THOMAS W. COLBERT
Thirteen Oak Tree Lane
Louisville, Kentucky 40245
(502) 568-0062 Daytime
twcolbert@gmail.com

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Kentucky Public Service Commission
Attn: Chair Angie C. Hatton
Commissioner Mary Pat Regan
Commissioner Andrew W. Wood
211 Sower Blvd.
Frankfort, KY 40601

Re: Case # 2025-00354

Dear Commissioners,

I am writing as a follow-up to my prior correspondence regarding the pending CSWR rate case.

After submitting my earlier letter, I reviewed the Commission's final order in CSWR's *last* general rate case, including Vice Chairman Chandler's concurring and dissenting opinion beginning on page 119 of the Order. His dissent addresses several of the same concerns I raised previously, including issues related to the adequacy and consistency of financial support, rate base determination, executive compensation, and whether the utility met its statutory burden of proof.

Considering Mr. Chandler's observations, and that many of the same entities and operational patterns appear to be present in the current proceeding, I respectfully inquire how those issues are being examined in this case to ensure that the deficiencies identified in the prior record do not recur.

I appreciate the complexity of these matters and the work involved in developing a complete evidentiary record. My purpose in writing is simply to understand how the Commission and the Office of Rate Intervention are approaching these previously identified concerns in the current review.

Thank you for your time and consideration.

Respectfully,

Tom

Thomas W. Colbert

Opinion of Vice Chairman Kent A. Chandler in Case No. 2020-00290, Concurring In Part and Dissenting In Part

Although I appreciate the Majority's well-written and exhaustive Order, particularly given the complexity of the matter before us, I must write separately to dissent in significant part regarding the Order's conclusion and rates. Before explaining the reason for which I dissent, I note that I concur on a number of items in the Majority's Order. I concur with the Majority insofar as they reaffirm the Commission's previous decisions denying the inclusion of the 00297 systems as part of this request to increase rates.[1] I also concur with the Majority's decision regarding "Procedural Issues."[2] Finally, I find no error with the Majority Order's determinations with regard to Certificates of Public Convenience and Necessity and the adoption of a unified tariff, generally.[3]

Regretfully, my ability to concur with the Majority's Order ends there. Instead of approving the rates found in the Majority's Order as fair, just and reasonable, I would have voted to order no change to Bluegrass Water's present rates, due to the utility's failure to (1) provide reasonable, sufficient or competent financial information, (2) provide the information necessary to appropriately calculate a revenue requirement, and (3) generally meet its burden of proof as to its proposed rates. Although Bluegrass Water is aware of the components of rate base[4] and how to calculate it, including the calculation

[1] Majority Order at 3-4, 10-13. *See also* March 24, 2021 Order denying Bluegrass Water's Motion to Alter the Commission's 2/12/21 Order; February 12, 2021 Order denying Bluegrass Water's November 18, 2020 Motion for Deviation from Requirements relating to Customer Notice.

[2] Majority Order at 14-15.

[3] *Id.* at 15-38.

[4] Direct Testimony of Brent G. Thies at 12-13.

of Utility Plant in Service (UPIS),[5] as the Majority's Order discusses, the information provided by the utility was incomplete, contrary to other sources, and wholly deficient for purposes of determining rate base. Bluegrass Water failed to provide a reasonable or competent amount for UPIS by failing to reflect any amount for asset retirements,[6] and failing to adequately explain discrepancies in its forecasted CWIP and UPIS calculations.[7] Rate base is of course a foundational component of the calculation of a utility's revenue requirement. Net investment rate base is necessary to determine a utility's operating income and depreciation expense. With a net investment rate base of $0, for instance, a utility's revenue requirement is equal to operating expenses, while the operating expenses would include no depreciation expense. Once it was concluded that Bluegrass Water had not provided competent support or explanation for the determination of rate base, I would have found the application deficient to the point fair, just and reasonable rates could not be determined from the record. This determination would be in accordance and pursuant to KRS 278.190(3), wherein the controlling statute clearly notes "the burden of proof to show that the increased rate or charge is just and reasonable shall be upon the utility." Failure by the utility to meet its burden of proof should result in no increase in rates.

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[5] *Id.* at 12-15.

[6] *See* Majority Order at 44-46, wherein the majority notes that the "undisputed evidence indicates Bluegrass Water did not include any retirements in the base period, the forecasted test year, or the period between the base and forecasted periods despite providing sworn testimony with its application that it had done so," and the Majority Order goes on to discuss why doing so was results oriented to the utility's benefit and was unreasonable.

[7] Majority Order at 44.

