

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF BLUEGRASS)
WATER UTILITY OPERATING COMPANY, LLC)
FOR AN ADJUSTMENT OF WATER AND)
SEWAGE RATES)
CASE NO.
2025-000354

**SCOTT COUNTY, KENTUCKY REPLY TO
BLUEGRASS WATER UTILITY OPERATING COMPANY, LLC'S
RESPONSE TO SCOTT COUNTY'S MOTION TO INTERVENE**

Comes now Scott County, Kentucky ("Scott County"), by and through counsel, and, under 807 KAR 5:001 Section 5(3), files its Reply to Bluegrass Water Utility Operating Company, LLC's ("Bluegrass Water") Response to Scott County's Motion to Intervene. Scott County replies to certain points raised by Bluegrass Water.

1. As an initial matter, the Commission has already granted Scott County intervention in a prior rate case involving Bluegrass Water. See *In the Matter of: Electronic Application of Bluegrass Water Utility Operating Company, LLC for an Adjustment of Sewage Rates*, Case No. 2022-00432 (May 5, 2023). There, the Commission found that Scott County had established a special interest in the proceeding based on the economic and public health impacts of wastewater operations within the County. Order, at pp. 4-5. The Commission specifically determined that the economic impact on Delaplain residential and commercial customers was significant and unique because those customers constitute the only Bluegrass customers receiving metered wastewater service and because Delaplain includes Bluegrass Water's only commercial customers, whose interests differ from those

represented by the Attorney General given that commercial customers take service under different rate schedules than residential customers. In reaching that conclusion, the Commission cited precedent recognizing intervention as appropriate where a party seeks to represent customer classes subject to different rate schedules, as well as precedent finding that a municipal or county government may have a special interest based on potential rate effects on its residents. The circumstances presented in this Application are substantially similar.¹

2. Although Bluegrass Water devotes substantial attention to the Attorney General's statutory right to intervene, that right is not at issue. What is at issue is the discretion of the Commission to grant permissive intervention to other parties, including Scott County. If the General Assembly had intended the Attorney General's participation to preclude other parties from intervening, it would have enacted statutory language to that effect. It did not. The General Assembly's decision to grant the Attorney General a statutory right of intervention does not carry the preclusive or preemptive effect urged by Bluegrass Water.
3. Bluegrass Water's assertion that Scott County has failed to demonstrate a special interest not otherwise adequately represented by the Attorney General rests on the

¹ See Case No. 2021-00448, *Electronic Joint Application of American Electric Power Company, Inc., Kentucky Power Company and Liberty Utilities Co. for Approval of the Transfer of Ownership and Control of Kentucky Power Company* (Ky. PSC Jan. 10, 2022), Order at 3, in which the Commission granted intervention to a party seeking to represent the interests of industrial customers who take service under different rate schedules than residential customers; see also Case No. 2022-00402, *Electronic Joint Application of Kentucky Utilities Company and Louisville Gas and Electric Company for Certificates of Public Convenience and Necessity and Site Compatibility Certificates and Approval of a Demand Side Management Plan*, (Ky. PSC Feb. 7, 2023), Order at 2, in which the Commission found that Lexington-Fayette Urban County Government had established a special interest based, in part, on potential rate effects on its residents.

premise that the Attorney General, as the statutory advocate for consumers in ratemaking proceedings, necessarily represents the interests of Scott County's citizens.² That premise finds no support in the intervention standard set forth in the plain language of 807 KAR 5:001, Section 4(11). The regulation does not establish that the Attorney General's participation is presumptively adequate to represent all consumer interests, nor does it create a rule barring other parties from establishing a special interest. If Bluegrass Water's position were correct, no party other than the Attorney General could ever satisfy the standard for permissive intervention. Instead, motions for intervention are evaluated on a case-by-case basis, and the facts presented in this Application demonstrate that consumer interests differ by service area and support a finding that Scott County has a special interest in this proceeding.

4. In its Motion to Intervene, Scott County identified a special interest based on the unique characteristics and disproportionate impacts of Bluegrass Water's proposed rates on Scott County customers. Scott County contains the only Bluegrass Water service areas with metered, volumetric billing and the utility's only commercial wastewater customers, and it also has more Bluegrass wastewater customers than any other single county.³ Bluegrass Water proposes the largest percentage rate increase in the Application for a county-specific customer class and further proposes allocating a substantial portion of the wastewater revenue requirement to the Delaplain non-residential class based on system-specific

² Bluegrass Water Response, page 2, Numbered Paragraph 7.

