

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF BLUEGRASS)	
WATER UTILITY OPERATING COMPANY, LLC)	CASE NO.
FOR AN ADJUSTMENT OF RATES AND)	2020-00290
APPROVAL OF CONSTRUCTION)	

ORDER

On October 1, 2020, Bluegrass Water Utility Operating Company, LLC (Bluegrass Water) tendered an application for approval of construction and an adjustment of rates pursuant to 807 KAR 5:001, Section 16. An application for a rate adjustment made pursuant to 807 KAR 5:001, Section 16 is not considered filed with the Commission unless, among other things, it meets all of the requirements of 807 KAR Chapter 5 and any Order of the Commission.¹ If an application is deficient when tendered to the Commission and those deficiencies are cured in a timely manner, the application will be deemed to have been filed on the date that the deficiencies are cured.²

¹ See 807 KAR 5:001, Section 8(12) (stating that when the electronic filing procedures are used that a paper shall be considered timely filed if it meets all requirements established in this administrative regulation and any order of the Commission); 807 KAR 5:001, Section 3(2) (“The executive director shall reject for filing a document that on its face does not comply with 807 KAR Chapter 5.”); 807 KAR 5:001, Section 16 (9) (“The commission shall notify the applicant of any deficiencies in the application within thirty (30) days of the application’s submission. An application shall not be accepted for filing until the utility has cured all noted deficiencies.”); see *also* 807 KAR 5:001, Section 4(9) (stating that unless electronic filing procedures are used that a paper shall not be deemed filed with the commission until the paper meets all applicable requirements of KRS Chapter 278 and KAR Title 807).

² 807 KAR 5:001, Section 16 (9); 807 KAR 5:001, Section 3(2); see *also Bullitt Utilities, Inc. v. Kentucky Public Service Commission*, 2018-CA-000559-MR, 2019 WL 2157926 (Ky. App. May 17, 2019) (unpublished) (indicating that the Commission acted within its authority in determining that an application for a rate adjustment should not be deemed filed until the application complies with Commission regulations).

Upon review of the application, Commission Staff identified several deficiencies with Bluegrass Water's application that must be cured before it may be accepted for filing. Specifically, an application for a general rate adjustment based on a forecasted test period must include the following, or a statement explaining why the required information does not exist and is not applicable to the utility's application:

(n) The latest twelve (12) months of the monthly managerial reports providing financial results of operations in comparison to the forecast;

(o) Complete monthly budget variance reports, with narrative explanations, for the twelve (12) months immediately prior to the base period, each month of the base period, and any subsequent months, as they become available.³

Similarly, an application for a general rate adjustment based on a forecasted test period must include:

(m) A revenue summary for both the base period and forecasted period with supporting schedules, which provide detailed billing analyses for all customer classes; and

(n) A typical bill comparison under present and proposed rates for all customer classes.⁴

The Commission agrees that Bluegrass Water's application did not include those required documents, or in the case of the first two requirements, a statement explaining that the required information does not exist and is not applicable to the utility's application. Thus, Bluegrass Water must cure those deficiencies as directed in the deficiency letter from staff before the application may be accepted for filing.

³ 807 KAR 5:001, Section 16(7).

⁴ 807 KAR 5:001, Section 16(8).

The Commission also observes that Bluegrass Water indicated that it did not provide customer notice to customers of the systems it was approved to purchase in Case No. 2020-00028⁵ on which it has not closed or the utilities it is requesting approval to purchase in Case No. 2020-00297.⁶ The failure to provide such notice alone would not render the application deficient, because 807 KAR 5:001, Section 17, does not appear to require that potential future customers receive notice of a proposed rate change.⁷ However, the customers of the systems Bluegrass Water was approved to purchase or has requested approval to purchase are different from potential future customers who may choose to relocate into a utilities system after a rate adjustment has been proposed, because they are current customers of systems that Bluegrass Water is seeking to purchase and will therefore be bound to obtain service from those systems at rates approved by the Commission. Thus, the Commission has established additional requirements to protect those customers to ensure that they receive notice of any proposed change in their rates.

Pursuant to 807 KAR 5:011, Section 11, a person purchasing an existing utility is required to adopt the predecessor utility's existing tariffs on file with the Commission, including any rates and service requirements therein, before filing a new or revised tariff

⁵ Case No. 2020-00028, *Electronic Proposed Acquisition by Bluegrass Water Utility Operating Company, LLC of Wastewater System Facilities and Subsequent Tariffed Service to Users Presently Served by Those Facilities* (Ky. PSC June 19, 2020).

⁶ Case No. 2020-00297, *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, Inc.; Springcrest Sewer Company, Inc; and Woodland Acres Utilities, LLC.* (filed Sept. 16, 2020), Joint Application.

⁷ The Commission would note that this interpretation, as applied to the existing customers of new systems a utility is purchasing, is in part dependent on the Commission's interpretation of other statutory and regulatory requirements designed to provide notice.

for the predecessor utility or incorporating the predecessor utility into the successor utility's existing tariff.⁸ Further, when filing a new or revised tariff that changes the predecessor utility's rates and service requirements, the purchaser is required, at minimum, to provide notice to the Commission pursuant to KRS 278.180 and customer notice pursuant to 807 KAR 5:011, Section 8,⁹ which is nearly identical to the customer notice required for an application for a general rate adjustment.¹⁰ These generally applicable requirements ensure that customers of a utility being purchased receive notice of any proposed changes in their rates in time to raise objections or concerns that the Commission, in its discretion, may investigate by suspending the proposed tariff pursuant to KRS 278.190 before it becomes effective.

