of a hearing is published by the applicant in a newspaper, it shall be published at least one (1) time and not less than seven (7) nor more than twenty-one (21) days prior to the hearing in a newspaper of general circulation in the areas that will be affected.

3. Notice by mail shall be mailed not less than fourteen (14) days nor more than twenty-one (21) days prior to the hearing.

4. Notice of hearing shall state the purpose, time, place, and date of hearing.

5. The applicant shall bear the expense of providing the notice.

6. Proof of publication shall be filed at or before the hearing.

(3) Investigation on commission's own motion.

(a) The commission may, on its own motion, conduct investigations and order hearings into any act or thing done or omitted to be done by a utility, which the commission believes is in violation of an order of the commission or KRS Chapters 74 or 278 or 807 KAR Chapter 5.

(b) The commission may, through its own experts, employees, or otherwise, obtain evidence the commission finds necessary or desirable in a formal proceeding in addition to the evidence presented by the parties.

(4) Conferences with commission staff. The commission, on its own motion, through its executive director or upon a motion of a party, may convene a conference in a case for the purpose of considering the possibility of settlement, the simplification or clarification of issues, or any other matter that may aid in the handling and disposition of the case. Unless the commission directs otherwise or the parties otherwise agree, participation in conferences with commission staff shall be limited to parties of the subject proceeding and their representatives.

(5) Conduct of hearings. Hearings shall be conducted before the commission or a commissioner or before a person designated by the commission to conduct a specific hearing.

(6) Stipulation of facts. By a stipulation in writing filed with the commission, the parties to a case may agree among themselves or with commission staff upon the facts or any portion of the facts involved in the controversy, which stipulation shall be regarded and used as evidence at the hearing.

(7) Testimony. All testimony given before the commission shall be given under oath or affirmation.

(8) Objections and exceptions. A party objecting to the admission or exclusion of evidence before the commission shall state the grounds for objection. Formal exceptions shall not be necessary and shall not be taken to rulings on objection.

(9) Record of evidence.

(a) The commission shall cause to be made a record of all hearings. Unless the commission orders otherwise, this record shall be a digital video recording.

1. A party to a case may, by motion made prior to the hearing, request that a stenographic transcript be made by a qualified reporter.

2. The commission shall grant the motion.

3. The requesting party shall bear the cost of the stenographic transcript and shall file a copy of the transcript with the commission within a reasonable time after completion of the hearing.

(b) The executive director shall cause to be made a written exhibit list, a written hearing log, and a written log listing the date and time of where each witness' testimony begins and ends on the digital video recording.

(c) If a party introduces an exhibit that is neither a document nor a photograph, the commission may direct a photograph of the exhibit be substituted for the exhibit.

Section 10. Briefs. Each brief shall be filed within the time fixed. A request for extension of time to file a brief shall be made to the commission by written motion.

Section 11. Documentary Evidence. (1) If documentary evidence is offered, the commission, in lieu of requiring the originals to be filed, may accept certified or otherwise authenticated copies of the documents or relevant portions, or may require evidence to be entered as a part of the record.

(2)(a) If relevant and material matter offered in evidence by any party is part of a book, paper, or document containing other matter not material or relevant, the party shall plainly designate the matter so offered.

(b) If immaterial matter unnecessarily encumbers the record, the book, paper, or document shall not be received in evidence, but may be described for identification, and if properly authenticated, the relevant and material matter may be read into the record.

(3)(a) The sheets of each exhibit shall be numbered.

(b) If practical, the lines of each sheet shall also be numbered.

(c) If the exhibit consists of two (2) or more sheets, the first sheet or title page shall contain a brief statement of what the exhibit purports to show, with reference by sheet and line to illustrative or typical examples contained in the exhibit.

(d) Rate comparisons and other evidence shall be condensed into tables.

(4) Unless so ordered by the commission, the commission shall not receive in evidence or consider as a part of the record a book, paper, or other document for consideration in connection with the proceeding after the close of the testimony.

(5) Upon motion of a party to a proceeding, or upon the commission's own motion, the record of a case in the commission's files or any document on file with the commission may be made a part of the record by "reference only."

(a) The case or document made a part of the record by reference only shall not be physically incorporated into the record.

(b) Upon action in the Franklin Circuit Court, excerpts from the record of a case or part of a document may be made a part of the record before the court, at the request of a party.

Section 12. Financial Exhibit. (1) If this administrative regulation requires that a financial exhibit be annexed to the application, the exhibit shall:

(a) For a utility that had \$5,000,000 or more in gross annual revenue in the immediate past calendar year, cover operations for a twelve (12) month period, the period ending not more than ninety (90) days prior to the date the application is filed; or

(b) For a utility that had less than \$5,000,000 in gross annual revenue in the immediate past calendar year, comply with paragraph (a) of this subsection or cover operations for the twelve (12) month period contained in the utility's most recent annual report on file with the commission, and contain a statement that:

1. Material changes have not occurred since the end of that twelve (12) month period; or

2. Identifies all material changes that have occurred since the end of that twelve (12) month period.

(2) The exhibit shall disclose the following information in the order indicated:

(a) The amount and kinds of stock authorized;

(b) The amount and kinds of stock issued and outstanding;

(c) Terms of preference of preferred stock, cumulative or participating, or on dividends or assets or otherwise;

(d) A brief description of each mortgage on property of applicant, giving date of execution, name of mortgagor, name of mortgagee or trustee, amount of indebtedness authorized to be secured, and the amount of indebtedness actually secured, together with sinking fund provisions, if applicable;

(e) The amount of bonds authorized and amount issued, giving the name of the public utility that issued the same, describing each class separately and giving the date of issue, face value, rate of interest, date of maturity, and how secured, together with amount of interest paid during the last fiscal year;

(f) Each note outstanding, giving date of issue, amount, date of maturity, rate of interest, in whose favor, together with amount of interest paid during the last fiscal year;

(g) Other indebtedness, giving same by classes and describing security, if any, with a brief statement of the devolution or assumption of a portion of the indebtedness upon or by person or corporation if the original liability has been transferred, together with amount of interest paid during the last fiscal year;

(h) The rate and amount of dividends paid during the five (5) previous fiscal years, and the amount of capital stock on which dividends were paid each year; and

(i) A detailed income statement and balance sheet.

Section 13. Confidential Material. (1) All material on file with the commission shall be available for examination by the public unless the material is confidential.

(2) Procedure for determining confidentiality of material submitted in a case.

(a) A request for confidential treatment of material shall be made by motion that:

1. Establishes specific grounds pursuant to KRS 61.878 for classification of that material as confidential;

2. States the time period for the material to be treated as confidential and the reasons for this time period; and

3. Includes ten (10) copies of the material in paper medium with those portions redacted for which confidentiality is sought, and, in a separate sealed envelope marked confidential, one (1) copy of the material in paper medium which identifies by underscoring, highlighting with transparent ink, or other reasonable means only those portions that unless redacted would disclose confidential material.

a. Text pages or portions thereof that do not contain confidential material shall not be included in this identification.

b. If confidential treatment is sought for an entire document, written notification that the entire document is confidential may be filed with the document in lieu of the required highlighting.

(b) The motion and one (1) copy of the material in paper medium, with only those portions for which confidentiality is sought redacted, shall be served on all parties.

(c) The burden of proof to show that the material falls within the exclusions from disclosure requirements established in KRS 61.878 and to demonstrate the time period for the material to be considered as confidential shall be upon the moving party.

(d) Unless the commission orders otherwise, a party may respond to a motion for confidential treatment within seven (7) days after the motion is filed with the commission.

(e) If the case is being conducted using electronic filing procedures established in Section 8 of this administrative regulation, the parties shall comply with those procedures except that an unredacted copy of the material for which confidentiality is sought shall not be transmitted electronically.

(3) Procedure for determining confidentiality of material submitted outside of a case.

(a) A person who requests confidential treatment of material filed with the commission outside of a case shall submit a written request to the executive director that:

1. Establishes specific grounds pursuant to KRS 61.878 for classification of that material as confidential;

2. States the time period for the material to be treated as confidential and the reasons for this time period; and

3. Includes one (1) copy of the material in paper medium with those portions redacted for which confidentiality is sought, and, in a separate sealed envelope marked confidential, one (1) copy of the material in paper medium which identifies by underscoring, highlighting with transparent ink, or other reasonable means only those portions that unless redacted would disclose confidential material.

a. Text pages or portions thereof that do not contain confidential material shall not be included in this identification.

b. If confidential treatment is sought for an entire document, written notification that the entire document is confidential may be filed with the document in lieu of the required highlighting.

(b) The burden of proof to show that the material falls within the exclusions from disclosure requirements established in KRS 61.878 and to demonstrate the time period for the material to be considered as confidential shall be upon the person requesting confidential treatment.

(c) The executive director, as official custodian of the commission's records, shall determine if the material is within an exclusion established in KRS 61.878 and the time period for the material to be considered as confidential and shall advise the requestor of the determination by letter.

(d) A person whose request for confidential treatment is denied, in whole or in part, by the executive director may make application within twenty (20) days of the executive director's decision to the commission for confidential treatment of the material in accordance with the procedures established in subsection (2) of this section.

1. The commission shall establish a case and shall review the application without regard to the executive director's determination and in the same manner as it would review a motion for confidential treatment made pursuant to subsection (2) of this section.

2. The application shall comply with the requirements of subsection (2)(a) of this section.

(e) If the executive director denies a request for confidential treatment, the material for which confidential treatment was sought shall not be placed in the public record for twenty (20) days following the decision.

(4) Pending action by the commission on a motion for confidential treatment or by its executive director on a request for confidential treatment, the material specifically identified shall be accorded confidential treatment.

(5) If the motion for confidential treatment of material is denied, the material shall not be placed in the public record for the period permitted pursuant to KRS 278.410 to bring an action for review.

(6) Procedure for a party to request access to confidential material filed in a case.

(a) A party to a case before the commission shall not fail to respond to a request for information by the commission, commission staff, or another party on grounds of confidentiality.

1. A party seeking confidential treatment for its response to information requests shall follow the procedures for requesting confidentiality established in this administrative regulation.

2. A party's response to requests for information shall be served upon all parties, with only those portions for which confidential treatment is sought redacted.

(b) If the commission grants confidential protection to the responsive material and if parties have not entered into protective agreements, then a party may, by motion, request access to the material on the grounds that it is essential to the party's meaningful participation in the proceeding.

1. The motion shall include a description of efforts to enter into a protective agreement and unwillingness, if applicable, to enter into a protective agreement shall be fully explained.

2. A party may respond to the motion within seven (7) days after it is filed with the commission.

3. The commission shall determine if the movant is entitled to the material, and the manner and extent of the disclosure necessary to protect confidentiality.

(7) Requests for access to records pursuant to KRS 61.870 to 61.884.

(a) A time period prescribed in subsection (10)(a) of this section shall not limit the right of a person to request access to commission records pursuant to KRS 61.870 to 61.884.

(b) Upon a request filed pursuant to KRS 61.870 to 61.884, the commission shall respond in accordance with the procedure established in KRS 61.880.

(8) Procedure for request for access to confidential material. A person denied access to records requested pursuant to KRS 61.870 to 61.884 or to material deemed confidential by the commission in accordance with the procedures established in this section, may obtain this information only pursuant to KRS 61.870 to 61.884 and other applicable law.

(9) Use of confidential material. (a) A person who files any paper that contains material that has previously been deemed confidential or for which a request or motion for confidential treatment is pending shall submit one (1) copy of the paper with the adjudged or alleged confidential material underscored or highlighted, and ten (10) copies of the paper with those portions redacted; and

1. If the confidential status of the material has been determined previously, a written notice identifying the person who originally submitted the material, the date on which a determination on the materials confidentiality was made and, if applicable, the case number in which the determination was made; or

2. If a request for confidential treatment of the material is pending, a written notice identifying the person who made the request and the date on which the request was submitted.

(b) Material deemed confidential by the commission may be addressed and relied upon during a formal hearing by the procedure established in this paragraph.

1. The party seeking to address the confidential material shall advise the commission prior to the use of the material.

2. A person other than commission employees not a party to a protective agreement related to the confidential material shall be excluded from the hearing room during testimony directly related to confidential material.

3. Any portion of the record directly related to the confidential material shall be sealed.

(10) Material granted confidentiality that later becomes publicly available or otherwise no longer warrants confidential treatment.

(a) Except as provided for in paragraphs (c) and (d) of this subsection, confidential treatment shall be afforded to material for the period specified in the commission's order or executive director's written decision.

1. At the end of this period, the material shall be placed in the public record without notice to the person who originally requested confidential treatment.

2. The person who sought confidential treatment for the material may request that the material continue to be treated as confidential but shall demonstrate that the material still falls within the exclusions from disclosure requirements established in KRS 61.878.

(b) The person who sought confidential protection shall inform the commission in writing if material granted confidentiality becomes publicly available.

(c) If the commission becomes aware that material granted confidentiality is publicly available or otherwise no longer qualifies for confidential treatment, it shall by order so advise the person who sought confidential protection, giving ten (10) days to respond. If that material has been disclosed by someone other than the person who requested confidential treatment, in violation of a protective agreement or commission order, the information shall not be deemed to be publicly available and shall not be placed in the public record.

(d) If a request to inspect material granted confidential treatment is made during the period specified in the commission's order or executive director's written decision, the commission shall notify in writing the person who originally sought confidential treatment for the material and direct that party to demonstrate within twenty (20) days of receipt of the notice that the material still falls within the exclusions from disclosure requirements established in KRS 61.878.

1. If the party is unable to make the demonstration, the commission shall make the requested materials available for public inspection; or

2. If the party is able to make the demonstration, the commission shall deny the request for inspection.

(e) The material shall not be placed in the public record for twenty (20) days following an order finding that the material no longer qualifies for confidential treatment to allow the petitioner to seek a remedy afforded by law.

Section 14. Applications. (1) Each application shall state the full name, mailing address, and electronic mail address of the applicant, and shall contain fully the facts on which the application is based, with a request for the order, authorization, permission, or certificate desired and a reference to the particular law requiring or providing for the information.

(2) If a corporation, the applicant shall identify in the application the state in which it is incorporated and the date of its incorporation, attest that it is currently in good standing in the state in which it is incorporated, and, if it is not a Kentucky corporation, state if it is authorized to transact business in Kentucky.

(3) If a limited liability company, the applicant shall identify in the application the state in which it is organized and the date on which it was organized, attest that it is in good standing in the state in which it is organized, and, if it is not a Kentucky limited liability company, state if it is authorized to transact business in Kentucky.

(4) If the applicant is a limited partnership, a certified copy of its limited partnership agreement and all amendments, if any, shall be annexed to the application, or a written statement attesting that its partnership agreement and all amendments have been filed with the commission in a prior proceeding and referencing the case number of the prior proceeding.

Section 15. Applications for Certificates of Public Convenience and Necessity. (1) Application to bid on a franchise pursuant to KRS 278.020(3).

(a) Upon application to the commission by the utility for a certificate of convenience and necessity authorizing the applicant to bid on a franchise, license, or permit offered by a governmental agency, the applicant shall submit with its application:

1. The information required pursuant to Section 14 of this administrative regulation;
2. The name of the governmental agency offering the franchise;
3. The type of franchise offered; and

4. A statement showing the need and demand for service.

(b) If an applicant is successful in acquiring the franchise, license, or permit, the applicant shall file a copy with the commission using the commission's electronic tariff filing system.

(2) New construction or extension. Upon application for a certificate that the present or future public convenience or necessity requires, or will require, the construction or extension of any plant, equipment, property, or facility, the applicant, in addition to complying with Section 14 of this administrative regulation, shall submit with its application:

(a) The facts relied upon to show that the proposed construction or extension is or will be required by public convenience or necessity;

(b) Copies of franchises or permits, if any, from the proper public authority for the proposed construction or extension, if not previously filed with the commission;

(c) A full description of the proposed location, route, or routes of the proposed construction or extension, including a description of the manner of the construction and the names of all public utilities, corporations, or persons with whom the proposed construction or extension is likely to compete;

(d) One (1) copy in portable document format on electronic storage medium and two (2) copies in paper medium of:

1. Maps to suitable scale showing the location or route of the proposed construction or extension, as well as the location to scale of like facilities owned by others located anywhere within the map area with adequate identification as to the ownership of the other facilities; and

2. Plans and specifications and drawings of the proposed plant, equipment, and facilities;

(e) The manner in detail in which the applicant proposes to finance the proposed construction or extension; and

(f) An estimated annual cost of operation after the proposed facilities are placed into service.

(3) Extensions in the ordinary course of business. A certificate of public convenience and necessity shall not be required for extensions that do not create wasteful duplication of plant, equipment, property, or facilities, or conflict with the existing certificates or service of other utilities operating in the same area and under the jurisdiction of the commission that are in the general or contiguous area in which the utility renders service, and that do not involve sufficient capital outlay to materially affect the existing financial condition of the utility involved, or will not result in increased charges to its customers.

(4) Renewal applications. An application for a renewal of a certificate of convenience and necessity shall be treated as an original application.

Section 16. Applications for General Adjustments of Existing Rates. (1) Each application requesting a general adjustment of existing rates shall:

(a) Be supported by:

1. A twelve (12) month historical test period that may include adjustments for known and measurable changes; or

2. A fully forecasted test period; and

(b) Include:

1. A statement of the reason the adjustment is required;

2. A certified copy of a certificate of assumed name as required by KRS 365.015 or a statement that a certificate is not necessary;

3. New or revised tariff sheets, if applicable in a format that complies with 807 KAR 5:011 with an effective date not less than thirty (30) days from the date the application is filed;

4. New or revised tariff sheets, if applicable, identified in compliance with 807 KAR 5:011, shown either by providing:

a. The present and proposed tariffs in comparative form on the same sheet side by side or on facing sheets side by side; or

b. A copy of the present tariff indicating proposed additions by italicized inserts or under-scoring and striking over proposed deletions; and

5. A statement that notice has been given in compliance with Section 17 of this administrative regulation with a copy of the notice.

(2) Notice of intent. A utility with gross annual revenues greater than \$5,000,000 shall notify the commission in writing of its intent to file a rate application at least thirty (30) days, but not more than sixty (60) days, prior to filing its application.

(a) The notice of intent shall state if the rate application will be supported by a historical test period or a fully forecasted test period.

(b) Upon filing the notice of intent, an application may be made to the commission for permission to use an abbreviated form of newspaper notice of proposed rate increases provided the notice includes a coupon that may be used to obtain a copy from the applicant of the full schedule of increases or rate changes.

(c) Upon filing the notice of intent with the commission, the applicant shall mail to the Attorney General's Office of Rate Intervention a copy of the notice of intent or send by electronic mail in a portable document format, to rateintervention@ag.ky.gov.

(3) Notice given pursuant to Section 17 of this administrative regulation shall satisfy the requirements of 807 KAR 5:051, Section 2.

(4) Each application supported by a historical test period shall include the following information or a statement explaining why the required information does not exist and is not applicable to the utility's application:

(a) A complete description and quantified explanation for all proposed adjustments with proper support for proposed changes in price or activity levels, if applicable, and other factors that may affect the adjustment;

(b) If the utility has gross annual revenues greater than \$5,000,000, the written testimony of each witness the utility proposes to use to support its application;

(c) If the utility has gross annual revenues less than \$5,000,000 the written testimony of each witness the utility proposes to use to support its application or a statement that the utility does not plan to submit written testimony;

(d) A statement estimating the effect that each new rate will have upon the revenues of the utility including, at minimum, the total amount of revenues resulting from the increase or decrease and the percentage of the increase or decrease;

(e) If the utility provides electric, gas, water, or sewer service, the effect upon the average bill for each customer classification to which the proposed rate change will apply;

(f) If the utility is an incumbent local exchange company, the effect upon the average bill for each customer class for the proposed rate change in basic local service;

(g) A detailed analysis of customers' bills whereby revenues from the present and proposed rates can be readily determined for each customer class;

(h) A summary of the utility's determination of its revenue requirements based on return on net investment rate base, return on capitalization, interest coverage, debt service coverage, or operating ratio, with supporting schedules;

(i) A reconciliation of the rate base and capital used to determine its revenue requirements;

(j) A current chart of accounts if more detailed than the Uniform System of Accounts;

(k) The independent auditor's annual opinion report, with written communication from the independent auditor to the utility, if applicable, which indicates the existence of a material weakness in the utility's internal controls;

(l) The most recent Federal Energy Regulatory Commission or Federal Communication Commission audit reports;

(m) The most recent FERC Financial Report FERC Form No.1, FERC Financial Report FERC Form No. 2, or Public Service Commission Form T (telephone);

(n) A summary of the utility's latest depreciation study with schedules by major plant accounts, except that telecommunications utilities that have adopted the commission's average depreciation rates shall provide a schedule that identifies the current and test period depreciation rates used by major plant accounts. If the required information has been filed in another commission case, a reference to that case's number shall be sufficient;

(o) A list of all commercially available or in-house developed computer software, programs, and models used in the development of the schedules and work papers associated with the filing of the utility's application. This list shall include:

1. Each software, program, or model;
2. What the software, program, or model was used for;
3. The supplier of each software, program, or model;
4. A brief description of the software, program, or model; and
5. The specifications for the computer hardware and the operating system required to run the program;

(p) Prospectuses of the most recent stock or bond offerings;

(q) The annual report to shareholders or members and statistical supplements covering the two (2) most recent years from the utility's application filing date;

(r) The monthly managerial reports providing financial results of operations for the twelve (12) months in the test period;

(s) A copy of the utility's annual report on Form 10-K as filed with the Securities and Exchange Commission for the most recent two (2) years, any Form 8-K issued during the past two (2) years, and any Form 10-Q issued during the past six (6) quarters updated as current information becomes available;

(t) If the utility had amounts charged or allocated to it by an affiliate or general or home office or paid monies to an affiliate or general or home office during the test period or during the previous three (3) calendar years, the utility shall file:

1. A detailed description of the method and amounts allocated or charged to the utility by the affiliate or general or home office for each charge allocation or payment;
2. An explanation of how the allocator for the test period was determined; and
3. All facts relied upon, including other regulatory approval, to demonstrate that each amount charged, allocated, or paid during the test period was reasonable;

(u) If the utility provides gas, electric, water, or sewage utility service and has annual gross revenues greater than \$5,000,000, a cost of service study based on a methodology generally accepted within the industry and based on current and reliable data from a single time period; and

(v) Local exchange carriers with more than 50,000 access lines shall file:

1. A jurisdictional separations study consistent with 47 C.F.R. Part 36; and
2. Service specific cost studies to support the pricing of all services that generate annual revenue greater than \$1,000,000 except local exchange access:
 - a. Based on current and reliable data from a single time period; and
 - b. Using generally recognized fully allocated, embedded, or incremental cost principles.

(5) Upon good cause shown, a utility may request pro forma adjustments for known and measurable changes to ensure fair, just, and reasonable rates based on the historical test period. The following information shall be filed with each application requesting pro forma ad-

justments or a statement explaining why the required information does not exist and is not applicable to the utility's application:

(a) A detailed income statement and balance sheet reflecting the impact of all proposed adjustments;

(b) The most recent capital construction budget containing at least the period of time as proposed for any pro forma adjustment for plant additions;

(c) For each proposed pro forma adjustment reflecting plant additions, the following information:

1. The starting date of the construction of each major component of plant;

2. The proposed in-service date;

3. The total estimated cost of construction at completion;

4. The amount contained in construction work in progress at the end of the test period;

5. A schedule containing a complete description of actual plant retirements and anticipated plant retirements related to the pro forma plant additions including the actual or anticipated date of retirement;

6. The original cost and the cost of removal and salvage for each component of plant to be retired during the period of the proposed pro forma adjustment for plant additions;

7. An explanation of differences, if applicable, in the amounts contained in the capital construction budget and the amounts of capital construction cost contained in the pro forma adjustment period; and

8. The impact on depreciation expense of all proposed pro forma adjustments for plant additions and retirements;

(d) The operating budget for each month of the period encompassing the pro forma adjustments; and

(e) The number of customers to be added to the test period end level of customers and the related revenue requirements impact for all pro forma adjustments with complete details and supporting work papers.

(6) All applications requesting a general adjustment in rates supported by a fully forecasted test period shall comply with the requirements established in this subsection.

(a) The financial data for the forecasted period shall be presented in the form of pro forma adjustments to the base period.

(b) Forecasted adjustments shall be limited to the twelve (12) months immediately following the suspension period.

(c) Capitalization and net investment rate base shall be based on a thirteen (13) month average for the forecasted period.

(d) After an application based on a forecasted test period is filed, there shall be no revisions to the forecast, except for the correction of mathematical errors, unless the revisions reflect statutory or regulatory enactments that could not, with reasonable diligence, have been included in the forecast on the date it was filed. There shall be no revisions filed within thirty (30) days of a scheduled hearing on the rate application.

(e) The commission may require the utility to prepare an alternative forecast based on a reasonable number of changes in the variables, assumptions, and other factors used as the basis for the utility's forecast.

(f) The utility shall provide a reconciliation of the rate base and capital used to determine its revenue requirements.

