

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

**POST-HEARING RESPONSE BRIEF OF
BLUEGRASS WATER UTILITY OPERATING COMPANY, LLC**

November 10, 2023

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BLUEGRASS WATER’S POST-HEARING RESPONSE BRIEF

Bluegrass Water Utility Operating Company, LLC (“Bluegrass Water” or the “Company”), by counsel, hereby files its Response Brief to the post-hearing briefs filed by the Office of the Attorney General (“OAG”) and Scott County, Kentucky (“Scott County”). As set forth below and more fully in its Post-Hearing Brief filed on October 27, and as the record otherwise demonstrates, the Commission should approve the Company’s application to adjust its wastewater rates, which will result in a 6.5% increase to Bluegrass Water’s unified rate schedule,¹ because the proposed rates are fair, just and reasonable. Bluegrass Water filed its Post-Hearing Brief in this matter on October 27, 2023, and respectfully incorporates that brief as if fully set forth herein.

I. INTRODUCTION

The Commission should reject the arguments of the Attorney General² and Scott County because the proposals made by the OAG and Scott County do not ensure that Bluegrass Water would be able to recover a fair rate that would preserve Bluegrass Water’s financial integrity.³

¹ (Bluegrass Water’s Notice of Rate Implementation, at Exhibit 1 (filed Nov. 1, 2023).)

² As noted in Bluegrass Water’s Post-Hearing Brief, Bluegrass Water agrees with the OAG’s proposed reduction in insurance expense.

³ See *In the Matter of: Application of Big Rivers Electric Corporation for a General Adjustment in Rates Supported by Fully Forecasted Test Period*, Case No. 2013-00199, 2014 Ky. PUC LEXIS 331, at *29 (Apr. 25, 2014) (“However, it is not the Commission’s intent, either explicitly or implicitly, to undermine Big Rivers’ financial integrity or force Big Rivers to take actions that

Preserving Bluegrass Water’s financial integrity is imperative to allowing Bluegrass Water to achieve its mission of bringing safe, reliable, and environmentally responsible water resources to every community. Preserving Bluegrass Water’s financial integrity is also imperative to satisfy the constitutional standard that guarantees a utility is able to charge rates allowing it to earn a fair return on its investment.⁴ Indeed, to allow Bluegrass Water to continue achieving 100% compliance with its environmental compliance agreements, a fair, just, and reasonable rate is necessary to ensure that the required investments can continue to be made in Kentucky’s communities.⁵

The challenges created by the small and neglected wastewater facilities purchased by Bluegrass Water are due, in large part, to the fact that the prior owner-operators of the systems lacked the technical, managerial, and financial resources to properly operate the systems. This lack of managerial and financial resources often included the failure to request a rate that would allow for the investment required to properly operate the systems or the recovery of reasonable operating costs.⁶

would thwart its ability to improve its financial and credit standings.”); *In the Matter of Application of Big Rivers*, Case No. 2012-00535, 2013 Ky. PUC LEXIS 938, at *33 (Oct. 29, 2013) (issuing a decision that enabled the utility “to avoid a default on its debts, continue to provide safe and reliable electric service to the 112,000 customers served by its member-owners, be able to implement its mitigation plan, and possibly attract new load.”).

⁴ See *Bluefield Water Works & Improvement Co. v. Public Serv. Comm’n*, 262 U.S. 679, 690 (1923) (“Rates which are not sufficient to yield a reasonable return on the value of the property used at the time it is being used to render the service are unjust, unreasonable and confiscatory, and their enforcement deprives the public utility company of its property in violation of the Fourteenth Amendment.”); *Fed. Power Comm’n v. Hope Natural Gas Co.*, 320 U.S. 591 (1944) (“By such a procedure the utility is made whole and the integrity of the investment is maintained.”).

⁵ (See Bluegrass Water’s Supplemental Response to PSC 2-3 (filed Sept. 15, 2023); Bluegrass Water’s Exhibit PSC 2-3, at 2 (filed Sept. 15, 2023).)

