

**COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION**

In the Matter of:

**ELECTRONIC APPLICATION OF)
BLUEGRASS WATER UTILITY)
OPERATING COMPANY, LLC FOR AN) Case No. 2022-00432
ADJUSTMENT OF SEWAGE RATES)**

**BLUEGRASS WATER UTILITY OPERATING COMPANY, LLC’S
RESPONSE TO ATTORNEY GENERAL’S MOTION TO COMPEL**

Bluegrass Water Utility Operating Company, LLC (“Bluegrass Water” or the “Company”), by counsel, and pursuant to 807 KAR 5:001 Section 5(2), and other applicable law, hereby responds to the motion to compel and to amend the procedural schedule filed by the Attorney General of Kentucky (“OAG”).¹ As explained below, the Public Service Commission (“Commission”) should deny OAG’s motion because the information sought does not relate to the relief Bluegrass Water seeks in this proceeding.

I. Introduction

Despite Bluegrass Water’s voluminous filings in its Application and in response to the Attorney General’s requests, two sets of data requests from the Commission, and the requests from intervenor Scott County, the OAG moves to compel responses to three requests:

- a. OAG 1-6 (for expenses never incurred by Bluegrass Water);

¹ OAG also requested that the Commission amend the procedural schedule. *See* Mot. at 6 (“Inasmuch as Supplemental Data Requests are due on May 26, 2023, the AG respectfully requests that it be granted additional time to file supplemental data requests upon the previously identified questions if the Commission rules favorably on its motion to compel.”). On May 19, the Commission issued an amended procedural schedule, extending the deadline for filing supplemental requests for information to Bluegrass Water until June 2, 2023. Accordingly, as a result of the prior amendment (and because the OAG’s Motion to Compel should be denied), the Commission’s request to amend the procedural schedule should be denied as moot.

- b. OAG 1-46 (for business development expenses never incurred by Bluegrass Water); and
- c. OAG 1-61 (seeking the financial records of an entity not under the Commission's jurisdiction).

See Mot. at 6.

As explained below, the OAG seeks information concerning expenses that Bluegrass Water has repeatedly made clear CSWR never allocated to Bluegrass Water. Consequently, the OAG's questions seek information regarding expenses that were never incurred by Bluegrass Water, instead of focusing on the evidence of expenses that (1) were incurred by Bluegrass Water and (2) are sought to be recovered in the proposed revenue requirement. It is those expenses—the ones included in the rate base—from which the Commission will determine whether Bluegrass Water's proposed rates are "fair, just and reasonable," and it is information regarding those actually-incurred expenses for which recovery is sought that is relevant to this proceeding. KRS 278.030(1). As is fully explained below, Bluegrass Water maintains its objections to OAG 1-6 and OAG 1-46. However, contemporaneously with this Response, Bluegrass Water files a supplementation of OAG 1-6 and OAG 1-46 and respectfully submits that it moots the OAG's Motion to Compel by providing CSWR expenses for the historical test year, including an indication as to which expenses were excluded from the allocation methodology.

Finally, the OAG's request about US Water, which is not subject to Commission jurisdiction and plays no role in management of Bluegrass Water, likewise seeks irrelevant information that is not discoverable. The Commission should therefore deny OAG's motion to compel.

II. OAG 1-6 & OAG 1-46: Costs and Expenses Excluded from Rate Case

OAG seeks to compel an answer to OAG 1-6. OAG 1-6 asked, “For CSWR and Bluegrass, provide calculations demonstrating that any charitable, lobbying/political, advertising, dues or membership fees paid to trade groups or law firms, and business development *costs have been removed.*” OAG 1-6 (emphasis added). The Motion to Compel filed by the OAG claims, “The testimony of Mr. Thies plainly states that certain costs were identified and excluded.” Mot. at 5.