(7) Each application requesting a general adjustment in rates supported by a fully forecasted test period shall include the following or a statement explaining why the required information does not exist and is not applicable to the utility's application:

(a) The written testimony of each witness the utility proposes to use to support its application, which shall include testimony from the utility's chief officer in charge of Kentucky operations on the existing programs to achieve improvements in efficiency and productivity, including an explanation of the purpose of the program;

(b) The utility's most recent capital construction budget containing at a minimum a three (3) year forecast of construction expenditures;

(c) A complete description, which may be filed in written testimony form, of all factors used in preparing the utility's forecast period. All econometric models, variables, assumptions, escalation factors, contingency provisions, and changes in activity levels shall be quantified, explained, and properly supported;

(d) The utility's annual and monthly budget for the twelve (12) months preceding the filing date, the base period, and forecasted period;

(e) A statement of attestation signed by the utility's chief officer in charge of Kentucky operations, which shall provide:

1. That the forecast is reasonable, reliable, made in good faith, and that all basic assumptions used in the forecast have been identified and justified;

2. That the forecast contains the same assumptions and methodologies as used in the forecast prepared for use by management, or an identification and explanation for differences that exist, if applicable; and

3. That productivity and efficiency gains are included in the forecast;

(f) For each major construction project that constitutes five (5) percent or more of the annual construction budget within the three (3) year forecast, the following information shall be filed:

1. The date the project was started or estimated starting date;

2. The estimated completion date;

3. The total estimated cost of construction by year exclusive and inclusive of allowance for funds used during construction ("AFUDC") or interest during construction credit; and

4. The most recent available total costs incurred exclusive and inclusive of AFUDC or interest during construction credit;

(g) For all construction projects that constitute less than five (5) percent of the annual construction budget within the three (3) year forecast, the utility shall file an aggregate of the information requested in paragraph (f)3 and 4 of this subsection;

(h) A financial forecast corresponding to each of the three (3) forecasted years included in the capital construction budget. The financial forecast shall be supported by the underlying assumptions made in projecting the results of operations and shall include the following information:

1. Operating income statement (exclusive of dividends per share or earnings per share);

2. Balance sheet;

3. Statement of cash flows;

4. Revenue requirements necessary to support the forecasted rate of return;

5. Load forecast including energy and demand (electric);

6. Access line forecast (telephone);

7. Mix of generation (electric);

8. Mix of gas supply (gas);

9. Employee level;

10. Labor cost changes;

11. Capital structure requirements;

12. Rate base;

13. Gallons of water projected to be sold (water);

14. Customer forecast (gas, water);

15. Sales volume forecasts in cubic feet (gas);
16. Toll and access forecast of number of calls and number of minutes (telephone); and
17. A detailed explanation of other information provided, if applicable;
 - (i) The most recent Federal Energy Regulatory Commission or Federal Communications Commission audit reports;
 - (j) The prospectuses of the most recent stock or bond offerings;
 - (k) The most recent FERC Financial Report FERC Form No.1, FERC Financial Report FERC Form No.2, or Public Service Commission Form T (telephone);
 - (l) The annual report to shareholders or members and the statistical supplements covering the most recent two (2) years from the application filing date;
 - (m) The current chart of accounts if more detailed than the Uniform System of Accounts chart;
 - (n) The latest twelve (12) months of the monthly managerial reports providing financial results of operations in comparison to the forecast;
 - (o) Complete monthly budget variance reports, with narrative explanations, for the twelve (12) months immediately prior to the base period, each month of the base period, and any subsequent months, as they become available;
 - (p) A copy of the utility's annual report on Form 10-K as filed with the Securities and Exchange Commission for the most recent two (2) years, and any Form 8-K issued during the past two (2) years, and any Form 10-Q issued during the past six (6) quarters;
 - (q) The independent auditor's annual opinion report, with any written communication from the independent auditor to the utility that indicates the existence of a material weakness in the utility's internal controls;
 - (r) The quarterly reports to the stockholders for the most recent five (5) quarters;
 - (s) The summary of the latest depreciation study with schedules itemized by major plant accounts, except that telecommunications utilities that have adopted the commission's average depreciation rates shall provide a schedule that identifies the current and base period depreciation rates used by major plant accounts. If the required information has been filed in another commission case, a reference to that case's number shall be sufficient;
 - (t) A list of all commercially available or in-house developed computer software, programs, and models used in the development of the schedules and work papers associated with the filing of the utility's application. This list shall include:
 1. Each software, program, or model;
 2. What the software, program, or model was used for;
 3. The supplier of each software, program, or model;
 4. A brief description of the software, program, or model; and
 5. The specifications for the computer hardware and the operating system required to run the program;
 - (u) If the utility had amounts charged or allocated to it by an affiliate or a general or home office or paid monies to an affiliate or a general or home office during the base period or during the previous three (3) calendar years, the utility shall file:
 1. A detailed description of the method and amounts allocated or charged to the utility by the affiliate or general or home office for each allocation or payment;
 2. The method and amounts allocated during the base period and the method and estimated amounts to be allocated during the forecasted test period;
 3. An explanation of how the allocator for both the base period and the forecasted test period were determined; and
 4. All facts relied upon, including other regulatory approval, to demonstrate that each amount charged, allocated, or paid during the base period is reasonable;

(v) If the utility provides gas, electric, sewage, or water utility service and has annual gross revenues greater than \$5,000,000 in the division for which a rate adjustment is sought, a cost of service study based on a methodology generally accepted within the industry and based on current and reliable data from a single time period; and

(w) Incumbent local exchange carriers with fewer than 50,000 access lines shall not be required to file cost of service studies, except as directed by the commission. Local exchange carriers with more than 50,000 access lines shall file:

1. A jurisdictional separations study consistent with 47 C.F.R. Part 36; and

2. Service specific cost studies to support the pricing of all services that generate annual revenue greater than \$1,000,000 except local exchange access:

a. Based on current and reliable data from a single time period; and

b. Using generally recognized fully allocated, embedded, or incremental cost principles.

(8) Each application seeking a general adjustment in rates supported by a forecasted test period shall include:

(a) A jurisdictional financial summary for both the base period and the forecasted period that details how the utility derived the amount of the requested revenue increase;

(b) A jurisdictional rate base summary for both the base period and the forecasted period with supporting schedules, which include detailed analyses of each component of the rate base;

(c) A jurisdictional operating income summary for both the base period and the forecasted period with supporting schedules, which provide breakdowns by major account group and by individual account;

(d) A summary of jurisdictional adjustments to operating income by major account with supporting schedules for individual adjustments and jurisdictional factors;

(e) A jurisdictional federal and state income tax summary for both the base period and the forecasted period with all supporting schedules of the various components of jurisdictional income taxes;

(f) Summary schedules for both the base period and the forecasted period (the utility may also provide a summary segregating those items it proposes to recover in rates) of organization membership dues; initiation fees; expenditures at country clubs; charitable contributions; marketing, sales, and advertising expenditures; professional service expenses; civic and political activity expenses; expenditures for employee parties and outings; employee gift expenses; and rate case expenses;

(g) Analyses of payroll costs including schedules for wages and salaries, employee benefits, payroll taxes, straight time and overtime hours, and executive compensation by title;

(h) A computation of the gross revenue conversion factor for the forecasted period;

(i) Comparative income statements (exclusive of dividends per share or earnings per share), revenue statistics and sales statistics for the five (5) most recent calendar years from the application filing date, the base period, the forecasted period, and two (2) calendar years beyond the forecast period;

(j) A cost of capital summary for both the base period and forecasted period with supporting schedules providing details on each component of the capital structure;

(k) Comparative financial data and earnings measures for the ten (10) most recent calendar years, the base period, and the forecast period;

(l) A narrative description and explanation of all proposed tariff changes;

(m) A revenue summary for both the base period and forecasted period with supporting schedules, which provide detailed billing analyses for all customer classes; and

(n) A typical bill comparison under present and proposed rates for all customer classes.

(9) The commission shall notify the applicant of any deficiencies in the application within thirty (30) days of the application's submission. An application shall not be accepted for filing until the utility has cured all noted deficiencies.

(10) A request for a waiver from the requirements of this section shall include the specific reasons for the request. The commission shall grant the request upon good cause shown by the utility. In determining if good cause has been shown, the commission shall consider:

(a) If other information that the utility would provide if the waiver is granted is sufficient to allow the commission to effectively and efficiently review the rate application;

(b) If the information that is the subject of the waiver request is normally maintained by the utility or reasonably available to it from the information that it maintains; and

(c) The expense to the utility in providing the information that is the subject of the waiver request.

Section 17. Notice of General Rate Adjustment. Upon filing an application for a general rate adjustment, a utility shall provide notice as established in this section.

(1) Public postings.

(a) A utility shall post at its place of business a copy of the notice no later than the date the application is submitted to the commission.

(b) A utility that maintains a Web site shall, within five (5) business days of the date the application is submitted to the commission, post on its Web sites:

1. A copy of the public notice; and

2. A hyperlink to the location on the commission's Web site where the case documents are available.

(c) The information required in paragraphs (a) and (b) of this subsection shall not be removed until the commission issues a final decision on the application.

(2) Customer Notice.

(a) If a utility has twenty (20) or fewer customers, the utility shall mail a written notice to each customer no later than the date on which the application is submitted to the commission.

(b) If a utility has more than twenty (20) customers, it shall provide notice by:

1. Including notice with customer bills mailed no later than the date the application is submitted to the commission;

2. Mailing a written notice to each customer no later than the date the application is submitted to the commission;

3. Publishing notice once a week for three (3) consecutive weeks in a prominent manner in a newspaper of general circulation in the utility's service area, the first publication to be made no later than the date the application is submitted to the commission; or

4. Publishing notice in a trade publication or newsletter delivered to all customers no later than the date the application is submitted to the commission.

(c) A utility that provides service in more than one (1) county may use a combination of the notice methods listed in paragraph (b) of this subsection.

(3) Proof of Notice. A utility shall file with the commission no later than forty-five (45) days from the date the application was initially submitted to the commission:

(a) If notice is mailed to its customers, an affidavit from an authorized representative of the utility verifying the contents of the notice, that notice was mailed to all customers, and the date of the mailing;

(b) If notice is published in a newspaper of general circulation in the utility's service area, an affidavit from the publisher verifying the contents of the notice, that the notice was published, and the dates of the notice's publication; or

(c) If notice is published in a trade publication or newsletter delivered to all customers, an affidavit from an authorized representative of the utility verifying the contents of the notice, the mailing of the trade publication or newsletter, that notice was included in the publication or newsletter, and the date of mailing.

(4) Notice Content. Each notice issued in accordance with this section shall contain:

(a) The proposed effective date and the date the proposed rates are expected to be filed with the commission;

(b) The present rates and proposed rates for each customer classification to which the proposed rates will apply;

(c) The amount of the change requested in both dollar amounts and percentage change for each customer classification to which the proposed rates will apply;

(d) The amount of the average usage and the effect upon the average bill for each customer classification to which the proposed rates will apply, except for local exchange companies, which shall include the effect upon the average bill for each customer classification for the proposed rate change in basic local service;

(e) A statement that a person may examine this application at the offices of (utility name) located at (utility address);

(f) A statement that a person may examine this application at the commission's offices located at 211 Sower Boulevard, Frankfort, Kentucky, Monday through Friday, 8:00 a.m. to 4:30 p.m., or through the commission's Web site at <http://psc.ky.gov>;

(g) A statement that comments regarding the application may be submitted to the Public Service Commission through its Web site or by mail to Public Service Commission, Post Office Box 615, Frankfort, Kentucky 40602;

(h) A statement that the rates contained in this notice are the rates proposed by (utility name) but that the Public Service Commission may order rates to be charged that differ from the proposed rates contained in this notice;

(i) A statement that a person may submit a timely written request for intervention to the Public Service Commission, Post Office Box 615, Frankfort, Kentucky 40602, establishing the grounds for the request including the status and interest of the party; and

(j) A statement that if the commission does not receive a written request for intervention within thirty (30) days of initial publication or mailing of the notice, the commission may take final action on the application.

(5) Abbreviated form of notice. Upon written request, the commission may grant a utility permission to use an abbreviated form of published notice of the proposed rates, provided the notice includes a coupon that may be used to obtain all of the required information.

Section 18. Application for Authority to Issue Securities, Notes, Bonds, Stocks, or Other Evidences of Indebtedness. (1) An application for authority to issue securities, notes, bonds, stocks, or other evidences of indebtedness payable at periods of more than two (2) years from the date thereof shall contain:

(a) The information required by Section 14 of this administrative regulation;

(b) A general description of the applicant's property and the field of its operation, together with a statement of the original cost of the same and the cost to the applicant. If it is impossible to state the original cost, the facts creating the impossibility shall be stated;

(c) The amount and kinds of stock, if any, which the applicant desires to issue, and, if preferred, the nature and extent of the preference; the amount of notes, bonds, or other evidences of indebtedness, if any, which the applicant desires to issue, with terms, rate of interest, and if and how to be secured;

(d) The use to be made of the proceeds of the issue of securities, notes, bonds, stocks, or other evidence of indebtedness with a statement indicating how much is to be used for the acquisition of property, the construction, completion, extension, or improvement of facilities, the improvement of service, the maintenance of service, and the discharge or refunding of obligations;

(e) The property in detail that is to be acquired, constructed, improved, or extended with its cost, a detailed description of the contemplated construction, completion, extension, or improvement of facilities established in a manner whereby an estimate of the cost may be made, a statement of the character of the improvement of service proposed, and of the reasons why the service should be maintained from its capital. If a contract has been made for the acquisition of property, or for construction, completion, extension, or improvement of facilities, or for the disposition of the securities, notes, bonds, stocks, or other evidence of indebtedness that it proposes to issue or the proceeds thereof and if a contract has been made, copies thereof shall be annexed to the application;

(f) If it is proposed to discharge or refund obligations, a statement of the nature and description of the obligations including their par value, the amount for which they were actually sold, the associated expenses, and the application of the proceeds from the sales. If notes are to be refunded, the application shall show the date, amount, time, rate of interest, and payee of each and the purpose for which their proceeds were expended; and

(g) If the applicant is a water district, a copy of the applicant's written notification to the state local debt officer regarding the proposed issuance.

(2) The following exhibits shall be filed with the application:

(a) Financial exhibit (see Section 12 of this administrative regulation);

(b) Copies of trust deeds or mortgages, if applicable, unless they have already been filed with the commission, in which case reference shall be made by case number to the proceeding in which the trust deeds or mortgages have been filed; and

(c) Maps and plans of the proposed property and constructions together with detailed estimates in a form that they can be reviewed by the commission's engineering division. Estimates shall be arranged according to the commission-prescribed uniform system of accounts for the various classes of utilities.

Section 19. Application for Declaratory Order. (1) The commission may, upon application by a person substantially affected, issue a declaratory order with respect to the jurisdiction of the commission, the applicability to a person, property, or state of facts of an order or administrative regulation of the commission or provision of KRS Chapter 278, or with respect to the meaning and scope of an order or administrative regulation of the commission or provision of KRS Chapter 278.

(2) An application for declaratory order shall:

(a) Be in writing;

(b) Contain a complete, accurate, and concise statement of the facts upon which the application is based;

(c) Fully disclose the applicant's interest;

(d) Identify all statutes, administrative regulations, and orders to which the application relates; and

(e) State the applicant's proposed resolution or conclusion.

(3) The commission may direct that a copy of the application for a declaratory order be served on a person who may be affected by the application.

(4) Unless the commission orders otherwise, responses, if applicable, to an application for declaratory order shall be filed with the commission within twenty-one (21) days after the date on which the application was filed with the commission and shall be served upon the applicant.

(5) A reply to a response shall be filed with the commission within fourteen (14) days after service.

(6) Each application, response, and reply containing an allegation of fact shall be supported by affidavit or shall be verified.

(7) The commission may dispose of an application for a declaratory order solely on the basis of the written submissions filed.

(8) The commission may take any action necessary to ensure a complete record, to include holding oral arguments on the application and requiring the production of additional documents and materials, and may extend the time for the filing of a reply or response under this section.

Section 20. Formal Complaints. (1) Contents of complaint. Each complaint shall be headed "Before the Public Service Commission," shall establish the names of the complainant and the defendant, and shall state:

(a) The full name and post office address of the complainant;

(b) The full name and post office address of the defendant;

(c) Fully, clearly, and with reasonable certainty, the act or omission, of which complaint is made, with a reference, if practicable, to the law, order, or administrative regulation, of which a failure to comply is alleged, and other matters, or facts, if any, as necessary to acquaint the commission fully with the details of the alleged failure; and

(d) The relief sought.

(2) Signature. The complainant or his or her attorney, if applicable, shall sign the complaint. A complaint by a corporation, association, or another organization with the right to file a complaint, shall be signed by its attorney.

(3) Number of copies required. Upon the filing of an original complaint, the complainant shall also file two (2) more copies than the number of persons to be served.

(4) Procedure on filing of complaint.

(a) Upon the filing of a complaint, the commission shall immediately examine the complaint to ascertain if it establishes a prima facie case and conforms to this administrative regulation.

1. If the commission finds that the complaint does not establish a prima facie case or does not conform to this administrative regulation, the commission shall notify the complainant and provide the complainant an opportunity to amend the complaint within a specified time.

2. If the complaint is not amended within the time or the extension as the commission, for good cause shown, shall grant, the complaint shall be dismissed.

(b) If the complaint, either as originally filed or as amended, establishes a prima facie case and conforms to this administrative regulation, the commission shall serve an order upon the person complained of, accompanied by a copy of the complaint, directed to the person complained of and requiring that the matter complained of be satisfied, or that the complaint be answered in writing within ten (10) days from the date of service of the order, provided that the commission may require the answer to be filed within a shorter period if the complaint involves an emergency situation or otherwise would be detrimental to the public interest.

(5) Satisfaction of the complaint. If the defendant desires to satisfy the complaint, he or she shall submit to the commission, within the time allowed for satisfaction or answer, a statement of the relief that the defendant is willing to give. Upon the acceptance of this offer by the complainant and with the approval of the commission, the case shall be dismissed.

(6) Answer to complaint. If the complainant is not satisfied with the relief offered, the defendant shall file an answer to the complaint within the time specified in the order or the extension as the commission, for good cause shown, shall grant.

(a) The answer shall contain a specific denial of the material allegations of the complaint as controverted by the defendant and also a statement of any new matters constituting a defense.

(b) If the defendant does not have information sufficient to answer an allegation of the complaint, the defendant may so state in the answer and place the denial upon that ground.

Section 21. Informal Complaints. (1) An informal complaint shall be made to the commission's division of consumer services in a manner that specifically states the complainant's concerns and identifies the utility.

(2) The commission's division of consumer services shall address by correspondence or other means the complaint.

(a) If an informal complaint is referred to a utility, the utility shall acknowledge to the commission's division of consumer services referral of the complaint and shall report on its efforts to contact the complainant within three (3) business days of the referral, or a lesser period if the complaint involves an emergency situation or otherwise would be detrimental to the public interest.

(b) If commission staff requires a period less than three (3) business days for a response, that period shall be reasonable under the circumstances.

(3) Upon resolution of the informal complaint, the utility shall notify the commission's division of consumer services.

(4) In the event of failure to bring about satisfaction of the complaint because of the inability of the parties to agree as to the facts involved, or from other causes, the proceeding shall be held to be without prejudice to the complainant's right to file and prosecute a formal complaint whereupon the informal proceedings shall be discontinued.

Section 22. Deviations from Rules. In special cases, for good cause shown, the commission may permit deviations from these rules.

Section 23. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "FERC Financial Report FERC Form No. 1", March 2007;
- (b) "FERC Financial Report FERC Form No. 2", December 2007;
- (c) "Notice of Election of Use of Electronic Filing Procedures", June 2014;
- (d) "PSC Form-T (telephone)", August 2005;
- (e) "Form 8-K", January 2012;
- (f) "Form 10-K", January 2012;
- (g) "Form 10-Q", January 2012; and
- (h) "Subpoena Form", August 2013.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the commission's offices located at 211 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m., or through the commission's Web site at <http://psc.ky.gov>. (8 Ky.R. 786; eff. 4-7-1982; 10 Ky.R. 831; eff. 1-4-1984; 11 Ky.R. 1301; 12 Ky.R. 127; eff. 7-9-1985; 18 Ky.R. 191; 1025; eff. 9-24-1991; 19 Ky.R. 1142; 1604; 2044; eff. 3-12-1993; 39 Ky.R. 295; 995; 1117; eff. 1-4-2013; 40 Ky.R. 686; 1109; 1269; eff. 1-3-2014; 41 Ky.R. 131; 476; 763; 983; eff. 10-31-2014; Crt eff. 3-27-2019.)



WHAT: Severe Weather Pop Ups & Social Messaging
DATE: 01/24/23

This weather system will affect pretty much all of the Midwest, the South, and most of our UOCs (potentially). We’d like to get pop ups and social messaging out to the UOCs listed below – Pop messaging will be universal for all of them listed, but the socials will need to be tweaked with the specific numbers/UOC references.

WEB

We are prepared to respond to weather-related events and conditions that may potentially impact your service area. Please check here in the drop-down menu for Service Advisories:

[Advisories Drop Down Menu Ribbon]

- We urge everyone to prepare for possible freezing pipes. For Freeze Prep and Info, click [here](#).
- We urge you to check the [National Weather Service](#) for the latest weather information.

Be safe – be prepared.

SOCIAL MESSAGE

We are prepared to respond to weather-related events and conditions that may potentially impact your service area. If you need to report an emergency, please call Customer Support at XXX-XXX-XXXX. We will post any Boil Water Advisories and Service Interruptions here and on our webpage at [\[Individual UOC url\]](#). Visit the [National Weather Service](#) for the latest storm information. Check our blogs on Freeze Prep & Info [here](#).

Stay safe – be prepared.

[picture of pipes here]

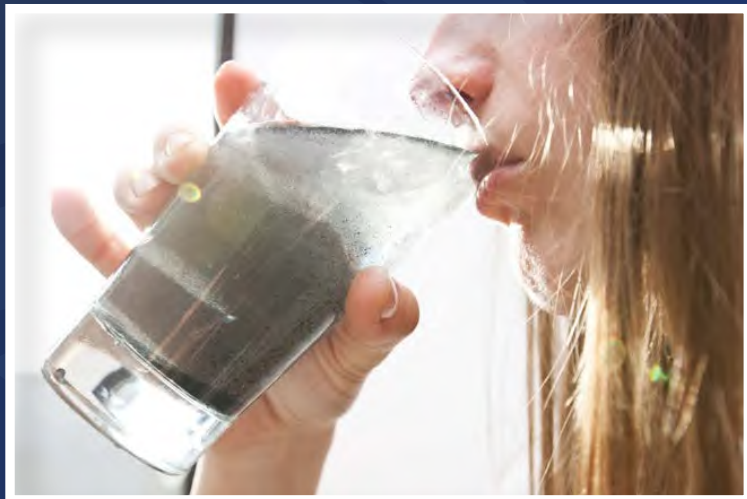
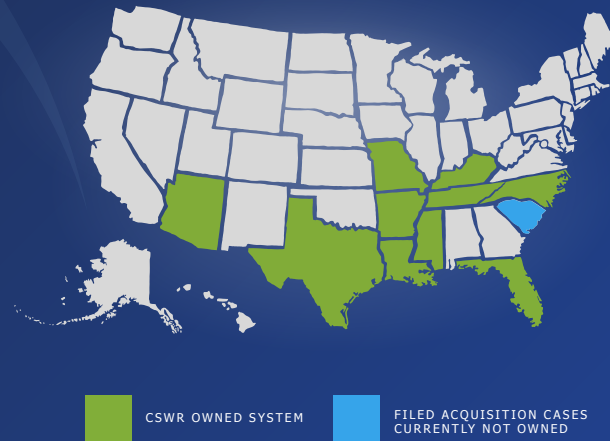
UOCs:

Magnolia Water	magnoliawateruoc.com	855-643-8152
Eagle Ridge UOC	eagleridgeuoc.com	866-232-7286
Oak Hill UOC	oakhilluoc.com	866-404-2162
Flushing Meadows UOC	flushingmeadowsuoc.com	866-279-1233
Hayden’s Place UOC	haydensplaceuoc.com	866-305-5540
Sebastian Lake UOC	sebastianlakeuoc.com	866-270-4919
St. Joseph’s Glen UOC	stjosephsglenuoc.com	866-611-0490
Confluence Rivers UOC	conflenceriversuoc.com	866-945-3920
Great River UOC	greatriveruoc.com	855-801-8440
Limestone Water UOC	limestonewateruoc.com	855-723-2450
Bluegrass Water UOC	bluegrasswateruoc.com	866-752-8982
CSWR-Florida UOC	cswrfloridauoc.com	855-476-1942
Red Bird UOC	redbirduoc.com	855-565-5273
CSWR-South Carolina	cswrsouthcarolinauoc.com	866-747-0493



BRINGING SAFE, RELIABLE AND ENVIRONMENTALLY RESPONSIBLE WATER RESOURCES TO EVERY COMMUNITY IN THE U.S.

Founded in 2014, Central States Water Resources (CSWR) is one of twelve largest investor-owned utilities in the United States. In 2019 – 20 alone, CSWR invested more than \$70 million to acquire and transform critical water infrastructure using technology and innovation to bring safe, reliable, and environmentally responsible water resources to nearly 200,000 customers across Arizona, Arkansas, Florida, Kentucky, Louisiana, Missouri, Mississippi, North Carolina, Tennessee and Texas. CSWR uses private investment to acquire and revitalize water systems that are often woefully outdated and dangerous, typically unbeknownst to end users. This enhances the value of individual properties and communities — all through the transformation of essential water resources, many of which have been in operation for more than a half-century.



ADDRESSING AMERICA'S WATER CRISIS

Nearly one in every four Americans' drinking water comes from untested or contaminated systems and some 60 million Americans do not trust their tap water. This is often because many water systems have been in operation between 50 - 100 years and lack staff, expertise and funding to address critical water safety, reliability and quality standards, frequently leading to unsafe and environmentally damaging conditions including hazardous lead levels and E.coli contamination.

THE CSWR METHODOLOGY

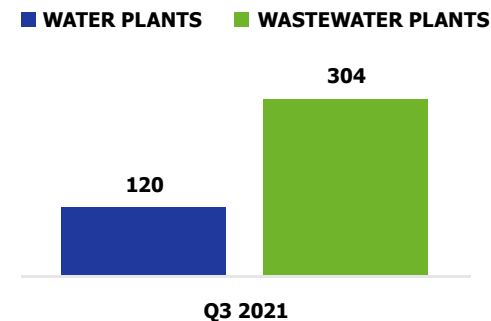
1. Identify small, distressed systems.
2. Negotiate and sign purchase agreements.
3. Consolidate systems into single, viable utility company.
4. Immediately begin title process and assessments on collection systems and engineering needs.
5. Work with utility regulators inform them of CSWR's plans.
6. Seek the best rate structure for consumers. Enter consent agreements with environmental regulators to upgrade and bring systems into compliance, focused on ensuring systems are operating compliantly.
7. Close acquisitions and commence operational and plant improvement efforts – bringing systems back into compliance quickly.
8. Partner with local engineering firms, suppliers, maintenance contractors, and regulatory legal support.
9. Connect local firms into our proprietary maintenance management system to track and manage routine preventative maintenance work and geotagging all equipment.



MAKING AN IMPACT

- 100% compliance with Agreed Orders (environmental compliance agreements) to bring 200 wastewater plants into compliance in 9 states.
- More than 20,000 samples taken at CSWR-owned water and wastewater facilities to monitor system performance.
- No sustained Customer Complaints with Public Utility Regulators.
- In 2021, CSWR delivered on average 10.6MM gallons of water and treats 17.1MM gallons of wastewater daily for 29,375 water customers and 47,146 wastewater customers in 7 states.
- CSWR's wastewater treatment removes 27,800 lbs. of pollution from local water bodies daily. This pollution includes BOD, nutrient pollution, and human pathogens.