³ Scott County Motion to Intervene, page 2, Numbered Paragraph 7; page 4, Numbered Paragraph 11

investments.⁴ These rate design and allocation decisions uniquely affect Scott County residents and businesses and implicate rate affordability, economic development, and public health within Scott County, creating interests that are not similarly situated to other Bluegrass Water customers and are not adequately represented by other parties to the proceeding.

5. In its Motion to Intervene, Scott County explained precisely how it would satisfy the standard set forth in 807 KAR 5:001, Section 4(11). The County stated that it questions the reasonableness of the proposals in the Application, including Bluegrass Water's assignment of the wastewater revenue requirement among customer classes and the corresponding rate design, and that it will present issues and/or develop facts that will assist the Commission in those areas.⁵ That is all the regulation requires. Contrary to Bluegrass Water's assertion, a proposed intervenor is not required to present evidence or fully developed arguments in a motion to intervene; rather, the inquiry is whether the intervenor is likely to present issues or develop facts that will assist the Commission without unduly complicating the proceeding. Scott County made that showing here. By contrast, *In the Matter of: Application of Nolin Rural Electric Cooperative Corporation for a General Rate Increase*, Case No. 2016-367 (Mar. 14, 2017)—relied upon by Bluegrass Water in its Response—the Commission denied intervention because the petitioner, despite citing his experience as an electrician, failed to demonstrate that he was sufficiently knowledgeable about issues of utility ratemaking and rate structures to assist the

⁴ Scott County Motion to Intervene, page 4, Numbered Paragraph 11; page 5, Numbered Paragraph 15

⁵ Scott County Motion to Intervene, page 6, Paragraph 21.

Commission in fully considering the matter.⁶ Bluegrass Water's concern here is fundamentally different. Scott County has stated that, if granted intervention, it will present issues and develop facts concerning the assignment of the wastewater revenue requirement among customer classes and the corresponding rate design—precisely the type of participation the Commission found lacking in Case No. 2016-00367. That case is therefore readily distinguishable from Scott County's request for intervention in this proceeding.

6. Bluegrass Water relies on a Commission order denying intervention to non-retail customers for the proposition that only retail customers of a utility have an interest in the utility's rates or service, and argues that because the County is not a retail customer of Bluegrass, it lacks a qualifying interest to intervene.⁷ See *In the Matter of: Electronic Application of Duke Energy Kentucky, Inc. for (1) An Adjustment of the Electric Rates; 2) Approval of New Tariffs; 3) Approval of Accounting Practices to Establish Regulatory Assets and Liabilities; and 4) All Other Required Approvals and Relief*, Case No. 2019-00271, Order at 3 (Oct. 14, 2019).⁸ Such reliance is misplaced. In that case, the Commission denied intervention because ChargePoint was not a retail customer of the utility and because its asserted interest was wholly collateral to the rates and services subject to the Commission's jurisdiction.

⁶ Bluegrass Water's Response, Pages 1-2, Numbered Paragraph 3.

⁷ Bluegrass Water's Response, Page 3, Numbered Paragraphs 9-10.

⁸ Bluegrass Water's Response does not clearly identify which Commission order it relies upon, and the Commission entered two orders on the same date denying intervention to non-retail customers in proceedings involving proposed pilot EV charging programs. Out of an abundance of caution, Scott County distinguishes both orders. See ChargePoint, Inc. and Zeco Systems, Inc. d/b/a Greenlots, in each of which the Commission denied intervention where the proposed intervenor was not a retail customer of the utility and asserted only a collateral commercial interest unrelated to the utility's rates or service.

ChargePoint did not receive service from the utility, did not pay retail rates, and did not seek to participate in ratemaking or rate design. Instead, its interest related solely to the utility's proposal to implement a pilot electric-vehicle charging program and to ChargePoint's position as a potential vendor or market participant. The Commission therefore concluded that ChargePoint lacked a direct interest in the utility's rates or service and was unlikely to present issues or develop facts that would assist the Commission in fully considering the matter.