⁶ (See Bluegrass Water’s Supplemental Response to PSC 2-3 (filed Sept. 15, 2023).))

In fact, the Commission itself has recognized that a contributing problem to the water and wastewater crisis in the Commonwealth is the failure of the managers of small, rural water and wastewater utilities to request rate increases when needed. This conclusion led to the Commission recommending a required periodic rate review of smaller water districts in the Commonwealth “to ensure that revenue is adequate to properly operate the system over the long term.”⁷ Specifically, the Commission’s investigation determined:

[T]he board and managers of small, rural water utilities will take extraordinary steps to avoid coming to the Commission for a rate increase, opting instead to try to operate on razor-thin margins. A utility that fails to increase revenues to match rising expenses cannot maintain its financial integrity, especially over the long-term. Moreover, when a utility delays increasing rates by covering operational expenses with depreciation reserves or through other funding mechanisms, true financial needs are masked.⁸

As Scott County acknowledged in its Brief, the last time a rate proceeding was filed for the Delaplain service area was 2010.⁹ If the prior operator of the Delaplain system had complied with the Commission’s recommendation for a rate review at least every three years, the Delaplain system would have been subject to four rate proceedings prior to the filing of this case by Bluegrass Water. Similarly, the Woodland Acres system has not been subject to a rate proceeding in over 30 years, and would have been subject to at least ten rate proceedings prior to the current case.¹⁰ So, while the OAG and Scott County focus the ire of their gradualism arguments on Bluegrass

⁷ *In the Matter of: Electronic Investigation Into Excessive Water Loss by Kentucky’s Jurisdictional Water Utilities*, Case No. 2019-00041, Order, Appendix L, *Confronting the Problems Plaguing Kentucky’s Water Utilities*, at iv (Nov. 22, 2019).

⁸ *Id.* at 16.

⁹ SC Br. at 8 (“Prior to the application in the instant case by Bluegrass Water, the most recent rate adjustment application for the Delaplain service area was Case No. 2010-00349, an application filed by Delaplain Disposal Company’s prior owner.”).

¹⁰ (Confidential Direct Testimony of Brent Thies, Application Exhibit 10, 9:9-10 n.1 (filed Feb. 27, 2023).)

Water, the long history of neglect and inattention leading to this point was not of Bluegrass Water's making. Bluegrass Water's mission and mandate is to remediate these systems, and the rates it has proposed in this proceeding are vital to that objective.

The Commission should therefore approve Bluegrass Water's proposed rates, including moving all systems to Bluegrass Water's unified rate, which will ensure that Bluegrass Water has the financial integrity to serve Kentucky's communities in both the short and long-term. The unified rates requested by Bluegrass Water will allow Bluegrass Water to continue in its mission to provide safe, reliable, and environmentally responsible services, benefitting not only its customers and the environment, but also improving the local communities served by Bluegrass Water by enhancing value and driving outside investment and growth.¹¹

II. THE COMMISSION SHOULD ADOPT BLUEGRASS WATER'S PROPOSED UNIFIED RATE SCHEDULE.

The Commission should reject Scott County's proposed phase-in approach, as well as the OAG's arguments related to a possible phase-in approach. Indeed, the OAG even admits that it has never proposed a phase-in approach, nor has the OAG provided any testimony or evidence regarding Scott County's proposed phase-in, despite ample opportunity to do so.

Scott County's proposed "phase-in" should be rejected because it violates Kentucky statute. Scott County requests "interim rates for the Delaplain service area."¹² Scott County asks for special treatment for the Delaplain service area, which plainly violates Kentucky statutes (and general principles of ratemaking). KRS 278.170(1) provides: "No utility shall, as to rates or

¹¹ (See Bluegrass Water's Supplemental Response to PSC 2-3 (filed Sept. 15, 2023); Bluegrass Water's Exhibit PSC 2-3, at 2 (filed Sept. 15, 2023), at 4.)

¹² SC Brief at 21 (emphasis added).

service, give any unreasonable preference or advantage to any person . . . or establish or maintain any unreasonable difference between localities or between classes of service for doing a like and contemporaneous service under the same or substantially the same conditions.” Indeed, as is further explained below, Scott County asks for even the systems *in Scott County* to be treated differently.