The OAG’s Motion, because it implies that such costs were removed by Bluegrass Water, incorrectly restates the Direct Testimony of Brent Thies. Rather, such costs are excluded by CSWR and, therefore, never allocated to Bluegrass Water. Thus, it is impossible, as OAG now seeks, for Bluegrass Water to show that these costs were excluded - they were never there for Bluegrass Water to remove. Bluegrass Water’s Application, filed February 27, 2023, included the Direct Testimony of Thies. Thies’s Direct Testimony stated:

Q: DOES CSWR EXCLUDE ANY COSTS FROM THE POOL OF INDIRECT ALLOCATION EXPENSES?

A: Yes. CSWR incurs expenses that are excluded from the calculation of costs that are allocated to its subsidiaries. In addition to those costs such as advertising, lobbying and charitable donations, CSWR also excludes certain charges which are related exclusively to its business development activities.

Application Ex. 10 at 15: 14–19 (emphasis added).

OAG’s question does not accurately account for the testimony of Mr. Thies. The only expenses that Bluegrass Water seeks to recover in its proposed revenue requirement are expenses incurred by Bluegrass Water. As the testimony of Mr. Thies makes clear, Bluegrass Water’s Cost Allocation Manual indicates that the expenses identified in OAG 1-6 are not charged to Bluegrass Water (i.e., they are not allocated to Bluegrass Water). *See* Direct Testimony of Thies, Application

Ex. 10 at 15: 14-19 (explaining the types of expenses that are not allocated to CSWR’s subsidiaries, such as Bluegrass Water).

Thus, Bluegrass Water cannot provide evidence that the requested costs were “removed” from Bluegrass Water’s expenses; it is impossible to show removal of an expense that was never incurred. The OAG’s Motion to Compel is based upon the faulty premise that the relevant expenses were allocated to Bluegrass Water and then subsequently removed from the requested revenue requirement. However, the Direct Testimony of Brent Thies and the Cost Allocation Manual show this is not the case.

Viewed with this understanding, Bluegrass Water’s Response to OAG 1-6 was forthright and complete. Specifically, Bluegrass Water responded:

Bluegrass Water objects to this Request as overly broad, unduly burdensome, and seeking information outside the scope of this rate case or information about expenses that are not included in its rate base. Bluegrass Water also objects to the term “regulatory advocacy” as vague and unclear. Moreover, its legal expenses in this rate case are recoverable. Ultimately, utilities like Bluegrass Water “may demand, collect and receive fair, just and reasonable rates for the services rendered or to be rendered by it to any person.” KRS 278.030(1).

Subject to and without waiver of the foregoing objections, please see the Direct Testimony of Brent Thies, Application Exhibit 10 at page 15, line 14.

Resp. to OAG Request 1-6 (original emphasis removed; emphasis added).

Bluegrass Water directly pointed the OAG to the Direct Testimony of Mr. Thies that explained Bluegrass Water does not incur the types of expenses set forth in the question because they are not allocated to Bluegrass Water by CSWR.

Similar to OAG 1-6, OAG 1-46 asked:

Regarding business development expense, provide the following:

(a) Identify all business development costs that have been excluded from the pending application and explain how such costs were determined. Identify each

employee, including their department, and any outside contractors whose costs were excluded from this filing.

(b) Identify the accounts and amounts charged to business development expense annually for calendar years 2020 through 2022 and monthly for the period January, 2023 through March, 2023.

(c) For any employee whose costs are identified and charged to Business Development Expense during 2022, provide the employee's job description and all job descriptions for those employees whom the "Business Development" employee reports to.

(d) Confirm that no costs allocated through the Massachusetts formula are assigned to the business development function. If this is not confirmed, identify the amount of such common costs assigned to the Business Development function by month for the period January, 2020 through March, 2023.

OAG Request 1-46 (emphasis added). Bluegrass Water responded:

Bluegrass Water objects to this request as overly burdensome and not seeking information related to this proceeding. Subject to and without waiver of the foregoing objections, Bluegrass Water does not currently recover any business development expense through its rates, and Bluegrass Water does not seek to recover any business development expense in this proceeding. As to subparagraph (d), as was explained in the Direct Testimony of Brent Thies, Bluegrass Water no longer uses the Massachusetts formula to allocate costs.