7. The County's interest in this proceeding is materially different. The County's participation is grounded directly in the rates and services at issue, including Bluegrass Water's proposed assignment of the wastewater revenue requirement among customer classes and the corresponding rate design applicable to Scott County customers. Unlike ChargePoint, Scott County does not seek to advance a collateral commercial interest or promote an external program, but instead seeks to assist the Commission in evaluating the reasonableness of ratemaking proposals that uniquely and disproportionately affect a specific service area and customer base within the Commission's jurisdiction. Accordingly, the ChargePoint order does not support denial of Scott County's motion to intervene.
8. Bluegrass Water further argues that Scott County's intervention would present an inherent and unavoidable conflict of interest that would unduly complicate and disrupt this proceeding.⁹ According to Bluegrass Water, Scott County seeks to intervene on behalf of both residential and commercial customers within Scott County, but Bluegrass Water's proposed rate design would prevent Scott County

⁹ Bluegrass Water's Response, Pages 4-5, Numbered Paragraphs 11-13.

from simultaneously representing the interests of both customer classes. Bluegrass contends that if Scott County were to oppose the proposed allocation of the wastewater revenue requirement to the Delaplain commercial class, it would necessarily be advocating the interests of commercial customers over residential customers, while any alternative allocation proposal would similarly advantage one group at the expense of another. On that basis, Bluegrass Water asserts that Scott County cannot participate without disadvantaging at least one class of its citizens and creating confusion as to whose interests it represents, and it cites in a footnote the Kentucky Supreme Court Rules of Professional Conduct concerning conflicts of interest in support of this position.

9. Bluegrass Water's assertion that Scott County's intervention would create an inherent conflict of interest is unfounded and unsupported by Commission precedent. This proceeding is materially indistinguishable from Bluegrass Water's prior rate case, in which the Commission granted Scott County intervention and no conflict of interest was argued, identified, or arose during the case. Scott County appears here as a single governmental entity acting in its institutional capacity, not as counsel for multiple individual customers or customer classes, and the Kentucky Rules of Professional Conduct governing conflicts between multiple clients have no application to that circumstance. Governmental entities routinely represent and consider the interests of diverse constituencies—residential, commercial, and otherwise—and the fact that ratemaking decisions may affect customer classes differently does not create an ethical conflict or disqualify governmental participation. Aside from a footnote citing Rule 1.7 of the Rules of Professional

Conduct, Bluegrass Water cites no Commission order, court decision, or other authority recognizing such a theory of inherent conflict, and the Commission’s prior decision granting Scott County intervention in a materially similar Bluegrass Water rate case confirms that no such conflict exists here.

10. In the alternative, Bluegrass Water argues that if the Commission permits intervention, the scope of Scott County’s participation should be limited to issues not already represented by the Attorney General, citing an order from *In the Matter of: Electronic Application of Kenergy Corp. for a Certificate of Public Convenience and Necessity for the Construction of a High-Speed Fiber Network and for Approval of the Leasing of the Network’s Excess Capacity to an Affiliate to be Engaged in the Provision of Broadband Service to Unserved and Underserved Households and Businesses of the Commonwealth*, Case No. 2021-00365, Order at 4 (Ky. PSC Dec. 9, 2021).¹⁰ That order does not support the limitation Bluegrass Water seeks here. In that case, the Commission found that the proposed intervenor—a trade association representing competitor cable providers—had failed to establish a special interest and that its participation would assist the Commission only with respect to a single, discrete factual issue. The Commission therefore limited intervention to that narrow issue. Here, by contrast, Scott County has already been found by the Commission to have a special interest in a prior Bluegrass Water rate case, is not a competitor of the utility, and seeks to participate on core ratemaking issues concerning the allocation of the wastewater revenue requirement and corresponding rate design. Moreover, the order relied upon by

¹⁰ Bluegrass Water’s Response, Page 5, Numbered Paragraphs 14-16.

Bluegrass Water does not limit intervention based on the Attorney General's participation. Accordingly, that decision provides no basis to restrict the scope of Scott County's intervention in this proceeding.

11. Regarding other points by Bluegrass Water in its Response, Scott County's lack of comment is not a concession. Scott County's Motion to Intervene adequately demonstrated grounds through which the Commission's requirements for permissive intervention have been met.

WHEREFORE, Scott County respectfully replies to Bluegrass Water's Response and requests the Commission grant it intervention into the instant case with full rights of a party to the proceeding.

Respectfully submitted,

/s/ Randal A. Strobo

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NOTICE AND CERTIFICATION FOR FILING

Undersigned counsel provides notice that the electronic version of the paper has been submitted to the Commission by uploading it using the Commission's E-Filing System on this 15th day of January 2026. Pursuant to the Commission's Orders in Case No. 2020-00085, *Electronic Emergency Docket Related to Novel Coronavirus Covid-19*, the paper, in paper medium, is not required to be filed.

/s/ Randal A. Strobo

NOTICE AND CERTIFICATION CONCERNING SERVICE

No party has been excused from the electronic filing procedures in the instant proceeding.

/s/ Randal A. Strobo