Not only does Scott County advocate for special treatment for the Delaplain service area in violation of Kentucky law, Scott County requests that all other ratepayers pay for that special treatment. “Any surcharge that amortizes uncollected revenue from a phase-in should be recovered from all Bluegrass Water sewer customers.”¹³ Certainly, no other Bluegrass Water customers have been given the sort of unlawfully discriminatory treatment for which Scott County advocates; nor would it be fair or lawful for the Commission to endorse this special treatment. The sewer services that Bluegrass Water provides to the Delaplain service area are just like the sewer services it provides to other Bluegrass Water customers around the Commonwealth, including the Longview service area, which is also in Scott County. Moving customers to a unified rate schedule is integral to the Company’s ongoing efforts to build economies of scale that will better serve the multitude of previously independent, neglected systems that are now under the unified and watchful management of Bluegrass Water. Requiring customers of other systems to pay the Delaplain system’s share of the costs of responsible management, however, is utterly unfair to those other customers located outside (and inside) Scott County. It is corrosive to the Company’s efforts to build a unified system with economies of scale, and it is unlawfully discriminatory because it treats like customers differently for like services.

¹³ *Id.* at 22.

As was also explained in Bluegrass Water’s Post-Hearing Brief, Scott County’s proposals in this proceeding have largely eschewed the interests of Scott County’s residential customers by focusing primarily on the commercial customers in the Delaplain service area. This is evidenced by Scott County’s proposals in this proceeding, including its request that the residential class be allocated a larger proportion of the revenue requirement than proposed by Bluegrass Water. This is made all the more obvious by the fact that Scott County makes absolutely no mention of, and therefore no argument on behalf of, the customers of the Longview system, which is likewise located in Scott County, but which consists solely of residential customers.

As a result, Scott County actually advocates for unequal treatment of its own citizens, with the residential customers in Longview (i) not receiving any phase-in; (ii) paying a portion of rates that Bluegrass Water seeks to allocate to the commercial customers; and (iii) paying for the costs associated with the benefits received solely by the Delaplain system. All of Scott County’s arguments should be viewed through this lens, and the Commission should resoundingly reject Scott County’s proposals.

Similarly, the Commission should reject the OAG’s positions regarding a phase-in. As an initial matter, the OAG acknowledges it has never put forth a proposal regarding a phase-in of rates, nor has its expert provided any testimony regarding Scott County’s proposal.¹⁴ The Commission should reject any arguments related to a phase-in for this reason alone; they have no support in the record.

¹⁴ See OAG Br. at 5 (“While it is true that the Testimony of David Dittmore did not include a formal recommendation that any rate increases be phased-in, this silence is not indicative of opposition to such an approach.”).

Moreover, the Commission should not endorse the OAG’s suggestion that “the gradual phase-in of rates need not be accompanied by an associated regulatory asset accumulating the difference between the lower ‘phase-in’ rate and a hypothetical rate.”¹⁵ Indeed, as was set forth in Bluegrass Water’s Post-Hearing Brief, to accept this premise would result in an unconstitutional taking.¹⁶ The rate is not “hypothetical,” as the OAG alleges, but is a phase-in of the rates designed to recover the Commission’s authorized revenue requirement. That means Bluegrass Water must be given an opportunity to recover that revenue requirement through rates. In fact, the very precedent cited in OAG’s Post-Hearing Brief recognizes this principle: “During this two-year [phase-in] period, the water division’s rates will be adjusted to ensure that Mountain District has the opportunity to collect rates that produce the total revenue requirement determined reasonable herein.”¹⁷

As the Commission reasoned in Bluegrass Water’s prior rate case:

[T]here 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 costs, which all systems will experience at some point.¹⁸

¹⁵ *Id.* at 5 n.17.

¹⁶ Bluegrass Water’s Post-Hearing Brief at 52.