CSWR PLANTS OPERATED



BLUEGRASS WATER UTILITY OPERATING COMPANY, LLC

1650 Des Peres Road, Suite 303


St. Louis, MO 63131

<http://www.centralstateswaterresources.com/communities/bluegrass/>

RATES – CHARGES – RULES - REGULATIONS
FOR FURNISHING
WATER SERVICE
IN

KENTUCKY COUNTY OF
CALLOWAY

FILED WITH THE
PUBLIC SERVICE COMMISSION
OF KENTUCKY

DATE OF ISSUE August 19, 2020
DATE EFFECTIVE September 18, 2020
ISSUED BY 
TITLE Bluegrass Water UOC, President



PSC KY NO. 1

Original SHEET NO. 1

CANCELLING PSC KY NO. _____

_____ SHEET NO. _____

Bluegrass Water Utility Operating Company, LLC

WATER SERVICE in entire service area

INDEX

Sheet Number

RATES AND CHARGES

2-3

Center Ridge area, recurring and non-recurring rates

2

(Reserved for future use)

3

RULES AND REGULATIONS

4

1. Service Area

4.1

2. Water Service Facilities

4.2

3. Water Use

4.3

4. Customer Billing and Payment

4.4

5. Discontinuance of Service

4.5

BILLING FORM

5

DATE OF ISSUE August 19, 2020

DATE EFFECTIVE September 18, 2020

ISSUED BY 

TITLE Bluegrass Water UOC, President

BY AUTHORITY OF ORDER OF THE PUBLIC SERVICE COMMISSION
IN CASE NO. 2019-00360 DATED February 17, 2020

KENTUCKY PUBLIC SERVICE COMMISSION
Kent A. Chandler Acting Executive Director

EFFECTIVE 9/18/2020 PURSUANT TO 807 KAR 5:011 SECTION 9 (1)

PSC KY NO. 1

1st Revised SHEET NO. 2

CANCELLING PSC KY NO. 1

Original SHEET NO. 2

Bluegrass Water Utility Operating Company, LLC

WATER SERVICE in entire service area

CLASSIFICATION OF SERVICE – Residential (T)

Applicable to all customers in the Center Ridge area in Calloway County, Kentucky, formerly served by Center Ridge Water District, Inc., including those in the subdivisions of Center Ridge Lake Properties, Pinebluff Shores Subdivision, Keniana Shores subdivision, and LH&M Properties.

Available for residential use only. Charges are assessed at a flat monthly rate to each dwelling unit even if the units share a service connection; at least one monthly charge is assessed per service connection. (T) | (T)

RECURRING CHARGES

Service Charge (flat rate per dwelling unit) \$77.63 per month (I)

NON-RECURRING CHARGES:

New Service Connection \$350.00 per connection (T)


Re-connection Charge \$0.00 per connection (R)

Late Payment Penalty \$0.00 (R)

Returned Check Charge \$0.00 (R)

DATE OF ISSUE August 16, 2021

DATE EFFECTIVE August 1, 2021

ISSUED BY /s/Josiah Cox 

TITLE Bluegrass Water UOC, President

BY AUTHORITY OF PUBLIC SERVICE COMMISSION ORDER

IN CASE NO. 2020-00290 DATED August 2, 2021

**KENTUCKY
PUBLIC SERVICE COMMISSION**

Linda C. Bridwell
Executive Director



EFFECTIVE
8/1/2021
PURSUANT TO 807 KAR 5:011 SECTION 9 (1)

Bluegrass Water Utility Operating Company, LLC

WATER SERVICE in entire service area

PSC KY NO. 1

Original SHEET NO. 3


CANCELLING PSC KY NO. _____

_____ SHEET NO. _____

RESERVED FOR FUTURE USE

DATE OF ISSUE August 19, 2020

DATE EFFECTIVE September 18, 2020

ISSUED BY 

TITLE Bluegrass Water UOC, President

BY AUTHORITY OF ORDER OF THE PUBLIC SERVICE COMMISSION
IN CASE NO. 2019-00360 DATED February 17, 2020

KENTUCKY PUBLIC SERVICE COMMISSION
Kent A. Chandler Acting Executive Director

EFFECTIVE 9/18/2020 PURSUANT TO 807 KAR 5:011 SECTION 9 (1)

PSC KY NO. 1

Original SHEET NO. 4.1

CANCELLING PSC KY NO. _____

_____ SHEET NO. _____

Bluegrass Water Utility Operating Company, LLC

WATER SERVICE in entire service area


RULES AND REGULATIONS

This schedule of Rules and Regulations governs the furnishing of water service by Bluegrass Water Utility Operating Company, LLC (“Bluegrass Water”) and applies to all water service received from Bluegrass Water. All Rules and Regulations are to be in effect so long as they are not in conflict with the rules and regulations of the Kentucky Public Service Commission (“the Commission”). Bluegrass Water and the service offered in this tariff are further subject to all rules and regulations of the Commission.

1. SERVICE AREA: Bluegrass Water furnishes water service to the Center Ridge area in Calloway County, Kentucky, formerly served by Center Ridge Water District, Inc. The Rules and Regulations contained in this tariff apply in the service area of Bluegrass Water.

DATE OF ISSUE August 19, 2020

DATE EFFECTIVE September 18, 2020

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BY AUTHORITY OF ORDER OF THE PUBLIC SERVICE COMMISSION

IN CASE NO. 2019-00360 DATED February 17, 2020

KENTUCKY PUBLIC SERVICE COMMISSION
Kent A. Chandler Acting Executive Director 
EFFECTIVE 9/18/2020 PURSUANT TO 807 KAR 5:011 SECTION 9 (1)

Bluegrass Water Utility Operating Company, LLC

WATER SERVICE in entire service area

PSC KY NO. 1

1st Revised SHEET NO. 4.2

CANCELLING PSC KY NO. 1

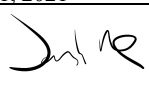
Original SHEET NO. 4.3

2. WATER SERVICE FACILITIES

- 2.1. Bluegrass Water serves each customer by a connection between its facilities and the customer’s facilities. This service connection is owned and maintained by Bluegrass Water, and includes the shutoff valve and all necessary appurtenances. All service connections must have a shutoff valve on the customer’s side of the connection. Any such service connection is to be located at the customer’s premises property line; if the property line is under a street or road, then the shutoff valve and other necessary appurtenances may be located at or near the edge of the street abutting the customer’s property.
- 2.2. The service line is a pipeline with other necessary appurtenances used to conduct water from the service connection to the dwelling or other unit where the water services will be consumed. All costs associated with the service line and with leaks, repairs, or maintenance on the service line will be the responsibility of the customer.
- 2.3. All service lines must be installed underground, below the frost line. A service line must not be laid in the same trench with a sewer pipe.
- 2.4. A non-recurring charge will be assessed for a new service connection, in an amount set forth in the applicable tariff sheet for the classification of service. This charge is assessed only when a new service connection is made to Bluegrass Water’s facilities, and not assessed if there is a current, operable service connection. (T)
- 2.5. All new facilities must comply with these rules and regulations. Customer service lines or other facilities owned and maintained by a customer that are in existence and use as of the September 2020 effective date of this tariff, but not in compliance with these rules and regulations, may remain in place only if the non-compliance does not constitute a misuse of water service, interfere with service to other customers, or present a safety/health hazard or risk. Any such existing customer facilities must be brought into compliance as a condition to re-connection after a discontinuance of service.
- 2.6. The customer must not tamper, interfere, or permit tampering or interference with Bluegrass Water pipes and other service facilities.

DATE OF ISSUE August 16, 2021

DATE EFFECTIVE August 1, 2021

ISSUED BY /s/Josiah Cox 

TITLE Bluegrass Water UOC, President

BY AUTHORITY OF PUBLIC SERVICE COMMISSION ORDER IN

CASE NO. 2020-00290 DATED August 2, 2021

KENTUCKY
PUBLIC SERVICE COMMISSION

Linda C. Bridwell
Executive Director



EFFECTIVE
8/1/2021
PURSUANT TO 807 KAR 5:011 SECTION 9 (1)

PSC KY NO. 1

Original SHEET NO. 4.3

CANCELLING PSC KY NO. _____

_____ SHEET NO. _____

Bluegrass Water Utility Operating Company, LLC


WATER SERVICE in entire service area

3. WATER USE

- 3.1. All leaks must be reported to Bluegrass Water immediately.
- 3.2. As soon as possible and no later than forty-eight (48) hours after notification of a leak in the associated service line or other appurtenances on the customer's side of the service connection, the customer will repair or cause to be repaired any such leak. If a leak on the customer's side of the service connection is not repaired within 48 hours of notice, Bluegrass Water may temporarily discontinue the affected water service without further notice to the customer, until the leak has been repaired.
- 3.3. A single service connection can serve no more than one unit. Each connection will be charged for service at the recurring rate stated in the applicable tariff sheet for the classification of service.
- 3.4. A customer is not allowed to resell, share, or give away water, unless the customer is receiving service under a special contract executed by Bluegrass Water and approved by the Commission.
- 3.5. For any dwelling left unoccupied for more than 72 hours, the customer is obligated to shut off water service to the dwelling and drain the lines prior to freezing weather.

DATE OF ISSUE August 19, 2020

DATE EFFECTIVE September 18, 2020

ISSUED BY 

TITLE Bluegrass Water UOC, President

BY AUTHORITY OF ORDER OF THE PUBLIC SERVICE COMMISSION

IN CASE NO. 2019-00360 DATED February 17, 2020

KENTUCKY PUBLIC SERVICE COMMISSION
Kent A. Chandler Acting Executive Director

EFFECTIVE 9/18/2020 PURSUANT TO 807 KAR 5:011 SECTION 9 (1)

Bluegrass Water Utility Operating Company, LLC

WATER SERVICE in entire service area

PSC KY NO. 1

1st Revised SHEET NO. 4.4

CANCELLING PSC KY NO. 1


Original SHEET NO. 4.4

4. CUSTOMER BILLING and PAYMENT

- 4.1. The customer is responsible for prompt payment of all charges for service.
- 4.2. A customer who wishes to transfer responsibility for service and other charges associated with a particular address (for example, upon transferring ownership of the property) must make arrangements to have the new customer accept responsibility for the service and to have the service put into the new customer's name. The customer is responsible for notifying Bluegrass Water of any change in the customer's billing address or other contact information.
- 4.3. Bluegrass Water bills each customer the first week of each calendar month for the prior calendar month's service.
- 4.4. If payment in full of the bill has not been received by the last day of the calendar month in which the bill was sent, (a) a delinquency notice will be sent to the customer billing address informing the customer that service will be discontinued and the date on which service will be discontinued and (b) a late payment penalty will be assessed in the amount or at the rate set forth in the applicable tariff sheet for the classification of service.
- 4.5. To avoid discontinuance of service, the bill and any late payment penalty must be paid by the discontinuance date specified on the notice. (T)

DATE OF ISSUE August 16, 2021

DATE EFFECTIVE August 1, 2021

ISSUED BY /s/Josiah Cox 

TITLE Bluegrass Water UOC, President

BY AUTHORITY OF PUBLIC SERVICE COMMISSION ORDER IN

CASE NO. 2020-00290 DATED August 2, 2021

**KENTUCKY
PUBLIC SERVICE COMMISSION**

Linda C. Bridwell
Executive Director



EFFECTIVE
8/1/2021
PURSUANT TO 807 KAR 5:011 SECTION 9 (1)

PSC KY NO. 1

Original SHEET NO. 4.5

CANCELLING PSC KY NO. _____

_____ SHEET NO. _____

Bluegrass Water Utility Operating Company, LLC


WATER SERVICE in entire service area

5. DISCONTINUANCE OF SERVICE

- 5.1. Service may be discontinued due to non-payment, misuse of service, tampering with Bluegrass Water's facilities or another customer's service, or non-compliance with rules and regulations of Bluegrass Water or the Commission.
- 5.2. Unless there is an emergency and the discontinuance is temporary, prior notice of a discontinuance of service will be given in accordance with the Commission's regulations.
- 5.3. Discontinuance of service may require or involve physically separating the service line from the service connection or other Bluegrass Water facilities.
- 5.4. Before service can be restored to premises where it has been discontinued, all charges owed to Bluegrass Water (including billed recurring rates and any late payment penalty) plus a re-connection charge, must be paid in full. The amount of the non-recurring re-connection charge is a rate set forth in the applicable tariff sheet for the classification of service.

DATE OF ISSUE August 19, 2020

DATE EFFECTIVE September 18, 2020

ISSUED BY 

TITLE Bluegrass Water UOC, President

BY AUTHORITY OF ORDER OF THE PUBLIC SERVICE COMMISSION
IN CASE NO. 2019-00360 DATED February 17, 2020

KENTUCKY PUBLIC SERVICE COMMISSION
Kent A. Chandler Acting Executive Director

EFFECTIVE 9/18/2020 PURSUANT TO 807 KAR 5:011 SECTION 9 (1)

PSC KY NO. 1

Original SHEET NO. 5

CANCELLING PSC KY NO. _____

SHEET NO. _____

Bluegrass Water Utility Operating Company, LLC

WATER SERVICE in entire service area

BILLING FORM:

Please Make Checks Payable to:

Bluegrass Water UOC, LLC

P.O. Box 790379

St. Louis MO 63179



ACCOUNT NAME	
NEW ACCT #	
SERVICE ADDRESS	
DATE	08/04/20
SECURITY CODE	
SYSTEM	Center Ridge-2
SERVICE PERIOD	07/01/20 - 07/31/20

Please visit our website: www.bluegrasswateruoc.com, and use the Security Code found in the upper right corner of your invoice to register your online account.

Through your customer portal, you may view your account history, pay your bill by Credit, Debit Card or ECheck, sign up for AutoPay, and even go paperless by enrolling in "Ebill" to receive an e-mail notification that a new bill is available. All Online payments are subject to processing fees.

PLEASE NOTE: When signing up for AutoPay, please pay the ENTIRE balance outstanding on your account. Failure to do so may result in a late penalty. AutoPay will take effect beginning the following invoice after successfully enrolling. AutoPay is drafted from your registered payment method 5 days prior to the due date. We recommend logging in, paying your current invoice due, and activating AutoPay for your next billing.

IF PAYING BY CHECK, PLEASE WRITE YOUR ACCT # ON YOUR CHECK AND USE THE CORRECT MAILING ADDRESS TO ENSURE ACCURATE PROCESSING. CASH PAYMENTS WILL NOT BE ACCEPTED.

ACCOUNT ACTIVITY

Description	Amount
Previous Balance	\$22.79
Payment Received	(\$250.25)
Balance	(\$227.46)
Current Billing	
Water - Center Ridge	\$22.79
Total Current Billing Charges	\$22.79
TOTAL DUE	\$0.00

GENERAL INFORMATION

Your account has a credit balance. No payment is due at this time.

For billing inquiries, call (866) 752-8982 Monday-Friday, 8am-5pm CST or email support@bluegrasswateruoc.com.

YOUR PROMPT PAYMENT IS APPRECIATED!

If mailing payment, please be sure to use correct mailing address:
P.O. Box 790379
St. Louis, MO 63179

*****SEPARATE AND RETURN BELOW STUB WITH PAYMENT*****

Bluegrass Water UOC, LLC
P.O. Box 790379
St. Louis MO 63179

NAME	
SERVICE ADDRESS	
ACCOUNT #	
DUE DATE	08/31/20
*Previous Balance Due Immediately	
TOTAL DUE	\$0.00
Amount Paid	Credit Balance - DO NOT PAY

Payment must be received by due date to avoid late fees.

Customer Billing Address

Bluegrass Water UOC, LLC
P.O. Box 790379
St. Louis MO 63179

DATE OF ISSUE August 19, 2020

DATE EFFECTIVE September 18, 2020

ISSUED BY

TITLE Bluegrass Water UOC, President

BY AUTHORITY OF ORDER OF THE PUBLIC SERVICE COMMISSION

IN CASE NO. 2019-00360 DATED February 17, 2020

**KENTUCKY
PUBLIC SERVICE COMMISSION**

Kent A. Chandler
Acting Executive Director

EFFECTIVE

9/18/2020

PURSUANT TO 807 KAR 5:011 SECTION 9 (1)

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF)	
BLUEGRASS WATER UTILITY OPERATING)	CASE NO.
COMPANY, LLC FOR AN ADJUSTMENT OF)	2020-00290
RATES AND APPROVAL OF)	
CONSTRUCTION)	

ORDER

This matter arises from an application for a rate increase and approval of construction filed by Bluegrass Water Utility Operating Company, LLC (Bluegrass Water) pursuant to KRS 278.020(1), KRS 278.180, and KRS 278.190. The Kentucky Attorney General, through the Office of Rate Intervention (Attorney General) and a number of groups representing Bluegrass Water’s customers (collectively, Joint Intervenors)¹ were permitted to intervene in this matter. Bluegrass Water responded to requests for information from the Attorney General, Joint Intervenors, and Commission Staff, and a hearing was conducted in this matter on May 18, 2021, through May 20, 2021. Bluegrass Water responded to post-hearing request for information and Joint Intervenors and the Attorney General filed post-hearing briefs, and Bluegrass Water filed a brief in response to intervenors’ post-hearing briefs. This matter is now before the Commission for a decision on the merits.

¹ The groups representing Bluegrass Water’s customers are Homestead Home Owners Association, Inc.; The Deer Run Estates Homeowners Association, Inc.; Longview Homeowners Association, Inc.; Arcadia Pines Sewer Association, Inc., Carriage Park Neighborhood Association, Inc., Marshall Ridge Sewer Association, Inc. and Randview Septic Corporation. They are all represented by the same counsel and have therefore acted collectively in the proceedings before the Commission. Thus, the Commission refers to them collectively as Joint Intervenors.

BACKGROUND

Bluegrass Water is a limited liability company organized under the laws of Kentucky on March 21, 2019. Beginning in April 2019, Bluegrass Water began filing applications pursuant to KRS Chapter 278 to purchase water and wastewater systems in Kentucky. On August 14, 2019, Bluegrass Water was approved to purchase the Airview Utilities, LLC (Airview), Brocklyn Utilities, LLC (Brocklyn), Fox Run Utilities, LLC (Fox Run), Marshall County Environmental Services, LLC (Great Oaks and Golden Acres), Kingswood Development, Inc. (Kingswood), Lake Columbia Utilities, Inc. (Lake Columbia), LH Treatment Company, LLC (Longview/Homestead), and P.R Wastewater Management, Inc (Persimmon Ridge) wastewater systems in Hardin, Madison, Franklin McCracken, Marshall, Bullitt, Scott, and Shelby counties.² On February 17, 2020, Bluegrass Water was approved to purchase the River Bluffs, Inc. (River Bluffs) and Joann Estates Utilities, Inc. (Timberland) wastewater systems in Oldham and McCracken counties and the Center Ridge Water District, Inc. (Center Ridge) water systems in Calloway County.³ On June 19, 2020, Bluegrass Water was approved to purchase the Arcadia Pines Sewer Association, Inc. (Arcadia Pines), Carriage Park Neighborhood Association Inc. (Carriage Park), Marshall Ridge Sewer Association Inc. (Marshall Ridge), and Randview Septic Corporation (Randview) wastewater systems in McCracken and

² Case No. 2019-00104, *Electronic Proposed Acquisition by Bluegrass Water Utility Operating Company, LLC and the Transfer of Ownership and Control of Assets by P.R. Wastewater Management, Inc., Marshall County Environmental Services, LLC, LH Treatment Company, LLC, Kingswood Development, Inc., Airview Utilities, LLC, Brocklyn Utilities, LLC, Fox Run Utilities, LLC, and Lake Columbia Utilities, Inc.* (Ky. PSC Feb. 25, 2021).

³ Case No. 2019-00360, *Electronic Proposed Acquisition by Bluegrass Water Utility Operating Company, LLC and the Transfer of Ownership and Control of Assets by Center Ridge Water District, Inc., Joann Estates Utilities, Inc., and River Bluffs, Inc.* (Ky. PSC Feb. 17, 2020).

Graves counties.⁴ On January 14, 2021, Bluegrass Water was approved to purchase the Delaplain Disposal Company (Delaplain), Herrington Haven Wastewater Company Inc. (Herrington Haven), Springcrest Sewer Company, Inc. (Springcrest), and Woodland Acres Utilities, LLC (Woodland Acres) wastewater systems in Scott, Garrard, Jessamine, and Bullitt counties. Bluegrass Water is categorized as a class B sewer utility and a class C water utility.

Bluegrass Water tendered its application in this matter on October 1, 2020.⁵ However, on October 30, 2020, Bluegrass Water was sent a deficiency letter that identified information required by 807 KAR 5:001, Section 16 that was not provided with the application. On the same day, the Commission issued an Order noting the same deficiencies issued in the letter and stating that Bluegrass Water must cure those deficiencies as directed in the deficiency letter before the application may be accepted for filing. In the October 30, 2020 Order, the Commission also noted that Bluegrass Water had not closed on the Arcadia Pines, Carriage Park, Marshall Ridge, and Randview wastewater systems when it tendered the application and explicitly stated that Bluegrass Water must close on those systems before it cures the deficiencies identified in the letter and the application is accepted for filing if it wanted the application to be considered a request for a rate adjustment for those systems. On November 19, 2020, Bluegrass Water closed on the Arcadia Pines, Carriage Park, Marshall Ridge, and Randview

⁴ Case No. 2020-00028, *Electronic Proposed Acquisition by Bluegrass Water Utility Operating Company, LLC of Wastewater System Facilities and Subsequent Tariffed Service to Users Presently Served by those Facilities* (Ky. PSC Jun. 19, 2020).

⁵ Note that Bluegrass Water tendered some of the attachments to the application on September 30, 2020 and tendered the application itself on September 30, 2020 in Case No. 2020-00297. Bluegrass Water corrected that issue and tendered the application in this matter on October 1, 2020.

wastewater systems and cured the filing deficiencies identified in the October 30, 2020 letter. Bluegrass Water's application was deemed to have been filed on November 19, 2020.

However, as of November 19, 2020, Bluegrass Water had not been approved to purchase and did not own the systems for which it sought approval to purchase in Case No. 2020-00297; the Delaplain, Herrington Haven, Springcrest, and Woodland Acres sewer systems (the 00297 systems). The Commission denied Bluegrass Water's request for a deviation from 807 KAR 5:011, Section 11, and determined that, pursuant to 807 KAR 5:011, Section 11, and KRS Chapter 278, Bluegrass Water could not file a tariff proposing to increase the rates of the 00297 systems until it completed the purchase of those systems and adopted the existing tariffs of those systems. Thus, the Commission held that Bluegrass Water's application in this matter, which was filed before Bluegrass Water was even approved to purchase those systems, would not be considered as a request to increase the rates of the 00297 systems pursuant to KRS Chapter 278.

Bluegrass Water's application proposes a rate increase based on a forecasted test period ending April 30, 2022, and requests rates based on a total revenue requirement for water and sewer customers of \$3,758,757. Bluegrass Water indicated that revenue requirement represents an increase of \$2,513,799 over projected revenues derived from current rates for the systems Bluegrass Water owns and operates and the systems it was seeking to operate when it tendered its application. The total proposed revenue requirement consists of a revenue requirement for sewer of \$3,332,039.61, including the costs associated with the 00297 systems, and a revenue requirement for water of \$426,747. If Bluegrass Water collected its total proposed revenue requirement of

\$3,758,757, the rates of its systems would need to be increased by about approximately 200 percent.

Bluegrass Water filed tariff sheets with its application that included a proposed flat, unified rate for residential sewage customers of \$96.14 per month and a proposed flat unified rate for residential water customers of \$105.84 per month. Bluegrass Water's customers are currently served under separate distinct rates based on the systems that provide them service, which are based on the filed rates or the amounts charged by the previous owners of the systems. Bluegrass Water indicated that residential customers of the sewer systems at issue currently pay flat rates ranging from \$15.00 to \$55.85 per month such that the proposed rate of \$96.14 per month will represent a 72.1 percent to a 540.9 percent increase in residential rates. Bluegrass Water indicated that residential customers of water systems at issue currently pay a flat rate of \$22.79 per month such that the proposed rate of \$105.84 per month will represent a 364.4 percent increase in those residential rates.

Bluegrass Water, in support of its application, presented schedules and written testimony from Josiah Cox, Todd Thomas, Jacob Freeman, Brent Thies, Dylan D'Ascendis, and Jennifer Nelson. Among other things, Bluegrass Water indicated that the proposed rates are necessary in large part due to the significant capital investment Bluegrass Water has or will make through the forecasted test period. Bluegrass Water asserted that it has made or that it will be necessary to make about \$4.39 million in capital investments in the sewage systems at issue, about \$1.16 million in capital investments in the water systems at issue, and about \$2.01 million in capital investments in the 00297

systems.⁶ In its application, Bluegrass Water contended that a Certificate of Public Convenience and Necessity (CPCN) was not required for the projects but alternatively requested a CPCN for any project for a CPCN would be required.

On June 30, 2021, Bluegrass Water filed a notice of intent to implement its proposed rates, which were suspended in a previous Commission Order, on August 1, 2021, pending the final Order and subject to refund as required by KRS 278.190. However, although Bluegrass Water indicated it maintained its objections, it indicated it would not implement any new rate, subject to refund, for the 00297 systems, which it did not own at the time this application was filed.

MISCELLANEOUS ISSUES

Rates of Systems at Issue in Case No. 2020-00028

Joint Intervenors argue that the Commission should reject Bluegrass Water's request for a rate increase with respect to the four systems Bluegrass Water was approved to purchase in Case No. 2020-00028, which are Arcadia Pines, Carriage Park, Marshall Ridge, and Randview (collectively, the 00028 systems). Joint Intervenors note that Bluegrass Water closed on those systems the same day its application was accepted for filing in this matter. Joint Intervenors argue that Bluegrass Water could not file a rate application based on a forecasted test period for those customers, because KRS 278.192 requires six months of actual historical data to support a rate case based on a forecasted test period. Joint Intervenors also argue that Bluegrass Water, in its application in Case No. 2020-00028, committed to waiting to file for a rate increase for those systems until

⁶ See *generally* Application, Exhibit 8, Direct Testimony of Jacob Freeman (Freeman Testimony).

