

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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

**ATTORNEY GENERAL'S MOTION TO COMPEL AND TO AMEND
PROCEDURAL SCHEDULE RELATED TO DISCOVERY**

The Attorney General of the Commonwealth of Kentucky (“AG”), through his Office of Rate Intervention, hereby moves the Commission to issue an order compelling petitioner Bluegrass Water Utility Operating Company, LLC (“Bluegrass” or “the Company”) to provide an adequate, good faith response to the AG’s Data Requests.

In support of this motion, counsel states that on April 28, 2023, the AG filed its First Set of Data Requests. On May 12, 2023, Bluegrass filed its responses to some of those requests. Bluegrass requested additional time to respond to certain requests by Motion on May 12, 2023. The AG agreed to grant additional time, and the supplemental responses were made on May 16, 2023.

The AG has reviewed Bluegrass’s response to the First Set of Data Requests and finds Bluegrass’s responses to some of the requests to be legally insufficient. Bluegrass failed to respond to certain requests or objected to producing the requested information. On May 15, 2023, the AG informed counsel for Bluegrass of its opinion that supplemental responses were required for certain requests. On May 18, 2023, counsel for Bluegrass responded to the AG asserting its position related to the requests at issue and indicated

that it would not comply with the AG's request to supplement for seven of the nine requests.

The AG initially identified deficiencies with the responses to AG 1-6, 1-15(ii and iii), 1-46, 1-56, 1-61, 1-102, 1-124, 1-130, and 1-133 and requested supplementation thereof. Regarding AG 1-56 and 1-133, Bluegrass simply inadvertently failed to include certain attachments in its filing. It has subsequently filed those attachments, resolving the dispute with regard to those issues.

With regarding to AG 1-61, the AG requested Bluegrass to, “[p]rovide 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 fiscal years.” Bluegrass responded, “Bluegrass Water objects to this Request as seeking the records of a nonapplicant that is not its direct parent.” US Water, LLC is a parent company of Bluegrass Water. The funding that it supplies to its subsidiary is relevant to the capital structure of that subsidiary. If a parent company forwards funds to a subsidiary, such as Bluegrass, the funding will be classified as equity, regardless of the true source of the parent funding. This could pose a situation where customers reimburse Bluegrass owners at an equity rate, in excess of the true costs of the underlying financing. Thus, the financial dealings of the parent company are relevant to the rate request of the subsidiary. Moreover, the Commission and Kentucky's courts have

previously found that financial information pertaining to a jurisdictional utility company's parent entity is relevant and discoverable.¹

With regard to AG 1-46, the AG stated:

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.

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.

In effect, Bluegrass's position with regard to business development expense is that the AG and Commission should simply trust its bare assertions that it has not passed

¹ See, e.g., *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; see also *Com. ex rel. Hancock v. South Central Bell Tel. Co.*, 528 S.W.2d 659, 660-662 (Ky. 1975).

business development expense along to ratepayers. Without identifying specific business development costs that have not been allocated or passed through Bluegrass to ratepayers, there is no way for the AG to determine whether further adjustments to account for business development activities should be made. Certainly, Bluegrass engages in business development. It incurs costs related to those activities. If those costs have not been identified and appropriately excluded, Bluegrass's revenue should be further adjusted to ensure those activities are not subsidized by Bluegrass ratepayers. Bluegrass's response to the data request prevents the AG from engaging in that exercise.

In Request AG 1-6, the AG requested:

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.

a. For each item of dues or membership fees included above the line, explain whether any portion of the dues/fees are utilized to pay for any of the following expenditures, and if so, provide complete details:

- i. Legislative advocacy;
- ii. Regulatory advocacy;
- iii. Public relations;
- iv. Influencing federal or Kentucky legislation or regulations;
- v. Legislative policy research;
- vi. Regulatory policy research;
- vii. Any media advertising campaigns backing the Company's or the Dues Requiring Organization's advocacy positions;
- viii. Contributions from any Dues Requiring Organizations to third-party organizations and contractors including any of the expenditures identified in the subparts to this question, above.

b. For each item of dues or membership fees included above the line:

- i. Provide any and all documents in the Company's possession that depict how each Dues Requiring Organization spends the dues it collects from the Company.
- ii. Provide a detailed description of the services each Dues Requiring Organization provides to the Company.

- iii. Provide a complete copy of invoices received from each Dues Requiring Organization applicable to the test year.
- c. If any affiliate of the Company pays dues to one or more Dues Requiring Organizations, and a jurisdictional portion of those dues are charged back to the Company, explain whether the dues are being recovered in rates, the amounts thereof, and precisely where they can be found in the application.

Bluegrass 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.

The cited direct testimony states:

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 costs such as advertising, lobbying and charitable donations, CSWR also excludes certain charges which are related exclusively to its business development activities.

So, yet again, Bluegrass is asking the AG and the Commission to simply trust its assertion that it has made the appropriate exclusions. The testimony of Mr. Thies plainly states that certain costs were identified and excluded. But nonetheless, Bluegrass refuses to provide the relevant information. The costs at issue should not be recovered from ratepayers, as the Commission has previously held.² Without the requested information,

² See, e.g., *In Re: Electronic Application Of Kentucky Utilities Company For An Adjustment Of Its Electric Rates, A Certificate Of Public Convenience And Necessity To Deploy Advanced Metering Infrastructure, Approval Of Certain Regulatory And Accounting Treatments, And Establishment Of A One-Year Surcredit*, Final Order dated June 30, 2021 at 25-28.

it will be difficult for the AG or the Commission to determine whether these costs have been fully and appropriately excluded.

Regarding requests AG 1-15, 1-102, 124, and 130, the AG and Bluegrass disagree regarding whether Bluegrass has appropriately responded to these requests. Instead of making those requests a part of this motion to compel, the AG will ask supplemental data requests related to those issues.

Inasmuch as Supplemental Data Requests are due on May 26, 2023, the AG additionally 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. The AG will file Supplemental Data Requests by the existing deadline. However, the AG would suggest that it be granted four business days to file supplemental data requests related to any issue derived from the information learned as a result of the motion to compel.

Therefore, the AG requests that the Commission compel discovery related to the AG's First Set of Data Requests, 1-6, 1-46, and 1-61 and provide related amendment of the procedural schedule to allow for full development of those issues.

Respectfully submitted,

DANIEL J. CAMERON
ATTORNEY GENERAL



J. MICHAEL WEST
LAWRENCE W. COOK
ANGELA M. GOAD
JOHN G. HORNE II
ASSISTANT ATTORNEYS GENERAL
1024 CAPITAL CENTER DRIVE SUITE 200
FRANKFORT, KY 40601-8204
PHONE: (502) 696-5433
FAX: (502) 564-2698
Michael.West@ky.gov
Larry.Cook@ky.gov
Angela.Goad@ky.gov
John.Horne@ky.gov

Certificate of Service and Filing

Pursuant to the Commission's Orders and in accord with all other applicable law, Counsel certifies that, on May 19, 2023, a copy of the forgoing was served via the Commission's electronic filing system.

this 19th day of May, 2023.



Assistant Attorney General