¹⁷ *In the Matter of Mountain Water District for an Adjustment of Water and Sewer Rates*, Case No. 2014-00342, 2015 Ky. PUC Lexis 927, at *46 (Oct. 9, 2015).

¹⁸ *In the Matter of: Electronic Application of Bluegrass Water Utility Operating Company, LLC for an Adjustment of Rates and Approval of Construction*, Case No. 2020-00290, (Aug. 2, 2021) Order, at 13.

Consistent with the determinations made in Bluegrass Water's last rate case, the Commission should adopt Bluegrass Water's proposed rates as fair, just, and reasonable, including moving all customers to the unified rate without phase-in.

III. THE COMMISSION SHOULD ACCEPT BLUEGRASS WATER'S EVIDENCE RELATED TO BUSINESS DEVELOPMENT EXPENSES.

The Commission should reject the OAG's argument that further reductions to the revenue requirement should be made for business development expenses. The OAG does not point to a single expense contained anywhere in the record that it believes should have been properly excluded as a business development expense, but was not.¹⁹ Nor does OAG acknowledge that in an Errata, its witness, Mr. Dittmore, deleted his previous assertion in testimony that the Company had failed to properly exclude business development expense.²⁰ As the Company explained in its Post-Hearing Brief, the record is clear that the Company appropriately excluded business development expenses, and it also explained its process for how Bluegrass Water accomplished the exclusion.²¹ The Company's Cost Allocation Manual detailed its process, and the time sheets its employees complete demonstrate the reasonableness of its approach.²²

The Commission should further reject the Attorney General's request that the Commission require an internal time study, the cost of which would far outweigh any benefit.²³ Bluegrass Water's mechanisms for keeping time records of employees, Cost Allocation Manual, and

¹⁹ OAG Br. at 11-12.

²⁰ (David Dittmore Errata Filing (filed Sept. 18, 2023).)

²¹ (Bluegrass Water's Post-Hearing Br. 31-32; *see also*, Bluegrass Water's Confidential PSC Exhibit 3-18 (filed May 26, 2023).)

²² (*See* Bluegrass Water's Exhibit PSC 1-1 (filed Apr. 21, 2023); *see also* Direct Testimony of Brent Thies, Application Exhibit 10, 12:4-5 (filed Feb. 27, 2023).)

²³ OAG Br. at 12.

removing a set amount of costs for executives is a reasonable approach for ensuring that Bluegrass Water properly removes all business development expenses from its proposed revenue requirement.

Indeed, just like Mr. Dittmore's testimony reflected inaccuracies and misunderstandings regarding business development expenses necessitating an Errata filing, the OAG's arguments and request for the time study reflect a misunderstanding regarding how Bluegrass Water is allocated costs by CSWR, despite repeated attempts to explain to the OAG that Bluegrass Water cannot show that it "excluded" costs it never incurred.²⁴ The record shows that it is not Bluegrass Water's excluded business development expenses that "defy logic"; instead, the OAG's argument defies the evidence.

The OAG fails to recognize or acknowledge that CSWR has multiple employees whose primary responsibility is "business development," but none of the expenses related to those employees are ever allocated to Bluegrass Water (or any other operating affiliate).²⁵ As a result, the citations in the OAG's Post-Hearing Brief regarding "excluded" business development costs

²⁴ (Bluegrass Water's Response to OAG's Motion to Compel (filed May 26, 2023).)

²⁵ (Bluegrass Water's Exhibit OAG 2-26 (filed June 22, 2023); *see also* Bluegrass Water's Response to OAG 1-53 (filed May 16, 2023); Bluegrass Water's CONFIDENTIAL Exhibit OAG 1-53 (filed May 16, 2023); Direct Testimony of Brent Thies, Application Exhibit 10, 15:14-19 (filed Feb. 27, 2023) ("CSWR incurs expenses that are excluded from the calculation of costs that are allocated to its subsidiaries."); Bluegrass Water's Exhibit PSC 1-1 (Cost Allocation Manual) (filed Apr. 21, 2023); Bluegrass Water's Response to OAG 1-46 (filed May 12, 2023) ("Bluegrass Water does not currently recover any business development expense through its rates, and Bluegrass Water does not seek to recover any business development in this proceeding."); Bluegrass Water's Exhibit OAG 1-124 (filed May 12, 2023) (detailing Business Development Exclusions); Bluegrass Water's Response to OAG 2-23 (filed Jun. 16, 2023) (explaining that the "Company defines business development activities as the expenses of an employee whose primary purpose is the sourcing of new systems. Also included in business development expense is a portion of executive salary and expense associated with the supervision of those employees."); Bluegrass Water's Exhibit OAG 2-30 (filed Jun. 16, 2023).)

