**BEFORE THE PUBLIC SERVICE COMMISSION**

In the Matter of:

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| ELECTRONIC APPLICATION OF BLUEGRASS WATER UTILITY OPERATING COMPANY, LLC FOR AN ADJUSTMENT OF WATER AND SEWAGE RATES | ) ) ) ) | CASE NO. 2025-00354 |

## POST-HEARING RESPONSE BRIEF OF THE ATTORNEY GENERAL

The intervenor, the Attorney General of the Commonwealth of Kentucky, through his Office of Rate Intervention ("Attorney General"), provides the following Post-Hearing Response Brief pursuant to the Commission's Order of September 29, 2026 and in response to the Post-Hearing Brief filed Bluegrass Water Utility Operating Company, LLC ("Bluegrass Water" or the "Company") on October 16, 2026.

The Attorney General's Initial Post-Hearing Brief sets out his positions on Bluegrass Water's application and the adjustments necessary to produce fair, just, and reasonable rates, while he does not fully restate all his positions here, his position on those issues remains unchanged. This Response Brief specifically addresses two arguments in Bluegrass Water's Post-Hearing Brief: the contention the 11.50% ROE request must be accepted due to a lack of rebuttal testimony, and its suggestion that denial of the full requested increase would threaten the financial viability of Bluegrass Water and other utilities. As set forth below, neither argument withstands scrutiny. As to all remaining issues, the Attorney General relies on the positions stated in his Post-Hearing Brief.

### I. Bluegrass Water's return-on-equity request fails on the Company's burden of proof,

**not for any absence of rebuttal.**

In the post-hearing brief filed by Bluegrass Water, the Company devotes much of the discussion pertaining to its return-on-equity not to defending the reasonableness of its 11.50% request, but to the argument that the request must be granted because none of the intervenors rebutted it. Bluegrass Water asserts that "there is no evidence in the record upon which the Commission may rely in rejecting Mr. Howard's recommended ROE"[1] and that, because "neither the Office of the Attorney General nor Scott County have presented any evidence rebutting the reasonableness of Mr. Howard's recommended ROE" his figure is "the only evidence in the record upon which the Commission may make a decision."[2] The conclusion made by Bluegrass Water is mistaken.

First, this argument inverts the burden of proof. Per KRS 278.190(3), "the burden of proof to show that the increased rate or charge is just and reasonable" rests "upon the utility."[3] The burden of proof does not rest in the hands of intervenors. Neither the Attorney General nor Scott County was required to sponsor a competing cost-of-capital witness, and the absence does not somehow shift the burden to another side. A lack of rebuttal testimony from intervenors does not likewise prove the reasonableness of the request, which Bluegrass Water has failed to do.

Second, the argument made by Bluegrass Water blatantly ignores the well-established precedent set by the Commission in the Company's previous two rate cases. In the Company's first case before the Commission, Bluegrass Water requested a ROE of 11.80%. This number

[1] Post-Hearing Brief of Bluegrass Water Utility Operating Company, LLC at 50.
[2] *Id* at 52.
[3] KRS 278.190(3).

was achieved by applying a business risk adjustment of 1.75%[4]. In that rate case, the Attorney General did not file rebuttal testimony regarding ROE but nonetheless contested the request in the post-hearing brief.[5] Despite the absence of rebuttal testimony, the Commission did not automatically approve the ROE request. In the Final Order, the Commission instead approved a ROE of only 9.90%. The Commission further rejected the practice of applying a risk adjustment by stating the following: "a business risk or size adjustment has not been approved in the past and the Commission agrees with the Attorney General and the Joint Intervenors that the explicit inclusion is not reasonable as such an adjustment is arbitrary and inflates the model results."[6]

This was again repeated in the last rate case where Bluegrass Water requested a ROE of 11.65% which included a 1.00% adjustment for business risk.[7] The Attorney General again contested the request in the post-hearing brief, despite not having a rebuttal testimony that contained rate of return analysis.[8] As was previously the case, the Commission did not automatically approve Bluegrass Water's requested ROE simply due to the lack of a rebuttal analysis. Instead, in the Final Order, the Commission only approved a ROE of 10.10%. Again, the Commission rejected the inclusion of a business risk adjustment, stating the following: "the Commission further reiterates that it continues to reject the use of flotation cost adjustments, financial risk adjustments and explicit size adjustments in the ROE analyses

[4] *Electronic Application of Bluegrass Water Utility Operating Company, LLC for an Adjustment of Rates and Approval of Construction, Case No. 2020-00290,* Order of August 2, 2021 at 105.
[5] *Electronic Application of Bluegrass Water Utility Operating Company, LLC for an Adjustment of Rates and Approval of Construction, Case No. 2020-00290,* Attorney General's Post-Hearing Memorandum Brief, June 3, 2021, at 6.
[6] Electronic Application of Bluegrass Water Utility Operating Company, LLC for an Adjustment of Rates and Approval of Construction, Case No. 2020-00290, Order of August 2, 2021 at 109.
[7] Case No. 2022-00432, *Electronic Application of Bluegrass Water Utility Operating Company, LLC for an Adjustment of Sewage Rates* (KY. PSC February 14, 2024) Final Order at 87.
[8] *Id* at 89.