Bluegrass Water had one year of historical data from owning and operating those systems.⁷

Bluegrass Water disputes Joint Intervenors' interpretation of KRS 278.192. It notes that it had more than six months of historical data from operations when it filed its application in this matter. Bluegrass Water argues that information is sufficient to comply with KRS 278.192, even though it did not have six months of historical data for the 00028 systems. Bluegrass Water also disputes that it committed not to increase the rates of the 00028 systems for a year in its application in Case No. 2020-00028. Bluegrass Water argues that the issue in Case No. 2020-00028 was that the systems were not being operated as rate-regulated utilities by the former owners such that there was no tariff on file for Bluegrass Water to adopt pursuant to 807 KAR 5:011 and insufficient information to establish rates pursuant to 807 KAR 5:076.⁸ Bluegrass Water stated that it proposed initial rates for the 00028 systems based on the amounts charged by the current owners and that it then "committed" to apply for a rate adjustment for those systems "no later than 15 months after their acquisition."⁹ Bluegrass Water also notes that it indicated it would file such an application "by mid-2021." Bluegrass Water argues that intervenors are incorrect in stating that "Bluegrass 'originally indicated' (AG Brief. p.7) or made an 'express commitment' or 'regulatory commitment' (Jt. Int. Brief pp. 5-6) to wait until mid-

⁷ Joint Intervenors' Post-Hearing Brief (Joint Intervenors' Brief) (filed June 3, 2021) at 5-7.

⁸ Bluegrass Water's Post-Hearing Response Brief (Bluegrass Water Response Brief)(filed June 9, 2021) at 3.

⁹ *Id.* at 4.

2021 to file for an adjustment of rates for the 00028 systems or state-wide.”¹⁰ Bluegrass Water also argues that the Commission’s final Order in Case No. 2020-00028 did not explicitly condition approval of the transfers on Bluegrass Water agreeing to wait until mid-2021 to apply for a rate increase.¹¹

If the Commission accepted Joint Intervenors’ argument with respect to the interpretation of KRS 278.192, it would essentially be holding that KRS 278.192 prevents a utility from including the customers of a system it purchased within six months in an application for a rate increase based on a forecasted test period. The Commission does not believe that such an interpretation is supported by the plain reading of the statute. Further, there was no explicit commitment or condition in Case No. 2020-00028 requiring Bluegrass Water to wait to file for a rate increase for the 00028 systems. Thus, the Commission finds no reason that Joint Intervenors’ request that the Commission reject the proposed rate increase as it pertains to the 00028 systems should be granted.

However, the Commission notes that when a utility files an application for a rate increase that “the burden of proof to show that the increased rate or charge is just and reasonable shall be upon the utility.”¹² If a utility includes a new system without accurate historical data, then it may be unable to meet its burden, and the Commission may reject or reduce the proposed rate as appropriate.

¹⁰ *Id.*

¹¹ *Id.*

¹² KRS 278.190.

Rates of Systems at Issue in Case No. 2019-00104

Joint Intervenors argue that Bluegrass Water broke an additional commitment to the Commission by filing a rate case using a forecasted test year for the systems acquired in Case No. 2019-00104 (the 00104 systems), because Josiah Cox, President of Bluegrass Water, had testified at a hearing in Case No. 2019-00104 that its first rate filing would be based upon the company's "current expenses." Joint Intervenors argue that Bluegrass Water seeks to inject millions of dollars of additional rate base and operation and maintenance expense into its revenue requirement. Joint Intervenors argue that Bluegrass Water should not be able to use a forecasted test year based on its commitment to use "current expenses."

Bluegrass Water responded that Mr. Cox, after explaining that "historical information is not necessarily informative," answered a question regarding a timeline for seeking a unified rate by stating: "[W]e would run the systems for some period of time before we would come back and apply for a unified rate based on what our current costs are."¹³ Bluegrass Water argued that in context the statement is to distinguish such a rate filing from one based on the past owners historical expenses. Further, Bluegrass Water claims that this current rate case is based on its current expenses, due to the inclusion of 2020 base year actuals.¹⁴ Bluegrass Water argues that there is no justification for prohibiting a rate adjustment through use of a forecasted test year from including the 00104 systems.

¹³ Bluegrass Water's Response Brief at 4, footnote 4.

¹⁴ *Id.*

The Commission agrees with Bluegrass Water that the statement made by Mr. Cox at the hearing in Case No. 2019-00104 would not prohibit Bluegrass Water from filing a rate adjustment based on a forecasted test year that included the 00104 systems. Given the context of the statement, it was not an explicit commitment to file a rate case based on a historical test year. Further, KRS 278.192 allows Bluegrass Water to apply for a rate increase based on a forecasted test year for the systems at issue in Case No. 2019-00104, and Joint Intervenors have not provided any basis for finding that the statute would not apply under the circumstances. Thus, the Commission finds that the Joint Intervenors' request that the proposed rate increase be dismissed for the 00104 systems or that rates be limited to purely historical information for those systems should not be granted.¹⁵

Exclusion of Systems at Issue in Case No. 2020-00297

Joint Intervenors argue that the Commission correctly found, in a February 12, 2021 Order, that Bluegrass Water had not adopted the tariffs of the 00297 systems when it filed the application in this matter and, therefore, that Bluegrass Water could not apply for a rate increase for the customers of those systems as part of this application. Joint Intervenors further argue that all proposed capital investments for the systems acquired in Case No. 2020-00297 be removed for ratemaking purposes in this proceeding.¹⁶ Joint Intervenors point out that the systems in question were not owned by Bluegrass Water at the time the application for the current proceeding was tendered and state that there is

¹⁵ The Commission also notes that even if it limited the 00104 systems to a historical test period that Bluegrass Water would be able to project known and measurable changes.

¹⁶ Joint Intervenors' Brief at 4.

no precedent for a Kentucky utility utilizing a forecast test year to raise rates on customers of a system that it does not yet own.¹⁷

Joint Intervenors also argue that exclusion of the plant for the 00297 systems is justified by the “used and useful” doctrine. Specifically, Joint Intervenors assert that the systems owned by Bluegrass Water do not draw service from a centralized source and operate independently of one another such that capital expenditures made to rehabilitate one system will never benefit the customers of another system. Thus, Joint Intervenors argue that the sharing of these costs across systems is unjust.¹⁸

Bluegrass Water states that it based its application for an adjustment of rates on a fully forecasted test year ending April 30, 2022. Bluegrass Water indicated that it proposed a unified rate for all systems forecast to be owned and operated by Bluegrass Water during the forecasted test period. Bluegrass Water asserts that it in fact does now own the 00297 systems as forecasted. Bluegrass Water noted that it disputes the Commission’s order to exclude the 00297 systems from the rate adjustment, “but here neither waives nor repeats arguments against exclusion.”¹⁹

Bluegrass Water contends that Joint Intervenors’ attempt to revisit the decision to exclude the 00297 systems advances “tendentious arguments purportedly in support of the Commission’s decision, most notably a radical position that costs for necessary investment in treatment or collection/distribution infrastructure cannot be recovered from

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Bluegrass Water’s Response Brief at 2–3.

‘consumers who will never benefit from them.’”²⁰ Bluegrass Water asserts that the rule proposed by Joint Intervenors would require individualized rates for each service location. Bluegrass Water notes that such a rule is violated each time rates are set and gave the example of a rate for a long established electric customer that includes the cost to construct new transmission and distribution lines to extend the service area or a reach new residential, commercial, or industrial development. Bluegrass Water argues that “[n]either law nor policy supports atomizing rates or de-averaging based on the nearest facilities and how close the customer is to them.”²¹

As an initial matter, for the reasons expressed in previous orders, the Commission sees no reason to reconsider its previous decisions in the February 12, 2021 Order and the March 24, 2021 Order on reconsideration denying Bluegrass Water’s request for a deviation and finding that Bluegrass Water must first adopt the existing tariffs of the utilities at issue in Case No. 2020-00297, pursuant to 807 KAR 5:011, Section 11, before filing a tariff proposing to increase rates for those systems, pursuant the 807 KAR Chapter 5 and KRS Chapter 278, with 30 days’ notice to the Commission.²² Further, as the Commission noted in the orders addressing that issue, Bluegrass Water is proposing to combine the separate rates of multiple systems into a single rate in this matter and,

²⁰ *Id.* at 2.

²¹ *Id.*

²² The Commission observes that Bluegrass Water adopted the tariffs of the previous utilities at the end of March 2021 and that in April 2021 Bluegrass Water filed tariffs bringing those systems within its tariff, which included separate rate sheets for each of those systems, consistent with the rate sheets it attached as an exhibit in Case No. 2020-00297 and indicated it would file, setting rates for those systems at the same level as the previous owner. Bluegrass Water has filed no new tariff sheets proposing to increase the rates of those or any other systems since those tariffs were filed.

therefore, the Commission would be looking at the costs attributable to each system separately, even if the Commission ultimately adopted a unified rate for the systems at issue in this case, when reviewing whether the proposed rates were reasonable.²³ The issue raised by Joint Intervenors is, in part, whether it is reasonable to include costs attributable to separate systems that are not included in a unified rate.

While the Commission, as discussed herein, is approving a unified rate for the systems at issue in this case, the Commission finds that it is not reasonable to include the costs of systems not included here among the costs that would be recovered from other customers. As discussed in more detail below, there are reasons for approving a unified rate as opposed to a single rate for each system, including that a unified rate is likely to promote regionalization, which should drive down costs in the long term by allowing utilities to take advantage of economies of scale, and that a unified rate will serve to levelize rates in the long term so that each system will not experience a significant rate shock every time it requires significant investment or some unexpected cost, which all systems will experience at some point. However, such cost sharing is not reasonable where the customers of a distinct system with wholly separate rates is not included in the unified rate. Thus, the Commission finds that the costs associated with the 00297 systems should not be included in establishing the revenue requirement for a unified rate in this matter and that they should be treated as distinct systems, whose rates are not at issue, for the purpose of setting rates for systems at issue in this matter.²⁴

²³ See Order (Ky. PSC Mar. 24, 2021) at 8–9.

²⁴ As Bluegrass Water noted, the inclusion of the 00297 systems in the unified rate would have actually lowered the overall rate.

As discussed in more detail below, the Commission will remove all capital costs associated with the 00297 systems when determining the revenue requirement for the systems at issue in this matter. Similarly, the Commission finds that operating revenues and expenses associated with the 00297 systems should be removed.

Governance and Accountability

Joint Intervenors assert that Bluegrass Water's Operating Agreement allows its sole member, CSWR, LLC (CSWR), to reorder the priority of making both regular and capital distributions and distributions upon the dissolution of the company. Joint Intervenors argue that "the governing documents expressly permit CSWR to take advantage of Bluegrass Water and, by extension, their customers," though Joint Intervenors acknowledge that it is probably unlikely to happen.²⁵

While Joint Intervenors are not specific, they appear to be concerned that Bluegrass Water would make payments to CSWR before making payments to creditors or contractors. The Commission notes that Bluegrass Water already has a statutory obligation to provide adequate service to customers and that Bluegrass Water is prohibited from transferring utility assets without prior Commission approval. The Commission does not believe that additional conditions are appropriate at this time, though it may revisit imposing conditions, pursuant to KRS 278.300, on the order of payment when Bluegrass Water applies for financing approval.

Procedural Issues

Bluegrass Water tendered a document titled "Statement of Non Existence/ Inapplicability of Certain Rate-Application Requirements or, in the alternative, Request

²⁵ Joint Intervenors' Brief at 25.

for Waiver of Requirement(s)” with its application in this matter. At the hearing in this matter, Bluegrass Water identified this document as a motion on which the Commission had not yet ruled. However, the requirements either were satisfied by the information or explanation provided or were not applicable to this case.²⁶ Further, the document was not clear that it was intended to be a motion filed pursuant to 807 KAR 5:001 in the event the Commission found that no waiver from the filing requirements was necessary, and no deficiency relevant to filing requirements mentioned was identified. Thus, the Commission finds that there is no need to take any action on this document.

Bluegrass Water also filed a motion for an enlargement of time to respond to Commission Staff’s Third Request for Information. Specifically, responses to the requests were due on March 22, 2021, and Bluegrass Water partially responded on that date, but noted that it was still compiling information to respond to additional requests for information and requested until March 26, 2021, to provide that information. Having reviewed that motion and being otherwise sufficiently advised, the Commission will grant that motion as it indicated it would at the hearing in this matter.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

Bluegrass Water and Intervenors’ Positions

Bluegrass Water indicated in its application that it planned projects, itemized in the testimony of Jacob Freeman, to repair, replace, and improve the sewer and water facilities

²⁶ See 807 KAR 5:001, Section 16(7) (indicating that a utility should provide the explanation “or a statement explaining why the required information does not exist and is not applicable to the utility’s application”).

it owns and operates or was approved or requested approval to own and operate.²⁷ Bluegrass Water acknowledged in testimony and other filings made with its application that it had started some of the projects when it filed its application.²⁸ Bluegrass Water argued that most of its projects are needed to maintain capacity and basic functionality of the systems or to achieve compliance with environmental regulations, and that other projects will achieve operational efficiencies as well as enhance the present quality of service for Bluegrass Water's customers.²⁹

Bluegrass Water asserted in its application that “[a]ll or most of the individual projects would not be categorized as new construction or extensions for which a [CPCN] is needed.”³⁰ Bluegrass Water argued that the projects do not extend the Bluegrass Water service area, do not create a wasteful duplication, or conflict with the service offered by other utilities.³¹ Bluegrass Water requested a finding that a CPCN is not needed for any one of the projects or, in the alternative, Bluegrass Water requests a CPCN for any projects that are found to be subject to the requirement that a CPCN be obtained.³²

At the hearing, Josiah Cox, Bluegrass Water's President, testified that he felt a CPCN would be necessary if the project involved the construction of a new tank or

²⁷ Application at 11.

²⁸ Response to Attorney General's Post-Hearing Requests, Item 1, AG_post-hearing_DR01.xlsx (indicating the amounts spent on each of the projects identified in Mr. Freeman's testimony to date).

²⁹ Application at 14.

³⁰ Application at 11–12.

³¹ Application at 12.

³² Application at 12.

process.³³ He said that he identified a number of projects that had not been completed that he felt met that criteria and, therefore, would require a CPCN. Specifically, he indicated that he believed the following projects would require a CPCN:

1. The addition of a flow equalization tank at Airview;
2. The construction of a new plant at Brocklyn;
3. The addition of flow equalization and a sludge digester at Fox Run;
4. The addition of a sludge digester at Lake Columbia;
5. The addition of a moving bed bioreactor at Permission Ridge;
6. The conversion of the plant at Delaplain to a moving bed bioreactor to increase the capacity of the plant and the addition of a strainer;
7. The addition of a moving bed bioreactor at Herrington Haven; and
8. The conversion of the Woodland Acres systems to a moving bed bioreactor.³⁴

Joint Intervenors argue that Bluegrass Water overlooked the requirement that a project must “not involve sufficient capital outlay to materially affect the existing financial condition of the utility involved” or “result in increased charges to its customers” when arguing that a CPCN is not necessary.³⁵ Joint Intervenors, referring to Mr. Cox’s testimony, contend that Bluegrass Water acknowledged that the capital projects are material to its financial condition and will result in a rate increase.³⁶ They also assert that

³³ May 19, 2021 Hearing Video Transcript (H.V.T.) at 09:41:40.

³⁴ May 19, 2021 H.V.T. at 09:39:51-09:41:40.

³⁵ Joint Intervenors’ Brief at 20.

³⁶ Joint Intervenors’ Brief at 21.

it is not credible for Bluegrass Water to argue that its actual construction projects to date did not require a CPCN given the level of spending Bluegrass Water proposed and has completed.³⁷ Joint Intervenors further argue that Bluegrass Water made structural improvements and replaced major components of its newly acquired systems.³⁸ Thus, Joint Intervenors argue Bluegrass Water's projects do not qualify as extensions of existing systems in the usual course of business and, therefore, that a CPCN is required for all of the projects proposed by Bluegrass Water.³⁹

Joint Intervenors next argue that no CPCN should be awarded for additional capital investment until Bluegrass Water certifies the actions it has taken to explore reasonable alternatives. Joint Intervenors assert that when pressed about reasonable alternatives to proposed projects that Bluegrass Water could not provide details on what connections to other systems might be available or when discussions regarding additional available connections might take place. Joint Intervenors state, referring to Bluegrass Water's response to post-hearing data requests, that the projects for which Bluegrass Water requests a CPCN are all systems within one mile of other systems. Joint Intervenors contend that Bluegrass Water has not established that its projects are the reasonable, least cost alternatives. Joint Intervenors argue that the Commission should either (1) deny the request for CPCNs or further capital investment for these systems without

³⁷ Joint Intervenors' Brief at 21–23.

³⁸ Joint Intervenors' Brief at 23 (citing May 18, 2021 H.V.T. 14:04:30–14:40:30).

³⁹ Joint Intervenors' Brief at 23.

prejudice; or (2) keep this portion of Bluegrass’s case open and pending for further action following the entry of a rate order within the suspension period.⁴⁰

The Attorney General argues that the Commission should scrutinize each of Bluegrass Water’s capital projects to ensure that all construction projects undertaken by Bluegrass Water are in furtherance of maintaining only basic functionality of each system and ensure that wasteful gold plating of the systems does not occur. The Attorney General specifically questions the Mission alarm installation and remote monitoring proposed in the application. The Attorney General notes that to comply 807 KAR 5:071(7)(4), Bluegrass Water’s contractors will need to visit the systems daily to inspect all mechanical equipment. The Attorney General argues that remote monitoring may constitute unnecessary duplication of service if contractors will be physically present at each system daily and that such wasteful duplication should be denied.⁴¹

Discussion of When a CPCN is Required

KRS 278.020(1)(a) generally requires a utility to obtain a CPCN before beginning the construction of any plant, equipment, property, or facility for furnishing to the public any utility, including water and sewer service. However, a CPCN is not required for “ordinary extensions of existing systems in the usual course of business.”⁴² An “ordinary extension . . . in the usual course of business” is not defined in KRS 278.020 or elsewhere

⁴⁰ Joint Intervenors’ Brief at 23–24.

⁴¹ Attorney General’s Post-Hearing Brief (AG’s Brief)(filed June 3, 2021) at 3–4.

⁴² KRS 278.020(1)(a)1.

in KRS Chapter 278. For that reason, the Commission promulgated 807 KAR 5:001, Section 15(3),⁴³ which states:

Extensions in the ordinary course of business. A certificate of public convenience and necessity shall not be required for extensions that do not create wasteful duplication of plant, equipment, property, or facilities, or conflict with the existing certificates or service of other utilities operating in the same area , *and* that do not involve sufficient capital outlay to materially affect the existing financial condition of the utility involved, or will not result in increased charges to its customers.⁴⁴

The Commission has interpreted 807 KAR 5:001, Section 15(3) as stating that no CPCN is required for extensions “that do not result in the wasteful duplication of utility plant, do not compete with the facilities of existing public utilities, and do not involve a sufficient capital outlay to materially affect the existing financial condition of the utility involved or to require an increase in utility rates.”⁴⁵ The Commission has almost always indicated that proposed construction that exceeds 10 percent or more of a utilities net plant in service is material and, therefore, requires a CPCN,⁴⁶ but has also found that smaller capital investments require a CPCN.⁴⁷

⁴³ Case No. 2000-00481, *Application of Northern Kentucky Water District (A) for Authority to Issue Parity Revenue Bonds in the Approximate Amount of \$16,545,000; and (B) A Certificate of Convenience and Necessity for the Construction of Water Main Facilities* (Ky. PSC Aug. 30, 2001), Order at 4.

⁴⁴ 807 KAR 5:001, Section 15(3) (emphasis added).

⁴⁵ Case No. 2000-00481, *Northern Kentucky Water District* (Ky. PSC Aug. 30, 2001), Order at 4.

⁴⁶ See, e.g., Case No. 2014-00277, *In the Matter of: Springcrest Sewer Co., Inc. Request for Deviation from 807 KAR 5:071, Section 7(4)*, (Ky. PSC Dec. 16, 2014) Order (finding that a remote monitoring system that exceeded 10% of a utilities net plant in service was material and, therefore, required a CPCN).

⁴⁷ See, e.g., Case No. 2018-00281, *Electronic Application of Atmos Energy Corporation for an Adjustment of Rates*, (Ky. PSC May 7, 2019) Order (discussing a 2% materiality threshold).

There is really no question, based on the records presented in the current matter, that Bluegrass Water's capital projects collectively are material to Bluegrass Water's existing financial condition and will result in increased charges to Bluegrass Water's customers, either now or in the future. Conversely, some individual "construction items" identified for specific systems likely would not materially affect Bluegrass Water's financial condition. Thus, the question regarding the application of the ordinary course of business exception is whether Bluegrass Water's proposed repairs, replacements, and improvements should be reviewed for materiality separately, collectively, or in some other combination.

Neither the statute nor the regulation explicitly state when various projects and subprojects should be considered a single extension for the purpose of determining whether construction falls into the stated exception. However, the Court in *Kentucky Utilities Co. v. Pub. Serv. Comm'n.*, 252 S.W.2d 885 (Ky. 1952) noted the absence of wasteful duplication is an element for determining whether to grant a CPCN and then defined wasteful duplication as "an excess of capacity over need" and "an excessive investment in relation to productivity or efficiency, and an unnecessary multiplicity of physical properties." The Court further noted that:

An inadequacy of service might be such as to require construction of an additional service facility to supplement an inadequate existing facility, yet the public interest would be better served by substituting one large facility, adequate to serve all the consumers, in place of the inadequate existing facility, rather than constructing a new small facility to supplement the existing small facility. A supplementary small facility might be constructed that would not create duplication from the standpoint of an excess of capacity, but would result in duplication from the standpoint of an excessive investment in relation to efficiency and a multiplicity of physical properties.

If KRS 278.020(1) were interpreted in a manner that allowed a utility to avoid the CPCN requirements by breaking out each discrete construction item or subproject as a separate extension, then the utility could, in part, avoid the analysis anticipated by the Court in *Kentucky Utilities Co.* and the legislature by measuring a single item necessary to repair, replace, or improve existing plant against the alternative instead of measuring all necessary construction on that plant against the alternative. Further, while significant overall capital investment in a short period may raise questions regarding whether a CPCN is necessary for certain projects, it would similarly be inconsistent with the statute and the Commission's past practice to review all of a utility's capital projects in a given period when determining whether the ordinary course of business exception applies.

Here, the Commission finds that all of the repairs and updates proposed to each sewage treatment facility should be reviewed collectively to determine the applicability of the ordinary course of business exception. Bluegrass Water is proposing significant construction on many of its treatment facilities nearly simultaneously such that the wasteful duplication analysis will require a collective review of the projects to determine whether they will result in wasteful duplication. Further, while Bluegrass Water made some updates to construction proposed for some systems, the construction items Bluegrass Water is proposing for each system were generally developed as part of a single plan for each system.⁴⁸ Similarly, when asked about the projects that support the additions in the base period and the forecasted period, Bluegrass Water identified all

⁴⁸ See Response to Staff's Second Request, Item 27, 2 PSC 27 Engineering Memos Unredacted.pdf.

construction on each system as a single project.⁴⁹ Thus, at a minimum, the Commission finds that the proposed construction for each system should be analyzed collectively to determine whether a CPCN is required and, if so, whether it should be granted.

In reviewing Bluegrass Water's proposed construction, the Commission finds that a CPCN is necessary or should have been obtained for the construction, which includes repairs and upgrades, to the wastewater treatment facilities at Airview, Brocklyn, and Delaplain, as proposed in Mr. Freeman's testimony. Among other things, Bluegrass Water's estimated cost for the proposed upgrades to the treatment facilities at each of those systems, not including the engineering costs, exceeded the value of Bluegrass Water's net plant in service at the beginning of the base period, based on the schedules Bluegrass Water filed with its application, before Bluegrass Water began significant work on any of the projects. The estimated costs of the proposed repairs and upgrades at those systems similarly made up a significant portion of Bluegrass Water's projected net sewer plant in service at the end of the base period, which includes some of the same work at issue. The cost of those facilities also would represent a significant portion of Bluegrass Water's revenue in both the base and the forecasted periods. Thus, the Commission finds that the proposed construction at those wastewater treatment plants are not extensions in the ordinary course of business and, therefore, that a CPCN must or should have been obtained pursuant to KRS 278.020(1).

The Commission also finds that a CPCN should have been obtained for the construction, including repairs and upgrades, to the wastewater treatment facilities at

⁴⁹ See Response to Staff's Second Request, Item 6, 2-PSC-06_(sewer).xlsx (in which Bluegrass Water was asked about all projects included as CWIP or plant in service and it identified all work on each system collectively as a single project).

River Bluffs, which Bluegrass Water reported cost about \$439,705 to date, not including remote monitoring equipment, despite an initial estimate of about \$120,000. As with the repairs and upgrades proposed at the treatment facilities mentioned above, that capital expenditure is significant in relation to Bluegrass Water's plant in service and its revenue. Thus, the Commission finds that the proposed construction at that wastewater treatment plant is not an extension in the ordinary course of business and, therefore, that a CPCN should have been obtained pursuant to KRS 278.020(1).

Lastly, the Commission finds that a CPCN should have been obtained before Bluegrass Water implemented and began construction of electronic monitoring with its Mission monitoring facilities. The Commission observes that Bluegrass Water's decision to implement electronic monitoring of all of its facilities in Kentucky is akin to other utilities seeking to implement Advanced Metering Infrastructure or related smart grid technology system wide where none previously existed. The Commission has often found that such plans are not extensions in the ordinary course of business and, therefore, that a CPCN is required for the initial implementation.⁵⁰ Additionally, here, based Mr. Freeman's testimony, the total capital costs of the proposed Mission monitoring equipment was approximately \$298,000 and the systems require the payment of monthly operating

⁵⁰ Case No. 2021-00428, *Consideration of the Implementation of Smart Grid and Smart Meter Technologies*, (Ky. PSC Apr. 13, 2016) Order ("the Commission finds it appropriate for jurisdictional electric utilities to obtain CPCNs for major AMR or AMI meter investments and distribution grid investments for DA, SCADA or volt/var resources"); see also Case No. 2020-00336, *Electronic Application of Meade County Rural Electric Cooperative Corporation for a Certificate of Public Convenience and Necessity to Continue with the Full Deployment Installation of its Automated Metering and Infrastructure Systems*, Order (Ky. PSC Apr. 19, 2021); Case No. 2016-00152, *Application of Duke Energy Kentucky, Inc. for (1) A Certificate of Public Convenience and Necessity Authorizing the Construction of an Advanced Metering Infrastructure; (2) Request for Accounting Treatment; and (3) All other Necessary Waivers, Approvals, and Relief*, (Ky. PSC May 25, 2017) Order.

costs.⁵¹ Such costs will result in an increase in the rates of Bluegrass Water's customers and are significant in the aggregate when compared to Bluegrass Water's plant balances and revenue. Thus, the Commission finds that the proposal to install remote monitoring equipment across Bluegrass Water's systems in Kentucky is not an extension in the ordinary course of business and, therefore, that a CPCN should have been obtained pursuant to KRS 278.020(1).