are not an accurate representation of the business development expense incurred by CSWR that have been excluded from recovery in this proceeding. Simply put, the OAG's Post-Hearing Brief fails to acknowledge or account for the employees who are primarily responsible for business development at CSWR and whose expenses were never allocated to Bluegrass Water. Therefore, those costs cannot be "excluded" from Bluegrass Water's books and records. The Commission should reject the OAG's invitations related to business development expenses, including a required time study, because the OAG's arguments are based upon the OAG's own continued miscomprehension of the CSWR Cost Allocation Manual and the evidence presented in this proceeding, rather than a failure to properly account for business development expenses.

IV. THE COMMISSION SHOULD ADOPT THE COMPANY'S ACTUAL CAPITAL STRUCTURE.

The Commission should approve rates in this proceeding based upon Bluegrass Water's actual capital structure, and it should reject the OAG's proposed hypothetical capital structure. For the reasons fully explained in Bluegrass Water's Post-Hearing Brief, the Commission should set rates based upon Bluegrass Water's actual capital structure, which reflects an amount of debt undertaken by Bluegrass Water that its current cash flows could support. While the OAG argues that Mr. D'Ascendis's proposed capital structure is "hypothetical," the evidence presented in this case, including the evidence of the financing transaction presented here and in the post-case file in Case No. 2022-00217, make clear that Bluegrass Water does, indeed, have outstanding debt. Setting rates based on the actual capital structure will allow Bluegrass Water to maintain its financial integrity, as well as provide the necessary cash flows that may allow Bluegrass Water to achieve the committed 50/50 capital structure. Conversely, Mr. Dittmore's proposed hypothetical structure, which is based on pure speculation and theories that academic literature has largely

discredited, will not ensure Bluegrass Water's financial integrity, nor does it seek to provide the additional cash flows that lenders have indicated are necessary for additional debt financings.

Finally, much like with Business Development expenses, the OAG once again makes arguments in its Post-Hearing Brief that are not supported by the evidence of record. Bluegrass Water did not "repeatedly fail[] to disclose" any financial information related to US Water Systems, LLC. As Bluegrass Water responded to Bluegrass Water's Supplemental Response to OAG 1-61, Bluegrass Water does not have the financial information regarding US Water Systems that the OAG requested, nor does Bluegrass Water have control over that information. Bluegrass Water cannot provide the OAG with information Bluegrass Water does not have. Moreover, Bluegrass Water provided the audited financials of CSWR, which include the full legal name of CSWR's parent entity: US Water Systems, LLC.²⁶ Similar audited financials were provided in Case No. 2020-00290, which likewise disclosed the full legal name of CSWR's parent entity. Notably, those previously-provided audited financials also explicitly recognized that US Water Systems, LLC has been CSWR's parent entity since November 19, 2018, which was prior to Bluegrass Water purchasing its first system in Kentucky."²⁷ In other words, contrary to OAG's assertion, no change of control occurred; CSWR's owner has been the same since 2018. Bluegrass Water makes no attempt to obfuscate the full legal name of any entity; it was provided in direct response to the OAG's requests for information (and in Case No. 2020-00290). Once again, the OAG simply failed to account for all of the evidence that has been presented in this proceeding.

²⁶ (Bluegrass Water's Confidential Exhibit PSC 3-27(a) at 9 (filed Jun. 16, 2023).)

²⁷ (Bluegrass Water's Application, Exhibit 7 at 4, Case No. 2020-00290 (filed Oct. 1, 2020).)