Resp. to OAG 1-46 (original emphasis removed; emphasis added).

As with OAG 1-6, OAG 1-46 seeks to have Bluegrass Water provide discovery about expenses that were never incurred, rendering it impossible to show that such expenses of Bluegrass Water were "excluded" or "removed." However, OAG 1-46 goes further than that, seeking information about employees of third-party non-regulated entities, including, but not limited to, CSWR, for information about costs incurred by that third-party and for which Bluegrass Water bore no financial responsibility. Put simply, OAG 1-46 seeks information that is irrelevant, unduly burdensome, overly broad, and not proportional to the needs of this proceeding as it seeks to conduct discovery on expenses that were not incurred by Bluegrass Water.

OAG’s myopic focus on expenses excluded from corporate allocations and, therefore, from Bluegrass Water’s rate base, which are irrelevant, distract from what is relevant: the expenses Bluegrass Water included in the rate base. Bluegrass Water has provided substantial documentation of these expenses in both its Application and in response to data requests. After all, it is the expenses that Bluegrass Water incurred and included in its rate base that will determine whether its proposed rates are “fair, just and reasonable.” KRS 278.030(1). As the regulations recognize, the expenses that form the rate base are what is at issue. *Cf.*, 807 KAR 5:001 Section 16(4)(a) (requiring that applicants relying on a historical test period include 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.”). In sum, expenses that were never incurred by Bluegrass Water are irrelevant for the Commission’s decision in this proceeding: determining whether its proposed rates are “fair, just and reasonable.” KRS 278.030(1).

The Commission should thus reject OAG’s motion to compel further responses to OAG 1-6 and 1-46, both of which ask for information about expenses that were never incurred by Bluegrass Water, which seek irrelevant information, and the production of which would be unduly burdensome. Moreover, based on Bluegrass Water’s supplemental response to OAG 1-6 and OAG 1-46 the Attorney General’s Motion should be denied as moot.

III. OAG 1-61: Financial records of a company outside Commission’s jurisdiction

OAG 1-61 asked: “Provide the audited financial statements of US Water, LLC for the periods 2021 and 2022. If audited financial statements are not prepared, provide unaudited financial statements for the most recent two years.” OAG Request 1-61. Bluegrass Water

responded, “Bluegrass Water objects to this Request as seeking the records of a non-applicant that is not its direct parent.” Resp. to OAG 1-61 (emphasis removed).

OAG cites only two cases for this portion of its motion to compel. See Mot. at 3 n.1 (citing *In Re: Application of Kentucky-American Water Company for an Adjustment of Rates*, Case No. 2015-00418, Order dated June 17, 2016 at 6–10 & *Com. ex rel. Hancock v. South Central Bank Tel. Co.*, 528 S.W.2d 659, 660–62 (Ky. 1975)).

Kentucky-American plainly does not apply. The *Kentucky-American* decision did not even involve a request for the financial records of a parent company, but of other operating subsidiaries of the parent company where *Kentucky-American* “clearly opened the door for inquiry into the performance of American Water.” *In the Matter of: Application of Kentucky-American Water Company for an Adjustment of Rates*, Case No. 2015-00418, Order at 14 (Jun. 17, 2016). Here, Bluegrass Water has not opened the door for inquiry into US Water, LLC.