Discussion of Whether to Grant a CPCN

To obtain a CPCN, a utility must demonstrate a need for such facilities and an absence of wasteful duplication.⁵²

"Need" requires:

[A] showing of a substantial inadequacy of existing service, involving a consumer market sufficiently large to make it economically feasible for the new system or facility to be constructed or operated.

[T]he inadequacy must be due either to a substantial deficiency of service facilities, beyond what could be supplied by normal improvements in the ordinary course of business; or to indifference, poor management or disregard of the rights of consumers, persisting over such a period of time as to establish an inability or unwillingness to render adequate service.⁵³

As noted above, "wasteful duplication" is defined as "an excess of capacity over need" and "an excessive investment in relation to productivity or efficiency, and an

⁵¹ Freeman Testimony.

⁵² *Kentucky Utilities Co. v. Pub. Serv. Comm'n.*, 252 S.W.2d 885 (Ky. 1952).

⁵³ *Id.* at 890.

unnecessary multiplicity of physical properties.”⁵⁴ To demonstrate that a proposed facility does not result in wasteful duplication, we have held that the applicant must demonstrate that a thorough review of all reasonable alternatives has been performed.⁵⁵ The fundamental principle of reasonable least-cost alternative is embedded in such an analysis. Selection of a proposal that ultimately costs more than an alternative does not necessarily result in wasteful duplication.⁵⁶ All relevant factors must be balanced.⁵⁷

Airview

Bluegrass Water reported that the Airview wastewater treatment facility was in poor condition at the time of acquisition and showed clear signs the previous owner had failed to properly operate or reinvest in the plant and facilities.⁵⁸ 21 Design, Bluegrass Water’s third party engineering firm, inspected Airview’s facilities, identified a number of deficiencies at Airview that needed to be corrected, and recommended certain projects to correct those deficiencies.⁵⁹ Bluegrass Water then entered into an Agreed Order with the Energy and Environment Cabinet (EEC) that, among other things, required Bluegrass

⁵⁴ *Id.*

⁵⁵ Case No. 2005-00142, *Joint Application of Louisville Gas and Electric Company and Kentucky Utilities Company for a Certificate of Public Convenience and Necessity for the Construction of Transmission Facilities in Jefferson, Bullitt, Meade, and Hardin Counties, Kentucky* (Ky. PSC Sept. 8, 2005).

⁵⁶ See *Kentucky Utilities Co. v. Pub. Serv. Comm’n*, 390 S.W.2d 168, 175 (Ky. 1965). See also Case No. 2005-00089, *Application of East Kentucky Power Cooperative, Inc. for a Certificate of Public Convenience and Necessity for the Construction of a 138 kV Electric Transmission Line in Rowan County, Kentucky* (Ky. PSC Aug. 19, 2005).

⁵⁷ Case No. 2005-00089, *East Kentucky Power Cooperative, Inc.* (Ky. PSC Aug. 19, 2005), final Order at 6.

⁵⁸ Cox Testimony at 7.

⁵⁹ See Response to Staff’s Second Request, Item 27, 2 PSC 27 Engineering Memos Unredacted.pdf at JA 00180-JA 00183.

Water to file a corrective action plan (CAP) describing how it would cure the deficiencies identified in 21 Design’s engineering report.

In its application, Bluegrass Water proposed the following repairs and upgrades to Airview’s wastewater treatment facilities.

<u>Construction Item</u>		<u>Estimated Cost</u>
Install flow equalization storage (20,000 gal)	\$	55,000
Influent Pumps from flow eq	\$	15,000
Chainlink fence replacement	\$	25,000
Sludge Holding tank renovation	\$	5,000
Clarifier Repairs	\$	205,000
Replace diffusers in aeration tankage	\$	30,000
Replace RAS lines from clarifier	\$	15,000
Replace blower	\$	25,000
Replace effluent pipe	\$	15,000
Remove contact chamber from creek	\$	5,000
Access road repair	\$	15,000

The proposed construction items are consistent with the needs identified by 21 Design in its engineering report, the recommendations made by 21 Design in its report, and the proposals 21 Design made to the EEC on behalf of Bluegrass Water in its CAP.⁶⁰ Further, while alternatives to each construction item were not specifically discussed, alternatives appear to have been reviewed where appropriate.⁶¹ Moreover, the Commission understands that previous efforts by the previous owners to connect Airview to Elizabethtown’s system, facilitated by the EEC and the Commission, failed. Thus, the Commission finds that the projects identified above are both needed and will not result in

⁶⁰ See Response to Staff’s Second Request, Item 3, 2-PSC-03-AOs.pdf, 2-PSC-03_Correspondence.pdf, 2-PSC-03_CAPs.pdf; Response to Staff’s Second Request, Item 27, 2 PSC 27 Engineering Memos Unredacted.pdf at JA 00180-JA 00183.

⁶¹ See e.g., Response to Staff’s Second Request, Item 3, 2-PSC-03_Correspondence.pdf, 2-PSC-03_CAPs.pdf; Response to Staff’s Second Request, Item 27, 2 PSC 27 Engineering Memos Unredacted.pdf, JA 00180-JA 00183.

wasteful duplication⁶² and, therefore, that a CPCN should be granted for those portions of the projects that are not complete.

However, Bluegrass Water indicated at the hearing and in response to post-hearing request for information that work on most of the construction items identified was completed, which means that Bluegrass Water violated KRS 278.020(1) by failing to obtain a CPCN before it began construction on those items. The Commission will not grant a CPCN for construction that has been completed,⁶³ and by failing to obtain a CPCN, a utility risks a finding by the Commission barring recovery of the investment. The Commission declines to do so here, given the urgent need for the construction and the absence of wasteful duplication. However, in the future, Bluegrass Water should be aware that the Commission may exercise its discretion to penalize or bar recovery of capital costs on plant for which a utility failed to obtain a CPCN as required.

Brocklyn System

Bluegrass Water reported that the Brocklyn system was in poor condition at the time of acquisition and exhibited signs of past mismanagement, poor operation practices, and an overall lack of investment.⁶⁴ Among other things, Bluegrass Water indicated that:

All steel tanks and plant components were severely corroded,
and many treatment components had not been properly

⁶² This is especially true given that the actual cost of some of the projects was significantly lower than the estimated cost. See Bluegrass Water's response to the Attorney General's Post-Hearing Request for Information (Response to Attorney General's Post Hearing Request), Item 1, AG_post-hearing_DR01 (indicating that the final cost of the Clarifier Repairs was only \$5,471.00 and that the final cost to Replace Blower was only \$7,230).

⁶³ See Case No. 2003-00495, *Application of Classic Construction, Inc. for Approval of Transfer of Ownership of Collbrook Sewage Treatment Plant in Franklin County, Kentucky from Aquasource Utility, Inc.*, (Ky. PSC May 10, 2004) Order (The Commission will not issue a CPCN for construction that has been completed prior to a request for a CPCN.).

⁶⁴ Cox Testimony at 14.

maintained. Yard piping consisted of PVC and flexible lines placed above ground, when proper installation of such facilities requires them to be buried. . . . Stormwater from an uphill neighborhood was routed into an open dirt channel running between the lagoon and an on-site package treatment plant, resulting in severe erosion that threatened the structural integrity of the lagoon further putting the surrounding community at risk.⁶⁵

21 Design inspected Brocklyn's facilities, identified a number of deficiencies at Brocklyn's wastewater treatment plant, and recommended certain repairs and upgrades to correct those deficiencies. Bluegrass Water then entered into an Agreed Order with the EEC that, among other things, required Bluegrass Water to file a CAP describing how it would cure the deficiencies identified in 21 Design's engineering report.

At Brocklyn, Bluegrass Water indicated that it closed the lagoon of the current treatment facility (though in its CAP and updates to EEC it referred to it as a clean out of the lagoon), made repairs to the sludge judge lagoon cell, and cleaned up sludge from the creek surrounding Brocklyn's sewage treatment plant.⁶⁶ Bluegrass Water had also initially proposed a number of repairs to its existing plant.⁶⁷ However, in a July 29, 2020 revision to its Brocklyn CAP, Bluegrass Water reported to the EEC that in the process of making repairs to the system that it determined that the tankage of the Brocklyn extended aeration plant is severely deteriorated such that the plant at Brocklyn would need to be

⁶⁵ *Id.*

⁶⁶ Response to Attorney General's Post Hearing Request, Item 1, AG_post-hearing_DR01; see also Response to Staff's Second Request, Item 3, 2-PSC-03_Correspondence.pdf (containing updates discussing Bluegrass Water's actions to comply Brocklyn's CAP).

⁶⁷ Response to Staff's Second Request, Item 3, 2-PSC-03_CAPs.pdf (containing Bluegrass Water's initial CAP for Brocklyn).

replaced.⁶⁸ Bluegrass Water is now proposing to replace the wastewater treatment facility at Brocklyn in lieu of other proposed repairs⁶⁹ and estimated the cost of the plant would be \$650,000.⁷⁰

The evidence indicates that there is a need to take action at Brocklyn to repair a significant issue with the existing plant, and Bluegrass Water did explore some alternatives to building a new package treatment plant in that it was initially attempting to simply repair the system.⁷¹ However, while Bluegrass Water indicated its belief that connecting to the city of Richmond's sewer system would be more costly, Bluegrass Water acknowledged at the hearing that it had not fully weighed the feasibility or the cost of attaching the Brocklyn's collection to the city of Richmond's facilities.⁷² Bluegrass Water indicated that it was currently in the process of completing that analysis, which EEC had requested from Bluegrass Water as part of the permitting process for the new plant proposed at Brocklyn.⁷³ The Commission finds that Bluegrass Water has not yet explored all reasonable alternatives with respect to the proposed new sewage treatment plant at Brocklyn and, therefore, that the required CPCN should be denied without

⁶⁸ Response to Staff's Second Request, Item 3, 2-PSC-03_Correspondence.pdf (containing the July 29, 2020 letter).

⁶⁹ *Id.*

⁷⁰ Response to Staff's Second Request, Item 3, 2PSC12-03_RateBase(Brocklyn).xlsx at Tab CWIP – BY B4.

⁷¹ Response to Staff's Second Request, Item 3, 2-PSC-03_Correspondence.pdf (containing the July 29, 2020 letter); Response to Staff's Second Request, Item 3, 2-PSC-03_CAPs.pdf (containing Bluegrass Water's initial CAP for Brocklyn in which it was initially proposing to repair the treatment plant); Response to Staff's Second Request, Item 3, 2-PSC-03_Correspondence.pdf (containing the July 29, 2020 letter in which Bluegrass indicated that it would need to repair the plant).

⁷² May 20, 2021 H.V.T at 11:20:05-11:22:18.

⁷³ May 20, 2021 H.V.T at 11:20:05-11:22:50.

prejudice. Bluegrass Water should refile the request when it has explored all reasonable alternatives.

Delaplain System

Bluegrass Water did not own the Delaplain system at the time that the application in this matter was filed, but Bluegrass Water reported that it had identified a number of problems with the system as part of its preliminary due diligence to purchase the system that it contended must be addressed immediately after closing and within the period covered by the forecasted test year.⁷⁴ Bluegrass Water indicated that the primary issue facing the facility is that “flows massively exceed its design capacity,” which Bluegrass Water stated indicates that the facility is undersized and needs to be expanded to treat the high volume waste loading the facility receives rather than just attempting to reduce infiltration and inflow of the system.⁷⁵ Bluegrass Water proposed to convert and expand the waste water treatment plant at an estimated cost of over \$800,000 to address that capacity shortfall as well as other issues identified with the Delaplain system.⁷⁶

Bluegrass Water indicated that discussions with the City of Georgetown regarding Georgetown’s ability to take waste from Delaplain, as opposed to increasing capacity at the treatment plant, are ongoing.⁷⁷ Bluegrass Water indicated that there were some preliminary discussions with Georgetown before Bluegrass Water purchased the Delaplain system and that Delaplain’s engineering firm reached out for more formal

⁷⁴ Freeman Testimony at 44.

⁷⁵ Freeman Testimony at 45; see also Response to Staff’s Second Request, Item 27, 2 PSC 27 Engineering Memos Unredacted.pdf; May 19, 2021 H.V.T at 9:39:50.

⁷⁶ Freeman Testimony at 44-46;

⁷⁷ See May 20, 2021 H.V.T at 11:15:15.

discussions in about March of 2021.⁷⁸ Bluegrass Water indicated that the discussions are ongoing and that Georgetown is preparing a proposal with the details of what Delaplain would have to do to connect to Georgetown's systems.⁷⁹ Bluegrass Water did not have a specific timetable regarding when it would receive a proposal from the city but at the time of the hearing indicated that they expected it within a month.⁸⁰

While the Commission understands that Bluegrass Water anticipates that the cost of connecting to Georgetown's system will be more than simply expanding its own plant, Bluegrass Water is still waiting on Georgetown's proposal, and the analysis of wasteful duplication and the reasonable least cost alternative is not simply about the capital cost of the project. In this instance, the Commission finds that Bluegrass Water cannot establish the absence of wasteful duplication with respect to the expansion at the Delaplain system until it has received and evaluated the proposal from Georgetown. Thus, the Commission finds that the CPCN for the proposed treatment plant conversion and expansion at Delaplain should be denied without prejudice.

River Bluffs System

Bluegrass Water reported that River Bluffs has a long history of non-compliance with environmental regulations and that maintenance at the facility had been poor.⁸¹

⁷⁸ May 20, 2021 H.V.T at 11:17:28.

⁷⁹ See May 20, 2021 H.V.T at 11:15:15.

⁸⁰ See May 20, 2021 H.V.T at 11:15:15.

⁸¹ Cox Testimony at 56–58.

Bluegrass Water indicated in testimony filed with the application in this matter that the following repairs and improvements would be necessary:⁸²

<u>Construction Item</u>		<u>Estimated Cost</u>
Address Inflow and Infiltration	\$	25,000.00
Mission Monitoring	\$	18,000.00
Lift station cleanup	\$	33,000.00
Control Panel Replacement	\$	10,000.00
Replace influent/exposed PVC pipe	\$	10,000.00
Treatment facility cleanup and repair	\$	20,000.00
Replace diffusers and blowers	\$	32,500.00
Replace air header	\$	5,000.00
Replace sludge returns	\$	10,000.00

Bluegrass Water noted that it had only recently closed on its acquisition of the River Bluffs system and that many of the planned improvements had not been completed, but Bluegrass Water noted that “items such as basic site cleanup and the proper installation of the influent line have been completed” and that “[r]epairs and patching of corroded steel tankage are underway and continue.”⁸³

Bluegrass Water presented an engineering report that generally supported the need for the proposed construction items. The evidence for the construction as proposed supported the need and the absence of wasteful duplication.⁸⁴ Thus, while the Commission could not grant a CPCN for work that had already been completed, it could allow Bluegrass Water to recover the cost of the projects through rates as it did for the projects Bluegrass Water completed at Airview without obtaining a CPCN.

⁸² Freeman Testimony at 33–34.

⁸³ Freeman Testimony at 33.

⁸⁴ Response to Staff’s Second Request, Item 27, 2 PSC 27 Engineering Memos Unredacted.pdf (containing River Bluffs Report); Response to Staff’s Second Request, Item 3, 2-PSC-03_Correspondence.pdf, 2-PSC-03_CAPs.pdf.

However, in response to post hearing requests for information from the Attorney General, Bluegrass Water indicated that several of the construction items proposed were significantly over budget. Specifically, Bluegrass Water indicated that the treatment facility cleanup and repair cost \$231,579 to complete despite an estimated cost of \$20,000; the replacement of diffusers and blowers cost \$96,559 to complete despite an estimated cost of \$32,500; and the replacement of the air header cost \$35,000 to complete despite an estimated budget of \$5,000.

While projects may occasionally go over budget, the extent by which the construction items identified above went over budget indicate that the work completed does not represent the same work initially contemplated. Further, the CAP for River Bluffs, which Bluegrass Water used to justify the construction, and correspondence between Bluegrass Water and the EEC do not indicate a significant change in the scope of the work.⁸⁵ Bluegrass Water has also indicated it is contemplating a new plant at River Bluffs,⁸⁶ such that any repairs made at this time may not provide long term benefits to customers. Thus, based on the current record, the Commission is not able to find that the repairs and upgrades that resulted in the construction items being significantly over budget are needed and will not result in wasteful duplication.

Based on the finding above, the Commission will adjust Bluegrass Water's rate base below based on the extent those construction items went over budget. However,

⁸⁵ See Response to Staff's Second Request, Item 3, 2-PSC-03_Correspondence.pdf, 2-PSC-03_CAPs.pdf.

⁸⁶ See Response to Staff's Second Request, Item 3, 2-PSC-03_CAPs.pdf (where Bluegrass Water stated in a July 30, 2020 CAP for River Bluffs that "[f]ollowing these initial improvements, a period of observation and evaluation will be conducted to determine if a process change is needed at the facility to consistently meet limits that the facility has struggled with in the past"); see also Response to Staff's Second Request, Item 27, 2 PSC 27 Engineering Memos Unredacted.pdf (containing River Bluffs Report).

for the reasons Bluegrass Water is being allowed to recover its investment in Airview, the Commission may allow Bluegrass Water to recover the amounts excluded from River Bluffs here as part of a subsequent rate case if Bluegrass Water later establishes, as part of that case, that the additional costs were for capital spending at River Bluffs that was needed and did not result in wasteful duplication.

Implementation of Remote Monitoring

Bluegrass Water installed or proposed to install remote monitoring equipment at most of its systems. In response to the Attorney General's First Request for Information, Item 6, Bluegrass Water explained that remote monitoring is necessary, because it "increases the effectiveness of operations at basic sewage plants and collection systems and drives down costs related to improvements and environmental compliance that would otherwise be passed through to customers." However, while remote monitoring does appear to provide more continuous access to data than having an operator inspect the systems daily, as required by 807 KAR 5:071, Section 7(4), the remote monitoring systems, at least in part, serve the same purpose as that requirement by ensuring that a utility is constantly monitoring the performance of equipment to prevent failures and ensure adequate service. Bluegrass Water indicated that operator costs in Kentucky were higher than those for Bluegrass Water affiliates in other states precisely because it required its operators to comply with 807 KAR 5:071, Section 7(4), which is not required in other states, such that the benefits of remote monitoring in Kentucky are at least reduced. Finally, Bluegrass Water acknowledged that it had not performed any cost

benefit analysis of the installation of the monitoring equipment in Kentucky.⁸⁷ Because, the costs of remote monitoring are not immaterial,⁸⁸ the Commission finds that Bluegrass Water failed to establish the absence of wasteful duplication.

Additional Construction

Pursuant to 807 KAR 5:001, Section 19(1), the Commission may, in its discretion, issue a declaratory order with respect to . . . the applicability to a person, property, or state of facts of an order or administrative regulation of the commission or provision of KRS Chapter 278.” While the Commission may choose to exercise its discretion and address an application for a declaratory order, it may similarly choose not to address an application for a declaratory order. This regulation is primarily intended as a mechanism to provide utilities guidance in situations involving new or novel issues that might be difficult to resolve through construction of the Commission’s orders or regulations, or KRS Chapter 278.

A number of utilities have been abusing 807 KAR 5:001, Section 19 recently by failing to request a CPCN where one is clearly required and instead requesting an order from the Commission that a CPCN is not required or by requesting a declaratory order that all proposed spending in a given period does not require a CPCN and requesting a CPCN in the alternative. The declaratory order regulation is not intended to resolve such issues. Rather, an application for a CPCN should be filed where a CPCN is obviously required, an application for a declaratory order should only be filed where there is a

⁸⁷ May 19, 2021 H.V.T at 09:45:00.

⁸⁸ The capital costs ranged from about \$7,500 to \$50,000 per system; Bluegrass Grass indicated that the equipment would last 5 to 10 years; and there is a monthly subscription fee per system.

legitimate question regarding whether a CPCN is required, and utilities should not routinely request that the Commission review all spending in a given period to determine what does and does not require a CPCN.

Here, as noted above, Bluegrass Water claimed in its application that no CPCN was required despite proposing approximately \$7.5 million in capital spending, including projects to replace or significantly upgrade existing wastewater treatment plants. Bluegrass Water's claims that no CPCN is required for the new plant at Brocklyn or the expansion at Delaplain, which it backed away from in testimony, are absurd on their face. Further, it should have been clear, between precedent and a plain reading of the law, that the additional construction discussed above required a CPCN. Thus, Bluegrass Water should not have requested a declaratory order or in the alternative requested a CPCN, but rather, should have specifically requested a CPCN for the projects that required it.

The Commission could have simply exercised its discretion and declined to address the application for the declaratory order and, in turn, the application for a CPCN. The Commission did not do so here for the projects discussed above, because Bluegrass Water is not the only utility that has recently engaged in this practice. However, while the construction items not specifically addressed above appear to be necessary and do not appear to result in wasteful duplication, the Commission does decline to make a specific finding that each additional construction item not discussed above is an extension in the ordinary course of business. Further, in the future, if Bluegrass Water or another utility files an application for a declaratory order finding that a CPCN is not required where one is clearly required or that all proposed spending does not require a CPCN, the Commission may decline to address any part of the application and, in turn, refuse to

grant any alternative application for a CPCN even where a CPCN is clearly necessary, which may be considered in denying a utility recovery the cost of such plant in the future.

RATES

Legal Standard

Bluegrass Water filed its application for a rate adjustment pursuant to KRS 278.180 and KRS 278.190. The Commission's standard of review of a utility's request for a rate increase is well established. In accordance with statutory and case law, Bluegrass Water is allowed to charge its customers "only 'fair, just, and reasonable rates.'"⁸⁹ Further, Bluegrass Water bears the burden of proof to show that the proposed rate increase is just and reasonable, under KRS 278.190(3).

Test Period

Bluegrass Water proposed the 12 months ending April 30, 2022, as its forecasted test period to determine the reasonableness of its proposed rates.⁹⁰ The Attorney General and Joint Intervenors did object to the proposed test period for the reasons discussed above and requested that a historical test period be used for some of the systems, but as discussed above, the Commission did not find that their objections justified rejecting the forecasted test period. For the reasons discussed above and based on the record in this matter, the Commission finds Bluegrass Water's forecasted test period to be reasonable and consistent with the provisions of KRS 278.192 and 807 KAR 5:001, Section 16(6), (7), and (8). Therefore, the Commission will accept the forecasted test year proposed by Bluegrass Water for use in this proceeding.

⁸⁹ KRS 278.030; and *Pub. Serv. Comm'n v. Com. ex rel. Conway*, 324 S.W.3d 373, 377 (Ky. 2010).

⁹⁰ Application at 4.

VALUATION

Sewer Rate Base

Bluegrass Water proposed a forecasted net investment rate base for its sewer division of \$6,907,546 based on a 13-month average for that period.⁹¹ In its base period update, Bluegrass Water increased its proposed sewer rate base to \$7,689,482.⁹² As discussed in more detail below, the Commission does not believe Bluegrass Water's rate base numbers are credible. Rather, the Commission finds that Bluegrass Water's net investment sewer rate base in the forecasted test period, excluding the 00297 systems, is \$2,601,721, as shown below.

Utility Plant In Service (UPIS)

Bluegrass Water reported a base year sewer UPIS ending balance of \$4,305,222.⁹³ According to Bluegrass Water, its base year UPIS balance reflected the actual amounts recorded on its books as of August 31, 2020, and the forecasted UPIS additions for the four-month period ending December 31, 2020.⁹⁴ Bluegrass Water explained that its 13-month average UPIS of \$8,438,874 in the forecasted period was calculated by adding forecasted acquisitions and plant additions and subtracting forecasted retirements through April 2022.⁹⁵

⁹¹ Responses to Staff's First Request, Item 1, BGUOC2020RateCase-RateBase_(Sewer).xlsx, Tab FY Rate Base - Sewer B1.

⁹² Base Period Update (filed Mar. 19, 2021), Excel Workbook: BYupdate-RateBase_(Sewer).xlsx, Tab FY Rate Base - Sewer B1.

⁹³ Response to Staff's First Request, Item 1, BGUOC2020RateCase-RateBase_(Sewer).xlsx, Tab UPIS - BY B2.

⁹⁴ Application, Exhibit 8, Thies Direct Testimony at 13.

⁹⁵ *Id.*

Joint Intervenors noted that Bluegrass Water had committed to account for its plant retirements through the forecasted test year.⁹⁶ Upon review of Bluegrass Water's filing of its base year updates, Joint Intervenors argue that Bluegrass Water had not recorded UPIS retirements in either the base period or the forecasted test year.⁹⁷ Joint Intervenors argue that Bluegrass Water's lack of attention to detail is not credible and is unacceptable for a regulated utility.⁹⁸

Joint Intervenors also note that Bluegrass Water asserted in its application that it would invest approximately \$7.56 million (\$6.4 million in its wastewater division and \$1.16 million in its water division) and that it would complete that investment prior to the end of the forecasted test year on April 30, 2022. However, Joint Intervenors point out that Bluegrass Water identified less than \$2 million that has actually been spent on construction across Bluegrass Water's entire system.⁹⁹

The Attorney General similarly notes that Bluegrass Water's witness, Brent Thies, under questioning from Vice-Chairman Chandler at the hearing, testified that Bluegrass Water failed to reflect any plant retirements in developing its Forecasted Test-Year UPIS.¹⁰⁰ The Attorney General claims that Bluegrass Water failed to determine if plant

⁹⁶ Joint Intervenors Brief at 10.

⁹⁷ *Id.* at 10–11.

⁹⁸ *Id.* at 11.

⁹⁹ *Id.*

¹⁰⁰ Brief of the Attorney General at 4–5.

retirements were appropriate and that such an incomplete analysis would inflate Bluegrass Water's revenue requirement to the detriment of ratepayers.¹⁰¹

According to Bluegrass Water, both intervenors assert that there must have been retirements from UPIS and that UPIS retirements must be included as net subtractions in the base or forecasted test year schedules.¹⁰² Bluegrass Water argues that neither the Attorney General nor Joint Intervenors acknowledge or address the explanation that was given in the hearing by Brent Thies that the lack of plant retirements in the designated columns was not material due to offsetting accumulated depreciation.¹⁰³ Joint Intervenors argue that Bluegrass Water lacks the accounting records necessary to demonstrate that the claim presented by Mr. Thies at the hearing is accurate.¹⁰⁴

With respect to Joint Intervenors assertion that Bluegrass Water has spent under \$2 million on construction that could be reflected as additions across the entire system, Bluegrass Water argues that the data request and response cited in support of that statement relate to the planned projects itemized in Mr. Freeman's direct testimony that were partially or fully complete at the time of his hearing testimony, not expenditures for projects on the entire Bluegrass Water system since September 2019.