V. THE COMMISSION SHOULD AUTHORIZE BLUEGRASS WATER TO ACCOUNT FOR ALL REAL PROPERTY AT THE DELAPLAIN SYSTEM.

The Commission should authorize Bluegrass Water to include an adjustment based upon the prior owner's failure to properly account for its property values when maintaining its books and records. Scott County's arguments regarding the Delaplain land appraisal reflects numerous misunderstandings of Bluegrass Water's request. First, Bluegrass Water does not seek to "increase" the value of any land or land rights originally accounted for by the prior owner of the Delaplain system.²⁸ Rather, "previous owners often fail to account for land values and easements on their books and records."²⁹ Thus, Bluegrass Water simply seeks to ensure that its books and records are as accurate and complete as possible due to the failures of prior owners to properly account for land values. With the prior owners failing to accurately maintain their accounts, Bluegrass Water simply seeks to use a prorated value of the appraised value to conform with the Uniform System of Accounts.

Indeed, when taking a holistic view of the Delaplain journal entries cited by Scott County, its arguments related to the balance of contributions in aid of construction ("CIAC") quickly fall apart. At the time of transfer, the books and records indicated that the value of the "Land & Land Rights" at Delaplain was \$0.00.³⁰ Since real property is a non-depreciable asset, and because the

²⁸ See SC Br. at 9.

²⁹ (Rebuttal Testimony of Brent Thies, 10:5-6 (filed Aug. 11, 2023).)

³⁰ *In the Matter of: Electronic Proposed Acquisition by Bluegrass Water Utility Operating Company, LLC and the Transfer of Ownership and Control of Assets by: Delaplain Disposal Company, Herrington Haven Wastewater Company, Springcrest Sewer Company, Inc., and Woodland Acres Utilities, Inc.*, Case No. 2020-00297, Post-Case File, Bluegrass Water journal entries for Delaplain, Herrington Haven, and Springcrest, (filed March 25, 2021).

The books and records of River Bluffs at the time of acquisition likewise reflect that the prior owner failed to properly account for land values and land rights, with the prior owner apparently

Delaplain Disposal System owned land and land rights at the time of purchase, it should be indisputable that the prior owner of the Delaplain system failed to account for the value of real property and easements. This is buttressed by the testimony of John Spanos, who conducted a field visit of Delaplain in conjunction with his Depreciation Study, and testified at the hearing in this matter that the plant values maintained by Bluegrass Water were consistent with what he would expect based upon his visual inspection and his experience.³¹ As a result, the evidence shows the Land & Land Rights at Delaplain were never properly accounted for by the prior owner. Thus, Bluegrass Water does not seek to “increase” the value of the land from when it was first booked by the prior owners; Bluegrass Water seeks to properly record a value of the land and accompanying land rights for the first time. The Commission should authorize and encourage proper bookkeeping and authorize the requested acquisition adjustment based upon the requested prorated value from the land appraisal conducted by Bluegrass Water.

VI. THE COMMISSION SHOULD APPROVE THE REQUESTED ACQUISITION ADJUSTMENTS.

As was explained in Bluegrass Water’s Post-Hearing Brief, whether judged under the Delta Test or KRS 278.295, Bluegrass Water has met the applicable burden of proof for requesting an acquisition adjustment.³² Both the OAG and Scott County object to recovery of an acquisition

not even maintaining an Account 310 for Land & Land Rights, let alone that account reflecting a value in excess of \$0.00. *See In the Matter of: Electronic Proposed Acquisition by Bluegrass Water Utility Operating Company, LLC and the Transfer of Ownership and Assets by Center Ridge Water District, Inc.; Joann Utilities, Inc.; and River Bluffs, Inc.*, Bluegrass Water’s Post-closing Accounting Entries for Joann Estates and River Bluffs, Case No. 2019-00360 (filed May 29, 2020).