considering a business risk or size adjustment has not been approved in the past and the Commission agrees with the Attorney General on that matter".[9]

Since the last rate case, nothing has changed. The lack of a rebuttal testimony on the matter does not mean that the Commission must automatically approve the ROE request, nor has the Commission begun to approve the use of risk adjustments or premiums. Bluegrass Water's assertion otherwise blatantly ignores precedent, included in its very own case history. The Commission has the authority to decide whether a request is just, fair, and reasonable, and the lack of rebuttal testimony does not circumvent that fact.

Bluegrass Water's framing is ultimately flawed. If an unrebutted expert's numbers were "the only evidence" on which the Commission could act, any utility could guarantee its requested return simply by being the only party to retain a cost-of-capital witness. If Bluegrass Water's logic were to be followed, the only thing stopping companies from receiving ROEs of 11%, 20%, or 30% would be intervenors retaining said experts. Thankfully, the law and established precedent requires otherwise. The Attorney General respectfully requests that the Commission decline the 11.50% request, including the unprecedented business risk adjustment that drives it, and instead authorize a ROE that is just, fair, and reasonable.

## II. Bluegrass Water's reliance on its financial viability and a 39-year-old letter does not lower its burden of proof.

Bluegrass Water closed its brief by arguing that its future financial viability depends on the requested rate increase citing its loan obligations to CoBank.[10] It further stated that denial of the request would amount to an "unexpected withdrawal of regulatory support" and

[9] *Id* at 91.
[10] Post-Hearing Brief of Bluegrass Water Utility Operating Company, LLC at 57.

that other utilities could be negatively affected.[11] In support of this argument, it filed a 39-year-old letter from a lender, the Rural Electrification Administration (REA), addressed to the Commission and related to the purported inadequacy of funding for Big Rivers Electric Corporation (BREC). Per the letter, REA threatened to suspend loan approvals and advances due to the Commission's denial of a rate increase requested by BREC.[12]

An appeal to financial viability does not alone satisfy the burden of proving that proposed rates are just, fair, and reasonable. The burden set by KRS 278.190(3) is attached to each contested adjustment, not to the request as a whole. A general warning of financial hardship is not dispositive of whether any particular disputed cost is reasonable. Loan obligations and a letter from 1987 do not prove that a requested increase for higher healthcare coverage or a high ROE with a risk premium should be approved. The Commission protects a utility's financial integrity by setting a return that permits recovery of prudent, supported costs, rather than approving a full request whenever a utility forecasts general distress.

Bluegrass Water's framing assumes a false choice between granting the entire request and endangering the Company. The question is the amount of expense and capital cost expended by the utility for the benefit of ratepayers that is well-supported with record evidence. Contrary to the Applicant's generalized complaints, setting rates on a basis of known and measurable evidence is not a "withdrawal of regulatory support."

Finally, the rate case referenced in 1987 letter bears little resemblance to this case. BREC is a member-owned, not-for-profit generation and transmission cooperative. It had over $700 million in federal loans. It had been in default since 1984 and had over $220 million

[11] *Id* at 59.
[12] Exhibit Letter from the REA, at 1,2.

in arrears.[13] Bluegrass Water is none of those things. It is a private, investor-owned water and wastewater utility. The record reflects a negotiated covenant waiver with its lender,[14], not arrearages of the magnitude accumulated by BREC in 1987. BREC's situation is easily distinguished from this one; the crisis described by the 1987 letter simply is not present here.

Therefore, the Commission should hold Bluegrass Water to its burden and set rates on the evidence in the record. Any increase should only be granted if it is fully supported by record evidence.

## CONCLUSION

For the foregoing reasons as well as those previously articulated in its Initial Post-Hearing Brief, the Attorney General requests that the Commission: adopt the adjustments recommended by John Defever, make any additional adjustments that it believes are fair and reasonable to ratepayers, set the Company's return on equity within a reasonable range consistent with the Commission's previous authorizations, direct the Company to credit its $87,394 late-fee overcollection back to ratepayers, and withhold any approved increase until the Company's system repairs and improvements have been independently verified.

[13] *Id* at 2.
[14] Post-Hearing Brief of Bluegrass Water Utility Operating Company, LLC at 58.

Respectfully submitted,

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*Certificate of Service and Filing*

Pursuant to the Commission's Orders and in accord with all other applicable law, Counsel certifies that, on October 27, 2026 an electronic copy of the foregoing was served via the Commission's electronic filing system.

This 27th day of October, 2026.



Assistant Attorney General