Nevertheless, the derivation and presentation of rate base is not the only issue for which I would have determined the utility failed to meet its burden of proof regarding its proposed rates. Bluegrass Water provided incorrect or inconsistent amounts for depreciation[8], Business Development,[9] and "Admin and Human Resources" expenses.[10] Bluegrass Water's compensation is unreasonable, unsubstantiated and lacks and formal policy.[11] The only basis provided for current levels of compensation or for increases, including CSWR's CEO's nearly 30% raise, was contradicted by the evidence of record.[12]

During the pendency of this matter Bluegrass Water has spent significant time, effort, and expense explaining its inconsistent or incomplete case record. Nearly all of these issues are related to the organization's finances or management, not necessarily Bluegrass Water's prosecution of the case. Bluegrass Water is the master of its petition. It chose when and how to file its application in this matter. It further determined the water and wastewater systems it sought to purchase, and after purchase, the amount of investment it intended on making before, during, and after its proposed test year; a time period the utility was further in control of determining in its application. Bluegrass Water came into the Commonwealth claiming it intended to "professionaliz[e] distressed"

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[8] Majority Order at 46, 66-67.

[9] Majority Order at FN 183.

[10] Majority Order at 82-83.

[11] Majority Order at 86, FN 217 citing Bluegrass Water's Response to Commission Staff's Second Request, Item 24.

[12] See Majority Order at 86-87, stating "Bluegrass Water further argued that 'CSWR seeks to attract the most qualified individuals and views total compensation, including the benefits package, as key to achieving that goal,'" while later noting CSWR did not review peer employers when determining employer insurance contributions and that neither Bluegrass Water nor CSWR "performed a study to compare its wages, salaries, benefits, and other compensation to other similarly-situated companies."

utilities. As explained herein and as detailed in the Majority's Order, the support provided for the utility's proposed application and rate increase failed to satisfy Bluegrass Water's burden of proof and falls short of what should be expected from an organization of Bluegrass Water's stature. It should not fall to the utility's attorney or the Commission to rectify or explain away an applicant's material shortcomings related to the financial information provided as support for a rate increase.

Finally, with regard to Bluegrass Water and this application, I must note that none of the systems owned by the utility now was without issue at their time of transfer to Bluegrass Water. A few of the orders approving either the transfer of jurisdictional systems to Bluegrass Water or the initiation of service under KRS 278.020 of previously non-jurisdictional systems indicated the problems or condition of the current service. The Majority's Order discussed this reality in sections, noting the obligation of Bluegrass Water to enter into Agreed Orders with the Commonwealth's Energy and Environment Cabinet to cure identified deficiencies. Upon review of the systems Bluegrass Water has acquired over the past two years, I would note that most of them are older, in poor operating condition, have generally lacked recurring maintenance and require (or have required for years) significant capital investments to provide adequate service. Regardless of who purchased many of these systems, rehabilitations will need to be made in order to continue providing service. Given the size of those systems, some sort of consolidation or regionalization is likely necessary to simultaneously provide adequate service at affordable rates. I take no position on Bluegrass Water's business model at this time, but I would note that to-date I have yet to see the type of "economies of scale

and scope that can sustain and improve existing service" and a rate that appears to me as being fair, just or reasonable.[13]

I further write today to explain the systemic shortcomings this case has served to elevate. During the pendency of this matter, the Commission received a number of comments on the application, including those from elected officials. Public comments ranged from general concern about the ability to pay for the proposed increase, to questions of whether investments underlying the rate increase were reasonable or necessary. Many of the comments request the Commission take specific action on the application, such as considering the affordability of the proposal or the sheer increase of the application. As a practical matter, two factors are at play that complicate the Commission's ability to make much meaningful impact on applications like the one at hand, short of a finding the utility merely has not met its burden of proof. Regretfully, these two factors exacerbate one another.

The first complicating factor is the lack of evidence before us. Short of finding an applicant has failed to meet their burden of proof, the Commission often depends on record evidence other than the applicant's to make findings of fact contrary to the utility's proposal. In this matter, neither intervening party, the Attorney General,[14] nor the Joint

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[13] Verified Joint Application for Approval of Acquisition and Transfer of Ownership and Control of Utility Assets, Case No. 2019-00104 (Apr. 16, 2019) at 23.

[14] These statements should not be construed as a critique of the Attorney General's Office of Rate Intervention (ORI), or the Attorney General. My personal experience and understanding is that the resources available for the purpose of participating before the Commission have been limited for decades. The Attorney General's ORI has historically been staffed exclusively by attorneys, rather than staff rate experts that can offer testimony. Further, consultant witnesses that have experience in rate matters are not inexpensive. Again, these comments are merely illustrative of a current example. The Attorney General's ORI has occasionally experienced the same resource constraints as I detailed for the Commission below.