³¹ (See Direct Testimony of John Spanos, Application Exhibit 14, 7:14-17 (filed Feb. 27, 2023) (explaining that he toured Delaplain, among Bluegrass Water’s other systems, in his field review); *see also* Hearing Testimony of John Spanos, Written Log, 10:18:02 AM to 10:18:48 AM (filed Nov. 8, 2023).)

³² Bluegrass Water’s Post-Hearing Brief at 18-21.

premium, challenging various factors of the Delta Test. Scott County, without any support, even argues that the Delaplain purchase was not an “arms-length” transaction.³³ The parties to the transaction were not related, and there is no evidence to even suggest that they were; this factor of the Delta Test is easily met.³⁴ Similarly, the OAG’s claim that ratepayers have failed to see economies of scale as a result of the transaction is also easily disproven by the record, which such arguments were fully set forth in Bluegrass Water’s Post-Hearing Brief and are incorporated herein.³⁵

The OAG and Scott County’s remaining arguments related to the requested acquisition adjustments reflect a fundamental misunderstanding of the Delta Test and the Commission’s prior precedent. Primarily, the OAG and Scott County argue that because Bluegrass Water has sought rate increases, Bluegrass Water cannot show that there is not an impact on rates. These arguments are misplaced because the Commission must perform its analysis from the standpoint as though the prior owner had properly operated the system, including making necessary investments; indeed, without analyzing from this view, it would be impossible to ever meet the Delta Test. It necessarily costs more to operate a system correctly than it does to allow a system to fall into disrepair and out of compliance with environmental regulations. The Commission has effectively recognized as such: “To meet this standard, [an applicant] must show that the premium paid plus

³³ SC Br. at 12.

³⁴ *In the Matter of: Electronic Application of Navitas Ky NG, Johnson County Gas Company, and B&H Gas Company for Approval of Acquisition, Transfer of Ownership, and Control of Natural Gas Utility Systems*, Case No. 2020-00396, 2021 Ky. PUC LEXIS 519, at *13 (Apr. 27, 2021) (“Applicants are unrelated parties and therefore have established that the purchase price was established at arm’s-length.”).

³⁵ See generally Bluegrass Water’s Post-Hearing Brief (filed Oct. 27, 2023).

the cost of restoration does not exceed what otherwise would have been incurred by the utility to remedy its operating deficiencies.”³⁶

When viewed appropriately, as well as with an overarching view of the policy evinced by the original *Delta* decision, Bluegrass Water has met its burden of proof. Indeed, while the Commission implemented factors, it should not be lost that the factors were intended to implement overall policy goals. “[I]f it is demonstrated that the acquisition at a cost above book value is in the public interest, the utility should be allowed to recover its investment.”³⁷ That acquisition adjustments should be authorized to serve the public interest is further codified in KRS 278.295, which specifically references the overall policy goals of KRS 224A.300(1).³⁸

Ultimately, in the order creating the “Delta Test,” the Commission authorized Delta Natural Gas to recover an acquisition adjustment based upon the following:

At the time Delta purchased Gas Service Co., the service was substandard. Poorly constructed and inadequately maintained gas lines had severe leakage problems and service was unreliable. Delta had been encouraged by the Commission to acquire Gas Service Co. and, as a part of its application to acquire Gas Service Co., Delta made a commitment to invest heavily in upgrading the facilities to [e]nsure a reliable gas supply for its consumers. . . . The primary evidence in support of the acquisition adjustment presented by Delta is the improved quality of service. The Commission cannot disagree with Delta’s contention that safety and reliability of gas service in the acquired area has improved substantially. Delta has done a commendable job in renovating and operating the acquired system. In this instance,

³⁶ *In the Matter of: Adjustment of Rates of Kentucky-American Water Company*, Case No. 2004-00103, Order at 8 (Feb. 28, 2005), available at: https://psc.ky.gov/psccef/2004-00103/PSC_efs/03012005/200400103_02282005.pdf.

³⁷ *In the Matter of: An Adjustment of Rates of Delta Natural Gas Company, Inc.*, Case No. 9059, Order, at 3 (Sept. 11, 1985), available at: https://psc.ky.gov/order_vault/Orders_1980-1988/Orders_1985/19009059_09111985.pdf.