The Commission agrees with the Joint Intervenors and the Attorney General regarding the lack of supporting evidence for Bluegrass Water's UPIS. First, schedules and spreadsheets provided by Bluegrass Water include conflicting information. As noted

¹⁰¹ *Id.*

¹⁰² Bluegrass Water's Brief at 11.

¹⁰³ *Id.* at 11–12.

¹⁰⁴ Joint Intervenors' Brief at 9.

above, Bluegrass Water calculated the 13-month average of its sewer UPIS in the application and attached schedules as \$8,438,874.¹⁰⁵ Then, in responding to a request from Commission Staff, Bluegrass Water provided separate Excel workbooks with the 13-month average rate base for each separate system that it had acquired or was seeking to acquire prior to the beginning of the forecasted period.¹⁰⁶ Upon the Commission’s review of the individual system rate bases, it was noted that total UPIS for the 19 systems did not equal the amount reported by Bluegrass Water in its application as shown in the table below.

	UPIS Staff 2nd Request Item 12
Woodland Acres	\$ 80,163
Timberland	125,127
Springcrest	49,200
River Bluff	596,176
Randview	139,973
Persimmon Ridge	504,609
Marshell Ridge	60,597
LH Treatment	679,447
Columbia	327,264
Kingswood	367,133
Haven	60,728
Grest Oaks	233,347
Golden Acres	204,283
Fox Run	348,728
Delaplain	2,252,079
Carriage Park	60,408
Brocklyn	659,362
Arcadia Pines	46,563
Airview	402,073
UPIS Totals	7,197,260
Application 13-Month Average UPIS and CWIP	(8,438,874)
Difference	\$ (1,241,614)

¹⁰⁵ Application, Exhibit 8, Thies Testimony at 13; Response to Staff’s First Request, Item 1, Excel Workbook: BGUOC2020RateCase-RateBase_(Sewer).xlsx, Tab UPIS - FY B2.

¹⁰⁶ Responses to Staff’s Second Request, Item 12.

This discrepancy raises questions regarding what Bluegrass Water included in UPIS. When Bluegrass Water was asked to provide the system specific information as originally requested in a post hearing request for information, Bluegrass Water stated that “[d]ue to the process used to update rate base numbers at the end of the base period, the data source necessary to produce system level rate base specific numbers is no longer available.”¹⁰⁷ Nevertheless, Bluegrass Water attempted to explain the discrepancy by stating:

A data source was inadvertently omitted from the Utility Plant in Service totals for the system. This data source was CWIP balances that were on the books of Bluegrass Water as of 12/31/2020 but the assets were not yet placed into service.

Bluegrass Water’s explanation does not resolve questions regarding what Bluegrass Water included in UPIS, including how CWIP was accounted for and whether the forecasted UPIS has been reported net of Accumulated Depreciation, Plant Acquisition Adjustments, or CIAC. Further, Bluegrass Water’s explanation does not provide any way to assess the UPIS Bluegrass Water included in the forecasted period for each system, as filed with its application, in order to check the proposed UPIS and CWIP changes against Bluegrass Water’s projected projects.

More problematic, the undisputed evidence indicates Bluegrass Water did not include any retirements in the base period, the forecasted test year, or the period between the base and forecasted periods despite providing sworn testimony with its application

¹⁰⁷ Responses to Staff’s Hearing Data Request, Item 1.a.

that it had done so.¹⁰⁸ As Bluegrass Water acknowledged, changes to UPIS are calculated in a given period by taking the starting balance of the UPIS, adding the additions, and then subtracting the retirements such that the net change is reflected at the end of the period.¹⁰⁹ Moreover, it is clearly understood and expected that if a utility is projecting that it will incur significant capital costs to repair, replace, and upgrade existing plant that it will have retirements. When asked to explain why Bluegrass Water did not account for retirements, Bluegrass Water's witness stated that he did not really have an explanation except that some, or most, existing assets were fully depreciated such that Bluegrass Water recognized the "negligible" impact the retirements would have on plant in service and, therefore, did not focus on projecting retirements.¹¹⁰ However, by calculating UPIS in that manner, Bluegrass Water focused solely on the positive side of equation that will increase UPIS, while ignoring any change to the negative side of the equation that might decrease UPIS. In short, Bluegrass Water essentially testified at the hearing that it focused on projecting amounts that increased its projected UPIS and, therefore its revenue requirement, while ignoring the component that would decrease the UPIS.

Bluegrass Water claimed at the hearing and in its brief that its failure to account for retirements had minimal or no effect on rates, because the existing plant of the systems it purchased had largely been depreciated and, therefore, that property

¹⁰⁸ May 19, 2021 H.V.T. at 15:45:33, 16:39:00; 16:44:00; see *also* Response to Staff's Second Request, Item 5 and 7, 2-PSC-05b.xlsx, 2-PSC-07b.xlsx (showing no retirements during any of the relevant periods).

¹⁰⁹ See May 19, 2021 H.V.T. at 16:37:50-16:40:24.

¹¹⁰ See May 19, 2021 H.V.T at 16:39:25.

Bluegrass Water should have retired was being offset by accumulated depreciation, which would be eliminated when the plant was retired, such that its failure to include retirements had no net effect on rates. However, Bluegrass Water's explanation falls apart for two reasons. First, while it appears that some of the systems Bluegrass Water purchased were fully depreciated,¹¹¹ all of the systems were not fully depreciated such that some assets with a net plant balance likely would be retired given the scope of the work Bluegrass Water was proposing. Second, Bluegrass Water calculated depreciation expense in the base and forecasted periods by applying depreciation rates to its UPIS¹¹² and, therefore, Bluegrass Water's model would include depreciation expense on UPIS that should have been retired even if that UPIS is fully offset in rate base by corresponding accumulated depreciation.¹¹³ Thus, Bluegrass Water's failure to project retirements of UPIS during any period from at least January 1, 2020, through April 30, 2022, when it was engaging in significant capital spending did materially impact rates.

Bluegrass Water's failure to account for retirements in projecting UPIS and other discrepancies in its rate base schedules place the Commission in a difficult position in attempting to set a rate base to which a rate of return and depreciation rates should apply

¹¹¹ There is no evidence in the record regarding the extent to which the assets of the systems were depreciated when Bluegrass Water purchased them. Commission Staff requested in a post hearing request for information that Bluegrass Water provide the original cost of the acquired assets of each system along with the associated accumulated depreciation by NARUC account. Bluegrass Water provided the plant balances projected for the end of the forecasted period and the projected accumulated depreciation for the end of the forecasted period. See Response to Staff's Post-hearing Request, Item 2. However, in response to Joint Intervenors' post hearing request for information, Bluegrass Water did provide the rate base of each system at the time of acquisition, which indicated that that most of the systems had little to no rate base. See Response to Joint Intervenors' Post-Hearing Request, Item 12, INTphDR12a.xlsx.

¹¹² See Response to Staff's First Request, Item 1, BGUOC2020RateCase-RateBase_(Sewer).xlsx, Tab Dep - FY B3.1 (showing that depreciation expense for a particular account is calculated by multiplying the utility plant in service balance by the depreciation rate).

¹¹³ See May 20, 2021 at 09:22:23–09:25:30.

when setting rates. As Bluegrass Water acknowledged, the original cost of the assets for many of the systems Bluegrass Water purchased in this matter were fully depreciated when Bluegrass Water purchased them. However, assuming depreciation was properly tracked by the previous owners, limited portions of some systems were not fully depreciated at the time the systems were transferred to Bluegrass Water.¹¹⁴ The problem is that the evidence regarding UPIS and accumulated depreciation for each sewer system at the time of transfer is limited, and there is no specific evidence in the record regarding the portions of the UPIS for each sewer system at the time of transfer that should have been retired as Bluegrass Water made projected repairs, replacements, and improvements, because Bluegrass Water did not project any retirements.

Bluegrass Water did provide some consideration to the previous owners of the systems at issue for the systems' assets. However, Bluegrass Water did not propose or present evidence in support of a system acquisition adjustment in this matter to recover those acquisition costs to the extent they exceeded the net value book value of the systems.¹¹⁵ In fact, although related cases indicate that the acquisition costs for the systems at issue in this matter were limited, there was limited to no evidence regarding the consideration provided to purchase the assets of the systems at issue.¹¹⁶

¹¹⁴ Again, the system specific schedules did not match the system wide schedules filed with the application. Bluegrass Water did not response to Commission Staff's post hearing request for information asking for the original cost of the acquired assets and associated accumulated depreciation by NARUC account. See Response to Staff's Post-Hearing Request, Item 2.

¹¹⁵ May 20, 2021 H.V.T. at 09:15:30.

¹¹⁶ The only evidence as to purchase prices identified by the Commission was anecdotal. For instance, at the hearing, when Bluegrass Water was discussing why its failure to account for retirements had little effect, it displayed and discussed a journal entry for Brocklyn indicating that the total payments at closing were \$14,350.90. May 20, 2021 H.V.T. at 09:11:40, Exhibit 2. Similarly, in response to Commission Staff's Third Request, Item 3, Bluegrass Water provided the sales contract for the LH Treatment Company, LLC in support of an O&M expense and that contract contained the sale price of \$230,000.

For the reasons discussed above and being otherwise sufficiently advised, the Commission finds that Bluegrass Water failed to establish the existing UPIS and accumulated depreciation for the systems at issue in this matter at the time of acquisition and the extent to which those assets should have been retired during the base period, the forecast period, and the period between the base and the forecasted period. The Commission observes that intervenors suggest that the Commission should dismiss this matter, in part, due that failure and that is a potential solution. However, the Commission finds that such a solution would not be in the long term interest of Bluegrass Water or its customers given Bluegrass Water's financial position and the need to attract additional capital to provide service and necessary upgrades to systems that have seen little investment in many years. Instead, the Commission will remove any UPIS and accumulated depreciation associated with the systems at the time of the acquisitions in this matter. To accomplish this, the Commission will calculate UPIS by simply adding the original cost of the projects Bluegrass Water indicated it had completed or would complete in 2019, 2020, the forecasted period, and the period between the base period and the forecast period and will calculate accumulated depreciation by eliminating accumulated depreciation prior to the forecasted period, which would nearly all be attributed to depreciation that occurred prior to Bluegrass Water's acquisitions of the various systems.

Specifically, with respect to the UPIS, the Commission will use the spreadsheet provided by Bluegrass Water in response to Commission Staff's Second Request, Item 6. In response to that request, Bluegrass Water provided a spreadsheet, at the end of February 2021, with the total actual cost of each project, if completed, or the total expected cost of each project that Bluegrass Water contends supports that projected

additions or CWIP in the schedules filed with the application for the base period, the forecasted period, and the months between the base and the forecasted periods, as well as the date on which work on each project began or is expected to begin and the date on which each project was placed in service or is expected to be placed in service.¹¹⁷

The Commission submits that the information provided in response to Staff's Second Request, Item 6, should reflect, by Bluegrass Water's own admission, all projects that support additions to UPIS in the period from January 1, 2020, about four months after Bluegrass Water began operating any of the systems, through the end of the forecasted period. The Commission notes that spreadsheet also justifies the spending by referring to both Mr. Cox and Mr. Freeman's testimony, which supports the finding that it includes actual or projected spending discussed by both witnesses. Bluegrass Water also provided the actual and projected dates on which its proposed spending would begin and the actual or projected in service dates such that it is possible to determine when projects should be moved from CWIP to UPIS and, using Bluegrass Water's straight-line method for projecting CWIP spending,¹¹⁸ when projected spending will occur during the forecasted period in order to calculate the 13-month average of CWIP and UPIS.

The issue with the using the information provided in response to Staff's Second Request, Item 6 is that Bluegrass Water apparently failed to include the projects for Persimmon Ridge and arguably there could have been spending on projects that occurred in 2019 that would not be include with that information. To address the issue of the

¹¹⁷ Response to Staff's Second Request, Item 6, 2-PSC-06.xlsx.

¹¹⁸ See May 20, 2021 H.V.T. at 12:01:54–12:02:38 (in which Mr. Duncan states that CWIP during forecasted period was projected based on a straight line of the remaining projected spending and the project end date).

Persimmon Ridge projects, the Commission will use the construction information provided in Mr. Freeman's testimony for Persimmon Ridge, which was largely complete as of the date of the hearings, and a final in service date for the Persimmon Ridge construction of September 2021 based on the final in service dates of the other systems included therein. To address construction in 2019, the Commission will only include construction for which there is evidence it was actually completed in 2019 in Bluegrass Water's response to the Attorney Generals post-hearing request for information.¹¹⁹

Using the method discussed above, and removing any construction for the 00297 systems, the 13-month average UPIS balance calculated by the Commission as shown in Appendix A is \$1,719,678. That UPIS balance is \$6,719,196 below the UPIS balances projected by Bluegrass Water in the forecasted period. However, the Commission notes that it is making this adjustment, in part, because Bluegrass Water failed to meet its burden with respect to amounts removed, including UPIS and accumulated depreciation at the time of transfer and the extent to which those amounts should have been retired. This Order should not be construed as preventing Bluegrass Water from seeking to include those amounts, should it choose to do so, in rate base in a future rate proceeding with proper supports.

Construction Work In Progress (CWIP). Bluegrass Water defines CWIP as the value of utility plant that is under construction but has not yet been placed into service.¹²⁰ Bluegrass Water's forecasted CWIP of \$877,758 is based on a thirteen-month average

¹¹⁹ Response to Attorney General's Post-Hearing Request, Item 1, AG_post-hearing_DR01.xlsx, Tab Construction Invoices (showing \$298,830 in spending in 2019).

¹²⁰ Application, Exhibit 8, Thies Testimony at 13.

of the forecasted balances from April 1, 2021, through April 30, 2022.¹²¹ Using the construction completed in the forecasted test-year and excluding CWIP for the 00297 systems, as discussed above for UPIS, the Commission calculated a 13-month average CWIP in the forecasted period of \$761,724, which is \$116,034 below Bluegrass Water's forecasted CWIP. The Commission's calculation of its 13-month average CWIP is included in Appendix A.

Brocklyn Plant Replacement. As noted above, the Commission denied the CPCN for the Brocklyn plant replacement at this time. Bluegrass Water projected the cost of the plant replacement would be approximately \$650,000.¹²² The Commission removed that project from CWIP and UPIS by removing \$650,000 from the total projected budget for Brocklyn shown in response to Staff's Second Request, Item 6. The Commission then included the remainder of the projected budget in UPIS as shown in Appendix A.

River Bluffs Plant Project. As noted above, the Commission denied a CPCN for three projects at River Bluffs with an original projected cost of \$57,500.00 to the extent that they were over budget by \$305,638 and found that Bluegrass Water failed to establish the need for that expanded project or the absence of wasteful duplication. Based on total costs reflected for River Bluffs in response to Staff's Second Request, Item 6 as compared to the original budget in Mr. Freeman's testimony, the Commission finds that those additional costs were included in the response and, therefore, must be adjusted here based on the findings discussed above. Thus, as shown in Appendix A, the Commission

¹²¹ *Id.*

¹²² Response to Staff's Second Request, Item 3, 2PSC12-03_RateBase(Brocklyn).xlsx at Tab CWIP-BY B4.

removed that amount from UPIS and CWIP for the River Bluffs system when calculating the 13-month average discussed above.

Canceled Construction Items. Bluegrass Water's witness testified at the hearing that in consultation with their third party engineering firm that Bluegrass Water had decided to eliminate several projects at Lake Columbia just prior to the hearing. Specifically, he stated that they had decided to eliminate the flow equalization and pumping system item with a projected cost of \$40,000, the install aeration in flow equalization and sludge holding item with a projected cost of \$15,000, and the collection system repair for I&I item with a projected cost of \$30,000. Since Bluegrass Water indicated that those projects had been eliminated just prior to hearing, the Commission finds that the projected cost of those projects that were included in the costs Bluegrass Water projected would now not be spent at Lake Columbia through the forecasted period as indicated in response to Staff's Second Request, Item 6. Thus, the Commission adjusted the cost of those projects out of CWIP and UPIS for Lake Columbia as shown in Appendix A.

Monitoring Systems. According to the Joint Intervenors, Bluegrass Water is paying a single contractor – Midwest Water Operations, LLC (Midwest) for having a technician visit each system on a daily basis while installing expensive mission control remote monitoring devices.¹²³ Joint Intervenors add that Bluegrass Water is also paying for the expenses associated with the Mission control subscription and the cost of Midwest's daily

¹²³ Brief of the Joint Intervenors at 14.

visits.¹²⁴ Joint Intervenors explains that this results in recovery of unnecessarily duplicative costs and the Commission should disallow either the capital or monitoring expenses associated with the mission control system or the costs of Midwest's daily visits.¹²⁵

As discussed in more detail above, the Commission agreed with the argument presented by Joint Intervenors, at least in part, and therefore, found that Bluegrass Water failed to establish the absence of wasteful duplication in this matter with respect to the Mission monitoring system. Thus, as shown in Appendix A, the Commission has included a reduction of \$161,500 in the overall decrease in UPIS to eliminate the capital cost on the Mission control monitoring systems.¹²⁶

Accumulated Depreciation. Bluegrass Water explains that accumulated depreciation consists of the historic total of plant depreciation to date.¹²⁷ Accumulated depreciation associated with assets acquired by Bluegrass Water from the prior owners have been carried forward on the books of Bluegrass Water.¹²⁸ Bluegrass Water's 13-month average for accumulated depreciation for its sewer system is calculated to be \$2,564,880.¹²⁹

¹²⁴ *Id.* at 14-15.

¹²⁵ *Id.* at 15.

¹²⁶ See Appendix A.

¹²⁷ Application, Exhibit 8, Thies Testimony at 13.

¹²⁸ *Id.* at 13-14.

¹²⁹ *Id.* at 14.

The depreciation rates that Bluegrass Water proposes to use in this instant case are the same rates approved for affiliates to use in other jurisdictions and are not based on a depreciation study.¹³⁰ To evaluate the reasonableness of the depreciation practices of small water and sewer utilities, the Commission has historically relied upon the report published in 1979 by the National Association of Regulatory Utility Commissioners (NARUC) titled *Depreciation Practices for Small Water Utilities* (NARUC Study) and the *O&M Guide for the Support of Rural Water-Wastewater Systems* (O&M Guide). When no evidence exists to support a specific life that is inside or outside of the NARUC and O&M Guide ranges, the Commission has historically used the mid-point of the depreciation ranges to depreciate utility plant.¹³¹

Bluegrass Water has not presented any supporting analysis or study to show that its depreciation lives are appropriate. Further, because the Commission is adjusting UPIS to reflect plant constructed in 2019, 2020, and the forecasted test-year, accumulated depreciation is being set equal to the depreciation expense for the test year. Given that the Commission's forecasted UPIS is not broken down by account, the Commission is using a composite rate based on the NARUC and the Operation & Maintenance (O&M) Guide depreciation rates.

Applying the NARUC and O&M Guide composite sewer rate of 3.3 percent¹³² results in a 13-month average accumulated depreciation balance of \$56,749 which in a decrease to Bluegrass Water's accumulated depreciation of \$2,508,131.

¹³⁰ Responses to Staff's Second Request, Item 2.

¹³¹ Case No. 2020-00195, *Electronic Application of Southeast Daviess County Water District for an Alternative Rate Adjustment* (Ky. PSC Dec. 30, 2020).

¹³² Responses to Staff's Third Request, Item 7(b).

Cash Working Capital Allowance. Bluegrass Water calculated its cash working capital allowance of \$256,178 by using the 45 day or 1/8th formula methodology, after adjusting for the impacts of Bluegrass Water's proposed adjustments to O&M expenses. While the Commission finds the 1/8th approach to be a reasonable approach for Bluegrass Water, particularly given its size and relative sophistication, and the Commission will permit its use in this matter given those factors, the Commission's cash working capital allowance of \$186,692 reflects the pro forma O&M expense determined reasonable herein.

Contributions In Aid of Construction (CIAC). CIAC carried on the books of Bluegrass Water is from the books and records of the prior owners of the acquired system assets.¹³³ The forecasted test year reflects additional CIAC that resulted from the system acquisitions approved by the Commission in Case No. 2020-00028 and those acquisitions that will be consummated in Case No. 2020-00297.¹³⁴ The 13-month average balance of CIAC Bluegrass Water has included in rate base is \$100,385.¹³⁵ Eliminating the CIAC recorded for Delaplain of \$76,684 results in a CIAC of \$23,701.

Based on the adjustments discussed above, the Commission has determined that Bluegrass Water's net investment rate base for its sewer division is \$2,601,721.

¹³³ Application, Exhibit 8, Thies Direct Testimony at 15.

¹³⁴ *Id.*

¹³⁵ *Id.*

	Application 13-Month Average Rate Base	Commission Adjustments	Commission 13-Month Average Rate Base
Rate Base Component - Sewer Utility Plant In Service	\$ 8,438,874	\$ (6,719,196)	\$ 1,719,678
Accumulated Depreciation	(2,564,880)	2,508,131	(56,749)
Net Utility Plant in Service	5,873,995	(4,211,066)	1,662,929
Construction Work In Progress	877,758	(116,034)	761,724
Working Capital Allowance	256,178	(55,409)	200,769
Contributions in Aid of Construction	(100,385)	76,684	(23,701)
Jurisdictional Rate Base	<u>\$ 6,907,546</u>	<u>\$ (4,305,825)</u>	<u>\$ 2,601,721</u>

Rate Base - Water

Bluegrass Water proposed a forecasted net investment rate base for its water division of \$968,960 based on a 13-month average for that period.¹³⁶ In its Base Period Update, Bluegrass Water increased its proposed water rate base to \$1,050,294.¹³⁷

As discussed below in this Order, the Commission has determined that Bluegrass Water's net investment water rate base is \$562,971.

Utility Plant In Service. Bluegrass Water reported a base year UPIS balance of \$1,188,537.¹³⁸ According to Bluegrass Water, its base year UPIS balance reflected the

¹³⁶ Responses to Staff's First Request, Item 1, Excel Workbook: https://www.bguoc.com/Case-2020-00290/RateBase_Water.xlsx; Tab: FY Rate Base - Water B1.

¹³⁷ Base Period Update (filed Mar. 19, 2021), Excel Workbook: https://www.bguoc.com/Case-2020-00290/RateBase_Water_Update.xlsx; Tab: FY Rate Base - Water B1.

¹³⁸ Responses to Staff's First Request, Item 1, Excel Workbook: https://www.bguoc.com/Case-2020-00290/RateBase_Water.xlsx; Tab: FY Rate Base - Water B1.

actual amounts recorded on its books as of August 31, 2020, and the forecasted UPIS additions for the four-month period ending December 31, 2020.¹³⁹ Bluegrass Water explained that its 13-month average UPIS of \$1,188,537 was calculated by adding forecasted acquisitions and plant additions and subtracting forecasted retirements through April 2022.¹⁴⁰ However, as noted above with respect to sewer, Bluegrass Water did not actually project any retirements in the forecasted period. Thus, as above, the Commission calculated a 13-month average UPIS to include the construction completed in 2019, 2020, and the forecasted test-year construction using information provided by Bluegrass Water regarding the amounts and timing of proposed project additions provided in response to Staff's Second Request, Item 8. However, for the same reasons discussed above with respect to sewer, the Commission eliminated the proposed remote monitoring costs and the cost of a \$15,000 construction item that Mr. Freeman testified had been eliminated just prior to the hearing. The 13-month average UPIS in the forecast period, as calculated by the Commission, with the monitoring costs and cancelled construction item eliminated, is \$419,882 which is \$768,655 below the forecasted UPIS included by Bluegrass Water in its application. The Commission's calculation of its 13-month average UPIS is included in Appendix A.

Accumulated Depreciation. Bluegrass Water's accumulated depreciation consists of the historic total of plant depreciation to date.¹⁴¹ Accumulated depreciation associated with assets acquired by Bluegrass Water from the prior owner have been carried forward

¹³⁹ Application, Exhibit 8, Thies Direct Testimony at 13.

¹⁴⁰ *Id.*

¹⁴¹ Application, Exhibit 8, Thies Direct Testimony at 13.

on the books of Bluegrass Water.¹⁴² Bluegrass Water's 13-month average for accumulated depreciation for its water system is calculated to be \$263,430.¹⁴³

The depreciation rates that Bluegrass Water proposes to use in this instant case are the same rates approved for affiliates to use in other jurisdictions and are not based on a depreciation study.¹⁴⁴ Bluegrass Water has not presented any supporting analysis or study to show that its depreciation lives are appropriate. Further, because the Commission is adjusting UPIS to reflect plant constructed in 2019, 2020, and the forecasted test-year, accumulated depreciation is being set equal to the depreciation expense for the test year. Given that the Commission's forecasted UPIS is not broken down by account it is using a composite rate based on the NARUC.

Applying the NARUC composite sewer rate of 2.82 percent¹⁴⁵ results in a 13-month average accumulated depreciation balance of \$11,667 which in a decrease to Bluegrass Water's accumulated depreciation of \$251,763.

Construction Work In Progress (CWIP). Bluegrass Water defines CWIP as the value of utility plant that is under construction but has not yet been placed into service.¹⁴⁶ Bluegrass Water's forecasted CWIP of \$97,909 is based on a 13-month average of the forecasted balances from April 1, 2021, through April 30, 2022.¹⁴⁷ Using the construction completed in 2019, 2020, and the forecasted test-year construction the Commission

¹⁴² *Id.* at 13–14.

¹⁴³ *Id.* at 14.

¹⁴⁴ Responses to Staff's Second Request, Item 2.

¹⁴⁵ Responses to Staff's Third Request, Item 8.b.

¹⁴⁶ Application, Exhibit 8, Thies Direct Testimony at 13.

¹⁴⁷ *Id.*

calculated a 13-month average CWIP of \$212,036 which is \$114,127 greater than the amount Bluegrass Water’s forecasted. The Commission’s calculation of its 13-month average CWIP is included in Appendix A.

Cash Working Capital Allowance. Bluegrass Water calculated its cash working capital allowance of \$35,266 by using the 45 day or 1/8th formula methodology, after adjusting for the impacts of Bluegrass Water’s proposed adjustments to O&M expenses. While the Commission finds the 1/8th approach to be a reasonable approach for Bluegrass Water, particularly given its size and relative sophistication, and the Commission will permit its use in this matter given those factors, the Commission’s cash working capital allowance of \$32,042 reflects the pro forma O & M expense determined reasonable herein.