Intervenors provided much in the way of alternative evidence. This is not to say that either of the parties failed to play a meaningful role in the matter. Indeed, the Majority's Opinion cites a number of arguments made by both parties that it agreed with, and cited a number of times to responses to intervenor discovery requests in support of its conclusions and rationale. However, discovery and arguments can only go so far in determining fair, just and reasonable rates. Evidence is the lifeblood of administrative decisions, including those made by this Commission. One needs only review the statute and case law in regard to judicial review of Commission orders to appreciate the importance of evidence. Commission orders may only be vacated or set aside if they are found to be unreasonable or unlawful, and an order is unreasonable "only if it is determined that the evidence presented leaves no room for difference of opinion among reasonable minds."[15] Without contrary "affirmative" evidence, such as intervenor testimony, and other than a finding the applicant failed to meet its burden of proof, the Commission is limited in its ability to effectuate much change in an applicant's proposed rates. The only additional tool the Commission has at its discretion is its experience, case precedence and dedicated staff. Staff and Commission resources though are not what they used to be.

The Commission currently has approximately 70 employees, including the Commissioners. These employees include those that actively and substantively work on open matters, like financial analysts and attorneys, as well as staff that support the Commission's work, such as IT professionals and consumer service representatives. In

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[15] KRS 278.410; *Kentucky Industrial Utility Customers, Inc. v. Kentucky Utilities Company*, 983 S.W.2d 493, 499, citing *Energy Regulatory Commission v. Kentucky Power, Ky. App., 605 S.W.2d 46 (1980).*

cases such as this one, the Commission depends on its staff to help investigate the reasonableness of the application. Commission Staff's work on these cases is invaluable, and their efforts are exactly what the General Assembly envisioned decades ago in providing the Commission an opportunity to have full-time staff that work exclusively on utility matters. Specifically, the Commission is authorized by the following statute to hire and employ competent staff to help it "perform the duties and exercise the powers conferred by law upon the Commission,"[16] including limiting the rates charged by utilities to only those that are "fair, just and reasonable."[17]

> The commission acting through the executive director may employ such clerks, stenographers, rate experts, agents, special agents, engineers, accountants, auditors, inspectors, lawyers, hearing examiners, experts and other classified service employees and the commission may contract for services of persons in a professional or scientific capacity to make or conduct a hearing or a temporary or special inquiry, investigation or examination as it deems necessary to carry out the provisions of this chapter, or to perform the duties and exercise the powers conferred by law upon the commission.[18]

Nevertheless, in the absence of the "affirmative" evidence discussed above, the Commission depends more and more on its Staff to help investigate and analyze whether applications should approved, modified or revoked. Outright approval or denial of a proposal poses fewer complications than that of a modification, which are ordinarily made in the public interest. The Commission could outright revoke every petition before it that has a minor issue or concern, indicating the reason for denial with an opportunity for the

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[16] KRS 278.110.

[17] KRS 278.030.

[18] KRS 278.110.

applicant to refile. Doing so though would cause untold inefficiency and ultimately not result in any public benefit. Therefore, the Commission has for decades, likely since its inception, made material and substantive modification to proposals in order to ultimately grant their approval. This has proven to be effective and efficient. Nevertheless, without "affirmative" evidence, the Commission depends on its and its Staff's expertise and experience to examine whatever evidence is in the record in order for the Commission to say what is fair, just and reasonable when a proposal before it is facially unfair, unjust or unreasonable. The problem the Commission finds itself in is that with more cases, and more complicated cases, coming before us, we have less staff than ever. During fiscal year 2013, for instance, the Commission employed an average 88 individuals with a personnel funding cap of 98 positions. As noted above, today we find ourselves with approximately 70 staff members, with a funding cap of 76 positions. Frankly, each year the Commission Staff is asked to do more with less.

It is cases like this that the lack of "affirmative" evidence by intervenors and the strain on Commission Staff is most evident. The Majority's Order in this case is as long, or longer than, investor-owned electric and gas rate case orders for utilities with tens-of-thousands of customers and hundreds-of-millions of dollars in annual revenues. This is a complicated case. Without intervenor testimony, for instance, the Commission is limited in its ability to make a meaningful effort to ensure rates are fair, just and reasonable. The Commission cannot merely dismiss a proposal as being "too high," or result in rates that are "unaffordable," particularly given that neither assertion is supported by record evidence. The issue is not KRS Chapter 278 either. The statutes the Commission operates under are adequate on this topic. The issue, insofar as commenters and the

public seek to have the Commission play a more active role in ensuring rates are fair, just and reasonable, or service is adequate, efficient and reasonable, is a lack of resources. More resources must be dedicated to (1) providing as much evidence as possible for the Commission to consider and (2) ensuring the Commission and its Staff have the time and personnel to investigate and adjudicate proposals and make decisions in the public's interest. This can be accomplished in a number of ways, including funding, subject to Commission approval, of intervenor witness expense and merely increasing Commission Staff counts to previous levels.