³⁸ KRS 224A.300(1) (“The General Assembly finds that it is necessary to encourage regionalization, consolidation, and partnerships among governmental agencies, and private parties when appropriate, with the goal of making public water and wastewater treatment secure for all Kentuckians. This is accomplished through the maximization of financial, managerial, and technical resources and the protection of source water of the Commonwealth.”).

the Commission is of the opinion that Delta has proven that the overall operations and financial condition of the utility have benefits as a result of its acquisition and it should be allowed a return on its full investment, including the plant acquisition adjustment. Therefore, the Commission will include the plant acquisition adjustment in rate base and allow the amortization of the plant acquisition adjustment in determining the cost of service and revenue requirements herein.³⁹

The circumstances giving rise to the approval of the acquisition adjustment in the *Delta* proceeding are virtually indistinguishable from the facts presented here. It cannot be questioned that the systems purchased by Bluegrass Water suffered from severe operational problems that created service issues. The Engineering Reports presented in this proceeding and the history of environmental compliance of each of the systems speak for themselves. Bluegrass Water has committed significant time and investment in Kentucky communities to ensure that wastewater services may be provided in a safe and reliable manner that complies with environmental regulations. Further, the systems purchased by Bluegrass Water are frequently recommended by Kentucky's Division of Water, as they recognize that the systems suffer from operational neglect creating environmental violations. Even the OAG acknowledges that Bluegrass Water "should be commended for its work in rehabilitating some of the Commonwealth's troubled small wastewater treatment systems."⁴⁰

³⁹ *In the Matter of: An Adjustment of Rates of Delta Natural Gas Company, Inc.*, Case No. 9059, Order, at 5 (Sept. 11, 1985), available at: https://psc.ky.gov/order_vault/Orders_1980-1988/Orders_1985/19009059_09111985.pdf; see also *In the Matter of: Electronic Application of Navitas Ky NG, Johnson County Gas Company, and B&H Gas Company for Approval of Acquisition, Transfer of Ownership, and Control of Natural Gas Utility Systems*, Case No. 2020-00396, 2021 Ky. PUC LEXIS 519, at *14 (Apr. 27, 2021) ("The acquisition is expected to result in overall benefits in the financial and service aspects of the operation of B&H and Johnson County. The Commission expects Navitas KY's operation of these systems to reduce costs, improve safety, and increase regulatory compliance. Therefore, the Commission finds that Navitas KY has satisfied the requirements of the Delta Test.").

⁴⁰ OAG Br. at 3.

And finally, much of the acquisition adjustment requested in this proceeding is not based upon an alleged purchase price “premium,” but rather the result of poor accounting practices or neglect of the prior owners of the systems, which are indicative of the problems associated with those systems. For example, the acquisition adjustment related to land values is intended to record on the books and records of those systems land rights that were never properly accounted for at all by the prior owners; as explained above, the books and records of the Delaplain Disposal System included a land value of \$0.00, which cannot possibly be correct. Failure to allow purchasers to correct such errors would only allow the poor accounting practices to continue and would only serve as a penalty to those who purchase small, distressed water and wastewater systems. Such a result does not serve the public interest, nor does it serve the purposes evinced in KRS 224.330(1) or the Delta Test itself. In fact, the Delta Test application endorsed by the OAG and Scott County could actually serve as a disincentive for the purchase of small, distressed systems from owners who lack the technical, managerial, and financial resources to properly run the systems. Not only would this turn the policy of the Delta Test on its head, it would hinder the regionalization and consolidation of Kentucky’s fragmented water and wastewater systems, an outcome both the Commission and General Assembly have indicated is desirable and beneficial.

Bluegrass Water has met its burden for each element of the Delta Test, and awarding the requested acquisition adjustment would best serve the public interest.

VII. CONCLUSION

For the reasons set forth herein, as more fully set forth in its October 27 Brief, and as otherwise established in this proceeding, Bluegrass Water respectfully requests that the

Commission grant its Application for an Adjustment of Sewer Rates and permit it to adjust its wastewater rates.

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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