Based on the adjustments discussed above, the Commission has determined that Bluegrass Water’s net investment rate base for its water division is \$562,971.

	Application 13-Month Average Rate - Base	Commission Adjustments	Commission 13-Month Average Rate - Base
UPIS	\$ 1,188,537	\$ (768,655)	\$ 419,882
Accumulated Depreciation	(263,430)	251,763	(11,667)
Net Utility Plant in Service	925,106	(516,891)	408,215
CWIP	97,909	114,127	212,036
Working Capital Allowance	35,266	(3,224)	32,042
CIAC	(89,322)		(89,322)
Jurisdictional Rate Base	<u>\$ 968,960</u>	<u>\$ (405,989)</u>	<u>\$ 562,971</u>

REVENUES AND EXPENSES

Bluegrass Water developed an operating statement for its forecasted test period based on its budgets for the 2020 fiscal year. As required by 807 KAR 5:001, Section 16(6)(a), the financial data for the forecasted test period was presented by Bluegrass Water in the form of pro forma adjustments to its base period, the 12 months ending December 31, 2020. Based on the assumptions built into its budgets, Bluegrass Water calculated its test year water revenues and O&M expenses to be \$90,000 and \$254,014, respectively, and its test year sewer revenues and O&M expenses to be \$1,154,988 and \$2,049,424, respectively. Based on these adjusted revenues and O&M expenses, Bluegrass Water's test period water and sewer operating income (loss) was (\$196,047) and (\$1,176,152).¹⁴⁸ Based on a proposed ROE of 11.80 percent, Bluegrass Water determined that it required a revenue increase of \$336,747 for water and \$2,177,052 for sewer.¹⁴⁹ The Commission will accept components of Bluegrass Water's test period revenue and expenses with certain adjustments discussed below.

Direct Expense Adjustments

1. Direct Administrative Expense

In the O&M expenses Bluegrass Water used to calculate its revenue requirement for both sewer and water, Bluegrass Water included a line item labeled "Administrative Services."¹⁵⁰ A breakout of that line item in the work papers for Schedule CE4, as filed

¹⁴⁸ See Response to Staff's First Request, Item 1, BGUOC2020RateCase-RevenueRequirement_and_ConversionFactor_(Sewer).xlsx; BGUOC2020RateCase-RevenueRequirement_and_ConversionFactor_(Water).xlsx.

¹⁴⁹ *Id.*

¹⁵⁰ See Schedule C-1, Response to Staff's First Request, BGUOC2020RateCase-IncomeStatement_(Sewer).xlsx, BGUOC2020RateCase-IncomeStatement_(Water).xlsx.

with Bluegrass Water's application, indicates that expense consists of "Legal Fees," "Manage Consult," and "IT" expenses.¹⁵¹ The bulk of the Administrative Services expense in the schedules filed with Bluegrass Water's application was attributable to "Manage Consult" expense (\$39,088 and \$3,066 for sewer and water, respectively, in the base period with \$36,000 and \$6,176 projected for the forecasted period).¹⁵²

When asked to identify who provided the Manage Consult services, the scope of their services, and how those services differed from services provided by CSWR, Bluegrass Water identified PH Enterprises, LLC, Elasticity LLC, and James Fallert Consultant, LLC as providing the services included as Manage Consult expense. Bluegrass Water stated that PH Enterprises provided Utility Operations Consulting and argued that the contract services were needed because PH Enterprises facilitates tap fees for new service connections and CSWR employs no project management staff in Kentucky; that Elasticity provided Communications and Public Relations service and that the service was needed because CSWR employs no public relations professionals; and that James Fallert Consultant provided Legal and Regulatory Consulting and that the service was needed because Mr. Fallert has expertise and decades of experience in regulatory accounting and finance.¹⁵³

In response to subsequent requests for information regarding the specific costs incurred for the direct services provided by PH Enterprises, Elasticity, and James Fallert,

¹⁵¹ Response to Staff's First Request, Item 1 BGUOC2020RateCase-IncomeStatement_(Sewer).xlsx, BGUOC2020RateCase-Schedule_CE4.xlsx.

¹⁵² *Id.* at Tab Base & Forecast Detail.

¹⁵³ Response to Staff's Third Request, Item 3.

Bluegrass Water indicated that PH Enterprises provided direct service for its sewer operations for \$2,000 per month from January 2020 through September 2020 for a total of \$18,000; that Elasticity provided direct service for Bluegrass Water from April 2020 through December 2020 at a total cost of \$30,834, and that James Fallert provided direct service to Bluegrass Water's sewer operations in October 2020 totaling \$12,600. In this updated information, Bluegrass Water also indicated that it paid Kentucky Rural Water Association \$550 in December 2020, which Bluegrass Water included as Manage Consult expense.¹⁵⁴ Notably, the sum of what Bluegrass Water later reported as actual Manage Consult expenses in the base period was significantly higher than what Bluegrass Water initially included in Schedule CE4 for the base period.¹⁵⁵

Joint Intervenors argued that the Commission should closely scrutinize Bluegrass Water's direct contractor expense.¹⁵⁶ Joint Intervenors specifically note that a significant portion of Bluegrass Water's outside expense arises from services provided by Elasticity, and argue that "[t]he majority of the work Elasticity appears to have done for Bluegrass appears to have been promotional in nature."¹⁵⁷ Thus, citing 807 KAR 5:016, Joint Intervenors argue that the expense for Elasticity should be excluded.

In response to Joint Intervenors, Bluegrass Water argued that its expense for Elasticity was reasonable for ratemaking purposes. Bluegrass Water argued that the services offered by Elasticity provide material benefit to its customers. Thus, Bluegrass

¹⁵⁴ Response to Staff's Fourth Request, Item 9(e), 4-PSC-09(e).xlsx.

¹⁵⁵ See Response to Staff's First Request, Item 1, BGUOC2020RateCase-Schedule_CE4.xlsx (showing a total Manage Consult Expense for water and sewer of \$42,153);

¹⁵⁶ Joint Intervenors' Brief at 14–15.

¹⁵⁷ *Id.* at 15.

Water argues that those expenses are allowable pursuant to 807 KAR 5:016, Section 3(2).

With respect to expenses attributable PH Enterprises, it is not clear what services PH Enterprises was providing or whether the contract price was reasonable. Bluegrass Water was making payments to PH Enterprises, an apparent affiliate of a previous owner of the Longview/Homestead system, pursuant to the sales contract for the Longview/Homestead system.¹⁵⁸ Moreover, although the sales contract that established the relationship indicated payments would be made based upon work completed, PH Enterprises invoices are numbered “1 of 12” through “12 of 12” and are simply for \$2,000 per month such that they do not appear to be tied to any particular work. Further, the expenses appear to have terminated upon payment of the twelfth of twelve invoices. Thus, the Commission finds that Bluegrass Water failed to establish that the direct expenses for PH Enterprises are reasonable expenses that should be recovered from customers in the forecasted test year (or that they will even be incurred in the forecasted test year).

With respect to the direct expenses for Elasticity, the Commission observes that the detail provided for the specific projects attributed to Bluegrass Water identified in invoices provided does not provide sufficient information to establish that they resulted in material benefit to Bluegrass Water’s utility customers, and the specific projects appear to be one off occurrences e.g. handling the press related to acquisitions and the

¹⁵⁸ Response to Staff’s Third Request, Item 3, KY2020-290_BW_0774- KY2020-290_BW_0788 (sale contract provided as contract for services).

production of a video to show some systems before and after construction.¹⁵⁹ Moreover, the work product provided in response to Joint Intervenors' Post-Hearing Request for Information, which consisted in large part of social media posts that were rarely specific to Bluegrass Water customers, would provide little, if any, benefit to Bluegrass Water's customers. There were a few correspondences from Bluegrass Water or CSWR to customers regarding specific issues related to Bluegrass Water's service that Bluegrass Water indicated Elasticity assisted in drafting, but that work appeared to be minimal and the cost of such correspondence were not broken down such that it was impossible to determine what small portion of the cost might be attributable to that work. Moreover, given the expense Bluegrass Water is already paying CSWR for general and administrative work and Bluegrass Water's size, the Commission questions the need for Bluegrass Water to retain an outside public relations firm at a direct cost of over \$30,000 to assist with such matters. Thus, the Commission finds that Bluegrass Water failed to establish that the direct expenses for Elasticity provided material benefit to Bluegrass Water's customers and, therefore, that they are recoverable pursuant to 807 KAR 5:016.

With respect to the direct expenses for James Fallert, it is not clear what services he was providing. The contract Bluegrass Water provided for Mr. Fallert indicated that he was primarily providing services related a rate case,¹⁶⁰ but Mr. Fallert was not offered as a witness in this matter and Bluegrass Water indicated that rate case expense had not

¹⁵⁹ See Response to Staff's Third Request, Item 3, KY2020-290_BW_0803- KY2020-290_BW_0826.

¹⁶⁰ Response to Staff's Third Request, Item 3, KY2020-290_BW_0827.

been included.¹⁶¹ Work papers provided by Bluegrass Water also indicate that the expense for Mr. Fallert's services accrued in a single month, October 2020, after Bluegrass Water tendered its application and testimony in this matter.¹⁶² Moreover, CSWR employs a number of accounting professionals, both directly and as contractors, and a portion of their cost is allocated to Bluegrass Water in this matter.¹⁶³ Finally, even if the basis for the expense was reasonable and should have been allocated to Bluegrass Water's customers, it is not clear that the expense would reoccur during the forecasted test year given that it accrued in a single month. Thus, the Commission finds that Bluegrass Water failed to establish that the direct expense for James Fallert Consultant is a reasonable expenses that should be recovered from Bluegrass Water's customers in the forecasted test year.

Bluegrass Water projected \$36,000 in Manage Consult expense for sewer and \$6,176 in Manage Consult expense for water in the forecasted period. Bluegrass Water indicated that it projected those expenses based on the expenses incurred in the base period and discussed above.¹⁶⁴ Because the Commission finds that Bluegrass Water failed to establish that the direct expense for PH Enterprises, Elasticity, and James Fallert Consultant are reasonable expenses that should be recovered in the forecasted test year, the Commission must adjust the expenses for Manage Consult expenses in Bluegrass

¹⁶¹ Response to Staff's Third Request, Item 24.

¹⁶² Response to Staff's Fourth Request, Item 9(e), 4-PSC-09(e).xlsx.

¹⁶³ See Response to Staff's Second Request for Information, Item 1(c), 2-PSC-01c.xlsx (showing \$133,000 in Auditor and Accounting Services in the allocated overhead); Response to Staff's Second Request for Information, Item 14 PSC 2-14 (showing a number of accounting professionals employed by CSWR).

¹⁶⁴ See Response to Staff's Third Request, Item 3(d).

Water's forecasted test year projections. Thus, the Commission will reduce Bluegrass Water's Manage Consult expense for sewer by \$35,450, which reflects amounts paid to the Kentucky Rural Water Association as the only remaining expense, and will reduce its Manage Consult expense for water by \$6,176 to reflect the elimination of any of the expenses discussed above from the projected revenue requirement.

2. Depreciation Expense

Bluegrass Water calculated depreciation expense for the sewer division of \$264,095 by multiplying its proposed depreciation rates by the end of the forecasted period UPIS balances.¹⁶⁵ Even assuming its depreciation rates were supported by the record, Bluegrass Water acknowledged at the hearing that it would be incorrect to apply the rates to the ending balance UPIS in the forecasted period, but rather, acknowledged that the rates should be applied to the 13-month average UPIS balances. Thus, the Commission will adjust Bluegrass Water's depreciation expense to reflect the correct application of the rates to the 13-month average balance.

Bluegrass Water included a negative net salvage value in its depreciation rates, which had the effect of increasing the depreciation rate. However, Bluegrass Water acknowledged that it had not provided specific evidence to support the negative net salvage values.¹⁶⁶ Further, it acknowledged that two of its projects included decommissioning costs for existing plant.¹⁶⁷ The Commission finds that large projects to

¹⁶⁵ See Response to Staff's First Request, Item 1, BGUOC2020RateCase-RateBase_(Sewer).xlsx, Tab Dep - FY B3.1 (showing that depreciation expense for a particular account is calculated by multiplying the end of period UPIS by the depreciation rate)

¹⁶⁶ Response to Staff's Third Request, Item 5 and 6.

¹⁶⁷ Response to Staff's Third Request, Item 17.

replace significant plant assets likely also have decommissioning costs baked into the estimates (a utility must “replace” existing plant by removing what is currently there), so Bluegrass Water is seeking to have its customers pay for at least some decommissioning costs of existing plant while also recovering a separate negative net salvage value. Given that the negative net salvage value is not supported by evidence, there is no way to determine if its inclusion under the circumstances will result in duplicative cost recovery or if it is otherwise reasonable. Thus, the Commission finds that Bluegrass Water failed to establish that a negative net salvage value is appropriate in this case.

With respect to the depreciation rates used to calculate depreciation expenses, Bluegrass Water has not presented any supporting analysis or study to show that its proposed depreciation lives are appropriate. Rather, Bluegrass Water indicated that its proposed depreciation rates are based on the rates used by its systems in other jurisdictions.¹⁶⁸ However, Bluegrass Water further indicated that even those rates are not based on a depreciation study, and Bluegrass Water provided no other information to indicate that its proposed depreciation rates are reasonable.¹⁶⁹

As noted above, when no evidence exists to support a specific life that is inside or outside of the NARUC and O&M Guide ranges, the Commission has historically used the mid-point of the depreciation ranges to depreciate utility plant as discussed above in the

¹⁶⁸ See Thies Testimony at 16 (indicating that the rates are based on rates used in other jurisdictions); see *also* Response to Staff’s Second Request, Item 2 (indicating that the rates on which Bluegrass Water based its rates are not based on any depreciation study).

¹⁶⁹ See *also* Response to Staff’s Second Request, Item 2 (indicating that the rates on which Bluegrass Water based its rates are not based on any depreciation study).

section discussing accumulated depreciation.¹⁷⁰ The Commission finds that it is appropriate to do so here. However, because Bluegrass Water's UPIS numbers were unreliable and the Commission had to establish a rate base based on projected construction, the UPIS found to be reasonable in this matter is not broken down by account. Thus, the Commission is applying a composite depreciation rate based on the NARUC and the O&M Guide to the 13-month average UPIS.¹⁷¹

Applying the NARUC and O&M Guide composite sewer rate of 3.3 percent and removing CIAC amortization of \$7,052 results in a 13-month average depreciation expense of \$49,697 which in a decrease to Bluegrass Water's forecasted depreciation expense of \$214,398. For the water division total depreciation net of CIAC amortization is calculated to be \$11,667 based on the NARUC midpoints, which represents a decrease of \$20,274.

3. Operator Contractor Expense

In its application, Bluegrass Water included operating expenses attributed to system operator contracts of \$1,029,348 and \$144,048 for its sewer and water systems, respectively, in the forecast period. The majority of the costs are paid to Midwest.

Joint Intervenors have recommended that Bluegrass Water's system operator contract expense to be reduced to reflect two factors. First, they argue that Bluegrass Water has implemented and is seeking recover the cost for remote monitoring despite

¹⁷⁰ Case No. 2020-00195, *Electronic Application of Southeast Daviess County Water District for an Alternative Rate Adjustment* (Ky. PSC Dec. 30, 2020).

¹⁷¹ The Commission observes that Bluegrass Water projected depreciation expense for amounts it had not placed in place accounts based on composite rate as well and that such a practice is not uncommon.

paying higher costs to its operator contractor to inspect each system daily. As noted above, Joint Intervenors argue this represents an unnecessary duplication of costs. Second, Joint Intervenors argue that Bluegrass Water confirmed at the hearing that the average cost of the operator agreements is likely to fall at the end of the test year as contracts expire and are renegotiated at a lower rate. Thus, Joint Intervenors propose adjusting all existing contract costs to reflect the cost of the most recently negotiated agreement.

Bluegrass Water responded that because it is required to have operators on site at the systems each day, even with a remote monitoring system in place, it still must comply with this legal requirement and, therefore, the associated expenses should not be disallowed.

The Commission agreed with Joint Intervenors that paying contractors to inspect each system daily as required by the regulation while paying for remote monitoring costs raised questions about duplicative costs. This is why the Commission found that Bluegrass Water failed to prove the absence of wasteful duplication with respect to the remote monitoring equipment and excluded the costs of remote monitoring as discussed above. However, the removal of those costs removes the duplicative costs associated with both monitoring and daily inspections. Thus, the duplicative costs alleged by Joint Intervenors do not justify *also* adjusting Bluegrass Water's operator expense.

Further, the evidence indicates that Bluegrass Water did competitively bid the operator contracts and selected the lowest cost option. The Commission agrees with Joint Intervenors that that the operator contractor costs are likely to fall in the future, as Bluegrass Water indicated that it anticipated. However, the contracts at issue have 2-

year terms such that the first of the four contract terms will not expire until about September 2021. Bluegrass Water could arguable rebid that contract leading up to the end of the term, and there could be savings that the Commission could reflect in this matter, but as with the more recent contracts, Midwest Operators, which won the bids on the earlier contracts, would be the only operator that could take advantage of economies of scale and potentially bid a lower cost.

Greater savings should be achieved in the future by bidding out the operator contracts for all systems together or in groups based on geography as Bluegrass Water indicated it planned to do. If Bluegrass Water rebids its current contracts, which it entered as it purchased systems, based on when the terms expire as opposed to waiting and bidding them in larger groups based on geography, then Midwest Operators will always have an advantage in bidding contracts such that it will not need to lower costs to win the bid. Further, if the Commission forced Bluegrass Water to recognize the savings Midwest Operators are likely to offer if a full open bid took place as each contract expired, then Bluegrass Water would likely be forced to rebid the contracts as they expired to recognize that savings and would thereby be unable to bid all systems at the same the time or based on geography when a number of the contracts have expired. Thus, the Commission finds that an adjustment to operator contract expense would not be appropriate here.

However, the Commission notes that it is making this decision with the understanding that Bluegrass Water will requests bids and proposals from numerous operators for the majority of its systems and for its systems based on geography to allow more operator contractors to take advantage of the economies of scale or regional

benefits when bidding the contracts. The Commission expects that greater savings will be seen in future rate cases.

Allocated Expense Adjustments

1. Allocation Methodology

Most general and administrative work is performed for Bluegrass Water through its parent company, CSWR, which is managed by an affiliate, Central States. However, CSWR, through Central States, performs general and administrative work for all utilities owned and operated by CSWR and engages in business development activities to acquire additional utilities across the country. Bluegrass Water has no formal cost allocation manual to allocate costs internally between the various affiliates of CSWR and business development activities performed by CSWR.¹⁷²

Bluegrass Water determined the amount of allocated expense for this rate case by first projecting CSWR's "Total SG&A Budget,"¹⁷³ which is all of CSWR's budget excluding costs that are allocated directly to a utility affiliate.¹⁷⁴ Bluegrass Water indicated that it then identified and eliminated CSWR's expenses related to business development, referred to as BD Expense in various workpapers,¹⁷⁵ because Bluegrass Water stated "those expenses would provide only marginal benefit to Bluegrass Water."¹⁷⁶ Bluegrass

¹⁷² Response to Attorney General's First Request, Item 48.

¹⁷³ See Schedule OHA1.

¹⁷⁴ Response to Staff's First Request, Item 1(a).

¹⁷⁵ See Schedule OHA1 (showing the elimination of "BD expenses" from the SG&A Budget before Bluegrass Water applied the Massachusetts' method).

¹⁷⁶ Response to Staff's Second Request, Item 1(b) (explaining what "BD expense" is and why Bluegrass Water was seeking to eliminate it).

Water then applied what it referred to as the Massachusetts' method or formula to allocate the remaining expenses between the utility affiliates owned by CSWR or projected to be owned by CSWR in the fourth quarter of 2021.¹⁷⁷

Bluegrass Water was asked to explain how it determined the BD Expense it excluded from the SG&A Budget, and it indicated that it excluded all of the compensation expense of employees designated specifically as business development employees, because they worked solely on business development activities.¹⁷⁸ Bluegrass Water explained that it then removed a portion of the total compensation expense for three officers, because the officers were involved in supervising the business development employees. Lastly, Bluegrass Water removed a portion of the amounts budgeted as office supply and travel expense in the SG&A budget.¹⁷⁹

At the hearing, Bluegrass Water was questioned regarding other employees work on business development activities, and it acknowledged that other employees worked on new acquisitions.¹⁸⁰ Bluegrass Water was also questioned regarding why portions of other expense items shown in the SG&A Budget, such as rent, insurance, management consulting, IT consulting, and auditing and accounting consulting, were not allocated to business development. Bluegrass Water was asked to identify portions of other expense items in the SG&A Budget that should have been allocated to business development

¹⁷⁷ Thies Testimony at 10-11; see also Schedule OHA1.

¹⁷⁸ Response to Staff's Third Request, Item 22.

¹⁷⁹ *Id.*

¹⁸⁰ See May 19, 2021 H.V.T. at 16:15:14-16:16:53; see also May 19, 2021 H.V.T. at 09:14:56-09:22:54.

expense as a post-hearing request for information, but it claimed the only business development expense that was not already allocated was the workers compensation expense for the business development employees.¹⁸¹

With respect to the allocation of SG&A Budget after BD Expense is eliminated, Bluegrass Water explained that the Massachusetts formula is based on the ratio of direct labor, capital investment and gross revenue of each affiliate to total direct labor, capital investment and gross revenue.¹⁸² Bluegrass Water asserts that the component factors used in the formula correspond to the significant drivers of general and administrative expense at CSWR.¹⁸³ Bluegrass Water asserted, for example, that a higher level of capital investment would require more time and higher expense to perform the necessary accounting procedures to track those fixed assets.¹⁸⁴ For the forecasted test year, as calculated in the application, the Massachusetts' formula produced an allocation percent factor for Bluegrass Water of 5.25 percent, which Bluegrass Water applied to the Total

¹⁸¹ Response to Joint Intervenors' Post-Hearing Request, Item 10; see *also* May 19, 2021 H.V.T.

¹⁸² Thies Testimony at 11.

¹⁸³ *Id.*

¹⁸⁴ *Id.*

SG&A Budget for the forecasted period,¹⁸⁵ less the amounts Bluegrass Water allocated to business development expense, to determine the amount of allocated overhead that should be assigned to Bluegrass Water.¹⁸⁶

The Joint Intervenors argue that Bluegrass Water failed to include all business development expenses in determining the amount to be excluded from the SG&A budget before applying the Massachusetts formula. Joint Intervenors assert that Bluegrass Water conceded that it had not taken into account information technology infrastructure, office rents, insurance, legal, and payroll taxes when identifying business development expenses that should be excluded. Joint Intervenors argue that these and any other expenses not related to providing service to Bluegrass Water's customers should be excluded.¹⁸⁷

Joint Intervenors also argue that the use of the Massachusetts formula to allocate the remaining overhead in this case may not be appropriate based on several factors.

¹⁸⁵ The Commission notes that in Schedule OHA1, as filed with the application, Bluegrass Water indicated that the total SG&A budget for the forecasted test year was \$11,173,000 and allocated \$4,771,832 of that to BD Expense for a net SG&A budget to be allocated to utility affiliates of \$6,401,169. When Bluegrass Water was asked for a breakdown of the SG&A Budget for the forecasted test year, Bluegrass Water provided an itemized SG&A Budget that totaled only \$7,976,342. See Response to Staff's Second Request, Item 1(c), 2-PSC-01c.xlsx. When Bluegrass Water was asked to identify those portions of \$7,976,342 it would consider to be BD Expense under its methodology, Bluegrass Water identified \$1,194,774 in BD Expense such that the net SG&A budget to be allocated to utility affiliates became \$6,781,568. See Response to Staff's Fourth Request, Item 5, 4-PSC-05.xlsx; see also Response to Staff's Third Request, Item 23 (where Bluegrass Water was unable to provide a breakdown of BD Expense in the forecasted period). Bluegrass Water later explained this discrepancy by stating that the Total SG&A Budget and BD Expense in Schedule OHA1 were projected numbers for 2022, not the forecasted period as indicated, that Bluegrass Water did not project the 2022 budget in sufficient detail to provide any kind of breakdown, and that the itemized SG&A Budget ultimately provided was based on 2021 projections. The Commission will use the projected 2021 SG&A budget when referring to the SG&A budget in the forecasted period going forward, since there is no way to know what is in the 2022 budget, but notes that the discrepancy does raise questions about the accuracy of Bluegrass Water's projections of the SG&A budget, especially given the significant differences.

¹⁸⁶ See Schedule OHA1.

¹⁸⁷ Post-Hearing Brief of the Joint Intervenors at 12.

Joint Intervenors state that Bluegrass Water's Utility Plant in Service balance is low as a percentage of the total system, because this proceeding is the first general rate adjustment sought by Bluegrass Water.¹⁸⁸ Conversely, Joint Intervenors note that Bluegrass Water produces a significantly higher amount of revenue when compared to other companies within CSWR, which Joint Intervenors assert suggests that Bluegrass Water's revenues are proportionately high compared to utility plant of other CSWR companies.¹⁸⁹ Finally, Joint Intervenors reference what they call a redundancy inherent in contracting costs, discussed above in this order, and state that it is not clear if Bluegrass Water's direct labor expenses reflect the true cost of corporate labor to CSWR.¹⁹⁰ Given these factors, Joint Intervenors propose that a better allocation method is one based on Bluegrass Water's total customer connections as a percent of the total connections within CSWR, which results in an allocation percentage of 4.0 percent.¹⁹¹

Bluegrass Water asserts that it has allocated common costs appropriately for ratemaking purposes. Bluegrass Water refutes Joint Intervenors' position, stating that the Massachusetts formula remains the most appropriate allocation methodology that allows for a consistent analysis. Bluegrass Water states that using the Massachusetts formula is better than some "arbitrary and unclear 'test' with no basis in the data provided."¹⁹²

¹⁸⁸ Bluegrass Water's Correction to Test Year Update at 19.

¹⁸⁹ *Id.*

¹⁹⁰ Post-Hearing Brief of the Joint Intervenors at 13.

¹⁹¹ *Id.* at 14.

¹⁹² Post-Hearing Brief of Bluegrass Water at 10.