Hancock also does not apply. In *Hancock*, the Commission set rates based on AT&T’s consolidated capital structure, not based on the capital structure of the operating subsidiary, South Central Bell. 528 S.W.2d at 661. Here, the proposed revenue requirement is based on the capital structure of Bluegrass Water, not of US Water, LLC, and it was Bluegrass Water’s capital structure upon which the Commission set rates in Case No. 2020-00290. See Case No. 2020-00290, Aug. 2, 2021 Order, at 100-01; see also *In the Matter of: Application of BellSouth Telecommunications, Inc., d/b/a South Central Bell Telephone Company to Modify Its Method of Regulation*, Case No. 94-00121, Order at 70 (Nov. 14, 1994) (“The information requested is relevant only insofar as it affects the financial status of South Central Bell-Kentucky during the test period.”) (emphasis added); *In the Matter of Joint Application of NiSource Inc., New NiSource Inc., Columbia Energy Group and Columbia Gas of Kentucky for Approval of a Merger*, Case No. 2000-00129, Order at

37 (Jun. 30, 2000) (“Should the books and records of [Columbia of Kentucky’s] parent company or of any other company with the group created by the merger become relevant to the jurisdictional rates or tariffed services of Columbia of Kentucky, such relevant books and records will also be made accessible to the Commission and its Staff at such time and place as it designates.”) (emphasis added). Moreover, it is evident that it is Bluegrass Water’s capital structure that is relevant to this proceeding based upon the Commission’s instructions to Bluegrass Water to work towards a 50:50 debt to equity capital structure.²

Indeed, in a Commission Order that is factually on point, the Commission properly denied discovery about a non-regulated parent entity. Specifically, it held that “PPL Corp. is not a utility subject to the Commission’s jurisdiction and is under no obligation to assist KU in financing the proposed projects. . . . Thus, the information request by KIUC concerning the source of short-term debt available to PPL Corp., as well as any studies that address PPL Corp.’s financing requirements and plans, is not relevant to any issue in this case and does not appear to be calculated to lead to the discovery of relevant information. Therefore, such information is not discoverable.” *In the Matter of: Application of Kentucky Utilities Company for Certificates of Public Convenience and Necessity and Approval of its 2011 Compliance Plan for Recovery by Environmental Surcharge*, Case No. 2011-00161, Order at *10 (Sept. 1, 2011).

As Bluegrass Water has explained, US Water is a legally distinct entity from Bluegrass Water, and it was Bluegrass Water (without US Water’s assistance) that recently obtained debt financing to move toward the goal of a 50:50 debt to equity capital structure as instructed by the Commission. US Water’s capital structure has no bearing on Bluegrass Water’s finances or its

² See *In the Matter of Electronic Proposed Acquisition by Bluegrass Water Utility Operating Company, LLC*, et al., Case No. 2019-00104, Aug 14, 2019 Order, at 18.

capital structure. Nor does US Water's financial position have any bearing on the relief Bluegrass Water seeks here.

Importantly, as mentioned, US Water is a legally distinct entity. In this regard, US Water is simply an investor in CSWR - Bluegrass Water's parent company. As such, it would be no different than OAG attempting to obtain discovery on John Doe, a shareholder of American Water Works, simply because American Water Works owns a subsidiary in Kentucky. Because US Water is simply an investor in CSWR, Bluegrass Water and CSWR have no information or documents responsive to OAG's request. Just as American Water Works would not possess such information of its shareholders, Bluegrass Water and CSWR do not possess documents regarding the capital structure of its investors. CSWR is the parent company that effectuates all management decisions on the operations in Kentucky. As a result, discovery regarding the finances and capital structure of US Water are irrelevant to the operations of CSWR, as well as Bluegrass Water.

WHEREFORE, Bluegrass Water respectfully asks the Commission to deny OAG's motion to compel further responses to OAG 1-6, OAG 1-46, and OAG 1-61, and also deny its motion to amend the procedural schedule as moot.

This the 26th day of May, 2023.

Respectfully submitted,

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Certification

I hereby certify that a copy of this filing has been served electronically on all parties of record through the use of the Commission's electronic filing system, and there are currently no parties that the Commission has excused from participation by electronic means. Pursuant to the Commission's July 22, 2021 Order in Case No. 2020-00085, a paper copy of this filing has not been transmitted to the Commission.

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