Pursuant to KRS 278.2207, “services and products provided to the utility by an affiliate shall be priced at the affiliate’s fully distributed cost but in no event greater than market or in compliance with the utility’s existing USDA, SEC, or FERC approved cost allocation methodology.” Further, “[i]n any formal commission proceeding in which cost allocation is at issue, a utility shall provide sufficient information to document that its cost allocation procedures and affiliate transaction pricing are consistent with the provisions of this chapter.”¹⁹³ If a utility has failed to provide sufficient evidence of its compliance, the Commission may “[o]rder that the costs attached to any transaction be disallowed from rates.”¹⁹⁴

With respect to the allocation of the SG&A Budget between CSWR’s utility affiliates after BD Expense is removed, the Commission agrees with Joint Intervenors that use of the Massachusetts formula is not reasonable under the circumstances. Specifically, due to the nature of CSWR’s business model, CSWR is in the process of purchasing new systems that often have rates that are artificially low and plant that has seen little investment in years. Conversely, Bluegrass Water is proposing significant investment through the forecasted period as well as a rate increase such that Bluegrass Water’s revenue and UPIS could be higher than a comparatively larger CSWR utility simply based on the timing of proposed investment or the rate increase. Additionally, as discussed in more detail above, Bluegrass Water’s UPIS numbers provided in its application are not credible given that Bluegrass Water failed to include retirements in the base and forecasted period, among other things, and Bluegrass Water acknowledged errors in

¹⁹³ KRS 278.2209.

¹⁹⁴ KRS 278.2211(1)(b).

some of the numbers included in its Schedule OHA1, as filed with its application. Thus, while the Massachusetts formula may be appropriate under certain circumstances, perhaps even for Bluegrass Water if CSWR's utility affiliates reach similar or stable places in terms of rates and investment, the Commission finds that Bluegrass Water failed to establish that the Massachusetts formula results in the proper allocation of costs in this matter.

Further, as proposed by Joint Intervenors, the Commission observes that it has often used customer equivalences to allocate general and administrative expenses when a cost of service study (COSS) is not available, as here, and there is not the means to allocate an expense directly. The Commission finds that this method is reasonable under the circumstances given the issues discussed above, and because customer equivalences do provide an estimate of the amount that would be spent providing general and administrative services. In fact, the Commission observes that Bluegrass Water proposed to allocate its portion of the expenses from CSWR between its sewer and water customers using a similar method.¹⁹⁵ Thus, the Commission generally finds Joint Intervenors proposal to use customer equivalents to allocate the SG&A Budget is reasonable.

However, while the Commission is in partial agreement with the Joint Intervenors, it takes issue with the fact that Joint Intervenors allocation based on customer equivalents is based on totals at the end of forecast period. The Commission notes that CSWR's total customer equivalences, what CSWR referred to as connections, changed significantly

¹⁹⁵ See Schedule OHA1.

during the forecasted period. Bluegrass Water's testimony indicated that at the end of April 2021 CSWR would have approximately 52,605 connections, that it would add approximately 7,000 connections by the end of June 2021, that it would add an approximately 10,200 connections by the third or fourth quarter of 2021, and that it would have approximately 85,000 total connections by the end of December 2021.¹⁹⁶ Based on that evidence, the Commission finds that CSWR will have 52,605 connections at the end of April 2021 and May 2021, 59,605 connections at the end of June 2021, July 2021, and August 2021, 69,805 connections at the end of September 2021, October 2021, and November 2021, and 85,000 connections at the end of each of the remaining months of the forecast period. The Commission finds that a 13-month average, using residential equivalents based on those findings, is a more appropriate method for allocating overhead than the methods proposed by Joint Intervenors or Bluegrass Water. That method yields a sharing percentage of 4.98 percent as shown in Appendix C.¹⁹⁷

The Commission further finds, as proposed by Bluegrass Water, that expenses arising from business development activities should not be recoverable from utility customers and, therefore, that such expenses should be excluded from the SG&A Budget before it is allocated to utility customers using the sharing methodology identified above. However, the Commission finds that Bluegrass Water failed to establish that its method of identifying and excluding BD Expense is reasonable and results in Bluegrass Water customers paying only the fully allocated cost they should.

¹⁹⁶ May 19, 2021 H.V.T at 09:12:40; Response to Staff's Fourth Request, Item 12.

¹⁹⁷ Appendix C.

Bluegrass Water itemized the SG&A budget for the forecast period as follows:¹⁹⁸

Admin & Human Resources	\$	6,320,269
Office Supplies and Travel Expense		682,439
Management Consulting		243,300
Engineering Consulting		20,400
Auditor & Accounting Services		133,000
Legal Fees		87,684
IT		238,250
Rent		168,000
Insurance		77,000
Miscellaneous		6,000
<u>Total Corporate SG&A</u>	\$	<u>7,976,342</u>

Bluegrass Water allocated \$1,097,121 in Admin & Human Resources expense, which Bluegrass Water attributed to the compensation for the business development employees and a portion of the compensation for officers mentioned above, and \$97,653 in Officer Supplies and Travel Expense to BD Expense.¹⁹⁹ Bluegrass Water later indicated that a very small portion of the Insurance expense in the SG&A budget, attributable to the workers compensation of the business development employees, should have been allocated to BD Expense. However, Bluegrass Water indicated that no other portion of the SG&A Budget should be allocated to BD Expense.²⁰⁰

The biggest issue with Bluegrass Water’s assertion that no other portion of the SG&A Budget should be allocated to BD Expense is that its witnesses acknowledged that other employees worked on business development activities such a portion of those

¹⁹⁸ See Response to Staff’s Second Request, Item 1(c), 2-PSC-01c.xlsx.

¹⁹⁹ See Response to Staff’s Fourth Request, Item 5, 4-PSC-05.xlsx; see *also* Response to Staff’s Third Request, Item 23 (where Bluegrass Water was unable to provide a breakdown of BD Expense in the forecasted period).

²⁰⁰ Response to Joint Intervenor’s Post-Hearing Request, 10.

employees work should be excluded.²⁰¹ Bluegrass Water also claimed after the hearing that IT expenses for business development activities, presumably only for the employees whose compensation was excluded, were excluded as part of exclusion of travel expense and office supplies, despite not previously indicating that before when asked how BD Expenses was allocated.²⁰² Bluegrass Water also claimed that no employee classified “exclusively” as a business development employee has a permanent office in CSWR’s building but ignores the officers for which Bluegrass Water excluded a portion of those employees’ compensation as part of business development expense as well as other employees it acknowledged were performing business development activities.

The Commission also observes that CSWR’s business development activities are extensive. As noted above, Bluegrass Water indicated that it had about 52,606 connections as of April 2021 and that it is expected to have 85,000 connections by December 2021. Bluegrass Water has also made additional connections between January 2021 and April 2021, and it indicated that it expected to have about 120,000 connections by end of 2022. Thus, Bluegrass Water was or will be working on about 35,000 new connections at any given time in 2021 and 2022.

If the approximately 35,000 connections Bluegrass Water was or is seeking to acquire at any given time during the forecasted period were part of CSWR, they would represent between about 39.95²⁰³ percent and 29.17²⁰⁴ percent of CSWR’s total

²⁰¹ See May 19, 2021 H.V.T. at 16:15:14-16:16:53; see also May 19, 2021 H.V.T. at 09:14:56-09:22:54.

²⁰² See Response to Staff’s Third Request, Item 22.

²⁰³ $35,000/87,605=39.95\%$

²⁰⁴ $35,000/120,000=29.17\%$

connections, based on the numbers used above. Given the process Bluegrass Water described for purchasing systems, and as acknowledged by Bluegrass Water's witnesses, it is clear that personnel other than those explicitly identified by Bluegrass Water are involved in such acquisitions. Moreover, those employees, in turn, use or benefit from resources, such as the building, office supplies, insurance, and legal and consulting services such that portions of those expense items should be allocated to business expenses. Thus, the Commission finds that Bluegrass Water failed to establish that its method of identifying and excluding BD Expense is reasonable and results in Bluegrass Water customers paying only the fully allocated cost they should.

Given that Bluegrass Water has the burden in this matter and on this issue in particular, the Commission could, in its discretion, disallow recovery of the allocated overhead.²⁰⁵ In lieu of such a result, which likely would not be in the long term interest of Bluegrass Water or its customers, the Commission will treat Bluegrass Water's business development activities as if they are a separate utility with 35,000 connections throughout the forecasted test period and allocate the budget items of the SG&A Budget for the forecasted test year to BD Expense in the same way amounts are allocated above between CSWR utilities. Using that method will result in a sharing percentage of 33.61 percent, which the Commission will apply to the SG&A, except as discussed below, before allocating the remaining SG&A Budget among the utilities as discussed above.

²⁰⁵ See, e.g. Case No. 2020-00342, *Electronic Application of CitiPower, LLC for a Rate Adjustment for Small Utilities Pursuant to 807 KAR 5:076*, (Ky. PSC Apr. 27, 2021), Order, at 5-7 (prohibiting recovery in rates of management fee paid to parent company for alleged general and administrative services due to utilities failure to provide proof that the fee is reasonable).

The effect of this change will be discussed below in the summary of the allocated overhead adjustments.

The Commission finds that this method of allocating BD Expense is reasonable, because it is consistent with how the Commission has allocated costs among utility operations in the past when no COSS has been completed and because it is clear from the evidence that Bluegrass Water's business development activities take up significant resources. The Commission also observes that this allocation method results in the Total SG&A Budget being allocated to BD Expenses at a rate roughly between the overall rate Bluegrass Water projected BD Expense would be allocated in the base period, 18 percent,²⁰⁶ and the calendar year 2022, 42.71 percent.²⁰⁷

2. Adjustments to SG&A Budget

a. Admin & Human Resources

In its SG&A Budget for the forecast period, Bluegrass Water included \$6,320,269 for the line item "Admin & Human Resources" in CSWR's SG&A budget.²⁰⁸ In response to request for information, Bluegrass Water indicated that the only component of this line item is projected employee compensation for CSWR in the forecast period.²⁰⁹ However, Bluegrass Water also provided a breakdown of employee compensation projected in the forecasted period which indicated the total employee compensation expense would be

²⁰⁶ $\$1,181,221/\$6,580,338=18\%$. See Schedule OHA1.

²⁰⁷ $\$4,771,832/\$11,173,000= 42.71$ percent. See Schedule OHA1; see also Response to Staff's Third Request, Item 23 (indicating those numbers are calendar year 2022 projections).

²⁰⁸ Response to Staff's Request, Item 1c, Schedule 2-PSC-01c.

²⁰⁹ Response to Staff's Third Request, Item 11(b).

\$6,083,987.²¹⁰ Bluegrass Water did not explain what additional expense, if any, accounted for that difference. Thus, the Commission finds that Bluegrass Water failed to establish that its customers should be responsible for any portion of that difference, and therefore, the Commission reduces the Admin & Human Resources expense in the SG&A Budget from \$6,320,268 to \$6,083,987.

b. New Employee Positions

In response to Staff's First Request, Item 18, Bluegrass Water provided all employee compensation for the forecasted test year broken down by categories of employees. The sum of the total employee compensation for the forecasted period provided in response to that request was \$5,212,209.²¹¹ Staff's Second Request asked Bluegrass Water to identify the employees included in the categories of employees that made up the total compensation for the forecasted period provided in response to Staff's First Request, Item 18. In response, Bluegrass Water provided the spreadsheet referenced above indicating CSWR's total employee compensation projected for the forecasted test year of \$6,083,987.

When asked about the discrepancy in the amounts, Bluegrass Water stated that it was due to the inclusion of eight additional positions in the attachment provided in response to Staff's Second Request that were not in the response provided to Staff's First Request. It indicated two of the positions were labeled as 'Paralegal' and 'O&M IT Specialist' in response to Staff's Second Request and had since been filled. However, it noted that the employees for the other 6 positions were listed only as "New Position,"

²¹⁰ Response to Staff's Second Request, Item 14, PSC 2-14.xlsx.

²¹¹ See Response to Staff's First Request, Item 18, KY2020-00290_BW_0078.

because they had not been filled. Bluegrass Water indicated that the positions were not included in response to Staff's First Request, because at the time it responded to that request, on January 29, 2021, it did not know the category into which the employees should be placed. Bluegrass Water stated that the six positions in which the person was identified as "New Position" were simply budgeted positions.²¹²

The Commission finds that Bluegrass Water's inclusion of the six "New Position[s]" in the forecasted period is unreasonable because Bluegrass Water failed to establish that the cost would be incurred or that they should be allocated to Bluegrass Water's customers. The Commission observes that six new positions would represent over 13 percent of CSWR's projected employees and officers in the forecasted test year. Yet, at the end of January, when it responded to Staff's First Request, Bluegrass Water could not even place the projected employees in categories as broad as Exempt, Non-Exempt, Director, or Manager, which raises questions regarding why Bluegrass Water was projecting the new employees in the first place. Further, there was no evidence that the employees have been retained. Thus, the Commission finds that Bluegrass Water has not met its burden in establishing that the cost of those employees is an allocated cost for which Bluegrass Water's customers should be responsible and, therefore, further finds that CSWR's Admin & Human Resources expense in the forecasted test period should be further reduced by \$691,141, from \$6,083,987 to \$5,392,846.

c. Health and Dental Insurance

²¹² Response to Staff's Third Request, Item 11.

For both Health and Dental insurance benefits provided to employees, CSWR pays 99 percent of premiums, and the employees pay the remaining 1 percent.²¹³ In the forecasted test year, for employees not designated as new positions, CSWR included Health and Dental employer contribution totals of \$696,691 and \$35,881, respectively.²¹⁴

The Joint Intervenors proposed a reduction in health and life insurance, citing Commission precedent in the treatment of employee insurance benefit costs.²¹⁵ Bluegrass Water objects to the position taken by the Joint Intervenors, stating that each CSWR employee does pay, in part, for the insurance and citing a failure of the Joint Intervenors to reference any applicable decision or guidance.²¹⁶

The Commission has placed greater emphasis on evaluating employee total compensation packages for market and geographic competitiveness to ensure fair rate development and has generally determined that 100 percent employer-funded health and dental care does not meet that criteria.²¹⁷ In every general rate case filed since 2016 in which a utility sought to recover its expenses for the payment of 100 percent of its employees' health insurance premiums, the Commission has reduced test year expenses for health insurance premiums to levels based on national average employee contribution

²¹³ Response to Staff's First Request, Item 19.

²¹⁴ Response to Staff's Second Request, Item 14, Schedule 2-PSC-14 (Confidential).xlsx.

²¹⁵ Post-Hearing Brief of the Joint Intervenors at 12.

²¹⁶ Post-Hearing Brief of Bluegrass Water at 10.

²¹⁷ See, e.g., Case No. 2016-00434, *Application of Shelby Energy Cooperative, Inc. for an Increase in its Retail Rates*, (Ky. PSC July 1, 2017) final Order at 6-7; Case No. 2016-00367, *Application of Nolin Rural Electric Cooperative Corporation for a General Rate Increase*, (Ky. PSC June 21, 2017) final Order at 10-11; Case No. 2016-00365, *Application of Farmers Rural Electric Cooperative Corporation for an Increase in Retail Rates*, (Ky. PSC May 12, 2017) final Order at 6-7; Case No. 2016-00174, *Electronic Application of Licking Valley Electric Cooperative Corporation for a General Rate Increase*, (Ky. PSC Mar. 1, 2017) final Order at 18; Case No. 2017-00349, *Electronic Application of Atmos Energy Corporation for an Adjustment of Rates and Tariff Modifications*, (Ky. PSC May 3, 2018) final Order at 19.

rates. The Commission does not see any material difference between a utility paying 99 percent of the premiums and 100 percent of the premiums.

Bluegrass Water was questioned about the Commission's practice of reducing employer contributions for health and dental insurance premiums based on national average contributions. In response, Bluegrass Water argued that as a small company CSWR sees the need to offer best in class compensation and benefits in order to attract the most-qualified employees. Bluegrass Water further argued that "CSWR seeks to attract the most qualified individuals and views total compensation, including the benefits package, as key to achieving that goal."²¹⁸

However, Bluegrass Water acknowledged that CSWR did not look at the typical private sector employer insurance contributions when it was determining what level of contributions for insurance it should provide.²¹⁹ Similarly, Bluegrass Water indicated that CSWR, through an outside consultant or otherwise, has not performed a study to compare its wages, salaries, benefits, and other compensation to other similarly-situated companies. Therefore, Bluegrass Water has not substantiated that it took any efforts to plan its compensation "to attract the most qualified individuals." Thus, Bluegrass Water has no evidence to support a finding that its contributions are reasonable and that Bluegrass Water's customers should be responsible for that level of contribution.

It is Commission practice that, in the absence of any compensation policy or benefits study regarding insurance benefits, an adjustment should be made to both health and dental insurance to bring the employee contributions in line with the Bureau of Labor

²¹⁸ Response to Staff's Second Request, Item 24.

²¹⁹ *Id.*

Statistics average employer contribution percentages of 21 percent²²⁰ for health and the Willis Benefits Benchmarking Survey 60 percent²²¹ average contribution for dental insurance. Accordingly, the Commission has reduced CSWR's forecast period employer contributions for Health and Dental insurance by \$139,338 and \$21,248, respectively.²²² Thus, the Admin & Human Resources expense in the SG&A Budget should be further reduced by \$160,586 from \$5,392,846 to \$5,232,260.

d. Increases to Employee Salary

In the forecasted test year, CSWR included \$4,282,377 of salary compensation for employees.²²³ At the end of the base year, however, total salary for all positions currently filled at CSWR totaled \$3,918,741.²²⁴ This increase was driven in large part by significant raises projected for several employees, including CSWR's President, who was projected to receive a salary of ██████████ in the base period and a salary of ██████████ in the forecasted test year. Such significant raises are unreasonable on their face, especially

²²⁰ Bureau of Labor Statistics, Healthcare Benefits, March 2019, Table 10, private industry workers. (<https://www.bls.gov/ncs/ebs/benefits/2019/ownership/private/table10a.pdf>); see also Bureau of Labor Statistics, Healthcare Benefits, March 2018, Table 10, private industry workers. (<https://www.bls.gov/ncs/ebs/benefits/2018/ownership/private/table10a.pdf>) (showing the same percentage contribution rate in 2018).

²²¹ See Case No. 2019-00109, *Electronic Application of Citipower, LLC (1) for Adjustment of Rates Pursuant to 807 KAR 5:076; (2) Approval for a Certificate of Public Convenience and Necessity to Purchase Pipeline and Other Related Assets; and (3) Approval of Financing*, Order (Ky. PSC Mar. 25, 2020) (citing the The Willis Benchmarking Survey, 2015, at 62-63 https://www.willis.com/Documents/publications/Services/Employee_Benefits/20151230_2015WillisBenefitsBenchmarkingSurveyReport.pdf); see also Case No. 2018-00129, *Application of Inter-County Energy Cooperative Corporation for a General Adjustment of Existing Rates* (Ky. PSC Jan. 25, 2019), Order.

²²² Appendix D.

²²³ Bluegrass Water's Response to Staff's Second Data Request, Item 14, Schedule 2-PSC-14 (Confidential).

²²⁴ Bluegrass Water's Response to Staff's Fourth Data Request, Item 6, Schedule PSC 4-6 CONFIDENTIAL.

for a company the size of CSWR. More importantly, Bluegrass Water provided no support for the reasonableness of projecting such raises or why such costs would be necessary. As noted above, Bluegrass Water has not performed any compensation study or analysis to determine the reasonableness of compensation proposed. Bluegrass Water has stated that it does not have a formal compensation policy or criteria, stating that the CSWR leadership “stays attuned to market conditions regarding employment and compensation levels”.²²⁵

The Commission finds that Bluegrass Water has not met its burden of proof concerning the raises in salary from the end of the base period to the forecast period. In the absence of a supported compensation policy, the Commission finds it is appropriate to adjust salaries in line with the Bureau of Labor Statistics average of a 3.0 percent yearly increase.²²⁶ Applying this to the end of base period rates produces a forecast period salary total of \$4,105,088. Accordingly, the Commission has reduced CSWR’s forecast period Admin & Human Resources by an additional \$177,289²²⁷ from \$5,232,260 to \$5,054,970

e. Auto Allowance

CSWR compensation for its executives includes a yearly auto allowance for certain employees totaling \$102,000 in the forecast period.²²⁸ Bluegrass Water justified the auto

²²⁵ Response to Staff’s Second Request, Item 23(a); see *also* Response to Staff’s Second Request, Item 11 (discussion how CSWR decided to provide specific executive salary increases).

²²⁶ Bureau of Labor Statistics - EMPLOYMENT COST INDEX – March 2021 <https://www.bls.gov/news.release/eci.nr0.htm>

²²⁷ Appendix D.

allowance based on extensive travel by the relevant employees.²²⁹ However, a breakdown of CSWR's expense for employee travel to Kentucky indicates the inclusion of mileage payments for employees that received an auto-allowance,²³⁰ which the Commission finds to be duplicative of direct payments made through the auto-allowance such that the auto-allowance payments are unreasonable. Thus, the Commission finds that CSWR's forecast period Admin & Human Resources expense should be reduced by an additional \$102,000 from \$5,054,970 to \$4,952,970.

f. 401(k) Matching

As part of its benefits compensation, CSWR offers a 401(k) retirement plan, with an employer contribution of 3.0 percent of an employee's yearly salary,²³¹ with an additional 2.0 percent matching of additional employee contributions.²³² The Joint Intervenors state that as CSWR provides bonuses and discretionary 401(k) contributions without a formal criteria or written compensation policy, the total amounts tied to incentive compensation structures should be disallowed.²³³ Bluegrass Water refutes the Joint Intervenors assertion that the 401(k) contributions are discretionary, stating that the

²²⁸ Bluegrass Water's Response to Staff's Second Data Request, Item 14, Schedule 2-PSC-14 (Confidential).

²²⁹ Response to AG's Second Request, Item 10.

²³⁰ See Response to Staff's Fourth Request, Item 7, 04-PSC-07.xlsx.

²³¹ Bluegrass Water's Response to Staff's Third Data Request, Items 18-19.

²³² May 19, 2021 H.V.T. at 11:24:35, Cox Testimony.

²³³ Post-Hearing Brief of the Joint Intervenors at 13.

additional contributions in excess of the base 3 percent are matching and depend on how much an employee chooses to invest.²³⁴

Concerning the 401(k) contributions, the Commission is in agreement with Bluegrass Water. As there is no discretionary portion of employer 401(k) contributions tied to financial performance, but represents a matching of employee contributions, no adjustment to reduce 401(k) contributions is necessary. However, the effect of adjustments to salaries discussed above will impact the allowable portion of 401(k) contribution in the forecast period. Accordingly, the Commission has reduced CSWR's forecast period Admin & Human Resources by an addition \$8,864 from \$4,952,971 to \$4,944,106.²³⁵

g. Travel Expense

CSWR included a total overhead Travel Expense of \$576,168 in the forecasted period.²³⁶ As noted above, Bluegrass Water then eliminated a portion of that travel expense as business development expense and allocated a portion of the travel expense to Bluegrass Water based on a sharing percentage. Bluegrass Water did not provide any breakdown of CSWR's total travel expense in historical periods, beyond identifying employees that incurred portions of them, and the total travel expense Bluegrass Water identified for CSWR in historical periods—\$109,830.90, \$314,563.19, and \$271,834.80 in 2018, 2019, and 2020, respectively—were significantly lower than the amount

²³⁴ Post-Hearing Brief of Bluegrass Water at 10.

²³⁵ Appendix D

²³⁶ Bluegrass Water's Response to Staff's Third Request for Information, Item 12a.

projected in the forecasted test year.²³⁷ Thus, the Commission is not able to find that Bluegrass Water's total projected travel expense in the forecasted test period is reasonable or that the costs should be recovered from Bluegrass Water's customers.

More importantly, Bluegrass Water did provide the actual costs for travel to Kentucky in 2019, 2020, and part of 2021. The records provided show that Bluegrass Water incurred \$26,199 in expense for travel to Kentucky in 2019, \$7,487 in expense for travel to Kentucky in 2020, and \$3,797 in expense for travel to Kentucky in 2021 through at least April 2021 (the records were provided in May 2021 and included costs dated May 2021 such that they must have included part of the cost through May). If the travel expense for employees Bluegrass Water identified as business development employees in each of those years is eliminated, then the records provided by Bluegrass Water show expense for travel to Kentucky in the amount of \$12,714 in 2019, \$4,820 in 2020, and \$3,797 in 2021 through at least April 2021. The Commission observes that the annualized expense for travel to Kentucky in 2021 would be about \$11,392.²³⁸

The Commission finds that travel expenses allocated to Bluegrass Water should be based on travel to, in, and from Kentucky, because those direct travel expenses will provide a more accurate estimate of costs incurred for the benefit of Kentucky customers. In addition, the Commission finds that the portion of travel expenses attributed to travel by business development employees should be removed in their entirety. Therefore, the Commission has reduced CSWR's forecast period travel expense in the SG&A budget by \$576,168 and directly allocated the allowable travel expense in the amount of \$11,392.

²³⁷ See Response to Staff's Fourth Request, Item 7, 4-PSC-07.xlsx.

²³⁸ $\$3,797.34 \times 12/4 = \$11,392.02$

h. Management Consulting

CSWR included Management Consulting expense of \$243,300 in its itemized budget for the forecast test period.²³⁹ Bluegrass Water was asked, among other things, to provide a list of all of the vendors that provided CSWR Management Consulting services in 2019 and 2020, to identify the costs paid to each vendor, and to explain what services CSWR received in consideration for that cost. Bluegrass Water provided a list of vendors used in the base period²⁴⁰, but failed to produce an explanation of the services provided by each vendor.²⁴¹ Rather, Bluegrass Water identified only broad categories within which the vendors allegedly provided services, including accounting support, system consulting, executive support, human resources consulting, communications and public relations consulting, legal and regulatory consulting, and environmental consulting.²⁴²

The only Management Consulting vendor for which detailed information was provided was Elasticity, which Bluegrass Water projected would be included both as part of direct expenses and allocated expenses from CSWR. However, as discussed above, Bluegrass Water failed to establish why any portion of the cost for Elasticity should be recovered from Bluegrass Water customers, much less why amounts that cannot be tied directly to Bluegrass Water itself should be recoverable.

²³⁹ Response to Staff's Second Request, Item 1(c), 2-PSC-01c.xlsx.

²⁴⁰ Response to Staff's Third Request, Item 12(b).

²⁴¹ See Response to Staff's Third Request, Item 12(b)(c); see also May 19, 2021 H.V.T. at 16:20:58; Response to Staff's Fourth Request, Item 7c, 4-PSC-07.xlsx (in which Bluegrass Grass was asked to provide a narrative description of the services provided by contractors but did not do so).

²⁴² See Response to Staff's Third Request, Item 12(b)(c).