Commission regulation 807 KAR 5:011, Section 11, does not specifically address a situation in which a system that is not a utility is being purchased by a utility such as Bluegrass Water's purchase of the systems in Case No. 2020-00028 because in that situation, there is no existing tariff for the purchaser to adopt before requesting to adjust the current rates of the system. However, the Commission may establish such requirements, in the case of specific purchases, through orders.¹¹ Further, in the final Order in Case No. 2020-00028, the Commission required that Bluegrass Water file a tariff adopting the current rates of each system it was approved to purchase as identified in

⁸ 807 KAR 5:011, Section 11(1), (6).

⁹ 807 KAR 5:011, Section 11(7).

¹⁰ See 807 KAR 5:001, Section 17.

¹¹ See KRS 278.040 (providing the Commission exclusive jurisdiction over the rates and services of utilities); see also KRS 278.160 (indicating that tariffs should be filed "[u]nder rules prescribed by the commission").

that Order.¹² That requirement, which Bluegrass Water supported in that case, has not been altered, amended, or appealed and, therefore, continues to apply regardless of Bluegrass Water's filing in this matter.¹³

The requirement that Bluegrass Water file a tariff adopting the current rates of each system does not prohibit Bluegrass Water from immediately seeking to adopt a new rate for the customers of those systems upon filing the rates approved in Case No. 2020-00028. Rather, consistent with situations in which the predecessor system is operated by a utility, it requires Bluegrass Water to first adopt the rates of the existing systems before proposing new rates with, at minimum, notice to the Commission pursuant to KRS 278.180 and customer notice pursuant to 807 KAR 5:001, Section 17; 807 KAR 5:011, Section 8; or 807 KAR 5:076, Section 5. This ensures that customers of those systems, like utilities purchased by Bluegrass Water, will receive notice of any proposed rate increase when it is submitted to the Commission for review.

Here, Bluegrass Water seemed to acknowledge that it will be required, pursuant to 807 KAR 5:011, Section 11, to adopt the existing tariffs of the utilities that it is seeking approval to purchase in Case No. 2020-00297 before filing another tariff seeking to amend the rates of those utilities.¹⁴ However, Bluegrass Water indicated that it intended for its application in this matter to establish rates for the four sewage systems that it was approved to purchase in Case No. 2020-00028 on which it has not yet closed. Bluegrass

¹² Case No. 2020-00028, *Electronic Proposed Acquisition by Bluegrass Water Utility Operating Company, LLC of Wastewater System Facilities and Subsequent Tariffed Service to Users Presently Served by those Facilities* (Ky. PSC Jun. 19, 2020), Order at 17–20 and 23.

¹³ KRS 278.390.

¹⁴ Application at 4–5.

Water explained that it expected the rates in the tariff tendered with its application to apply as those systems' initial rates unless the Commission suspended the rates in the application in which case Bluegrass Water indicated that it would then file the tariff approved in Case No. 2020-00028 within 20 days of when it completes its purchase of each system. Bluegrass Water then indicated that it intended for the rates approved in Case No. 2020-00028 to apply to the customers of those systems until the rate adjustment requested herein becomes effective.¹⁵

The Commission finds that the manner in which Bluegrass Water proposes to establish rates for the systems it was approved to purchase in Case No. 2020-00028 is inconsistent with the final Order in that case, 807 KAR Chapter 5, and KRS Chapter 278. First, as noted above, the Commission required that Bluegrass Water file a tariff adopting the current rates of each system it was approved to purchase in the final Order in Case No. 2020-00028 and that requirement continues to apply. Further, KRS Chapter 278 clearly contemplates that a schedule containing new rates filed with the Commission will amend the schedule that preceded it, so even if the Commission were inclined to follow the process outlined by Bluegrass Water, which it is not, Bluegrass Water would likely need to refile the proposed rates in this matter after it submitted the tariff filed pursuant to the final Order in Case No. 2020-00028 in the scenario it proposed, which would trigger new notice requirements and deadlines. Lastly, assuming *arguendo* that a utility could amend the Commission approved rates of existing customers of systems it was purchasing as proposed, then there is a strong argument that the customers of those systems would, in fact, be "customers" entitled to notice pursuant to 807 KAR 5:001,

¹⁵ Application at 5.

Section 17, which was not provided here. Thus, to the extent Bluegrass Water intends for this application to serve as a request to increase the rates of the systems at issue in Case No. 2020-00028, the Commission finds that it is deficient.

If Bluegrass Water intends for this application to serve as a request to adjust the rates of the systems for which it obtained purchase approval in Case No. 2020-00028, then it must complete the purchase of the systems, file a tariff with the rates approved in Case No. 2020-00028, and provide those customers with proper notice of the rate adjustment proposed herein before this application is filed (or deemed filed upon correction of any other deficiencies). Conversely, if Bluegrass Water indicates that it is no longer seeking to establish or increase rates for the systems it was approved to purchase in Case No. 2020-00028 with this application, and it then supplements the application to correct the deficiencies identified by Commission Staff, as discussed above, then the application will be accepted for filing as of the date those deficiencies are corrected, but it will only be considered an application for an adjustment of the rates of the systems Bluegrass Water already owns.

Regardless of how Bluegrass Water proceeds in this matter, the rates it proposed in the application shall not become effective on October 31, 2020, because the application has not been accepted as filed due to the deficiencies identified above. Rather, pursuant to KRS 278.180, the earliest date on which the proposed rates could become effective is 30 days from the date on which the application is deemed to have been filed.¹⁶ Further, based on a review of the application and the interest from current customers, the

¹⁶ Case No. 2018-00129, *Application of Inter-County Energy Cooperative Corporation for a General Adjustment of Existing Rates* (Ky. PSC Aug. 28, 2018), Order (in which an application was not deemed to have been filed until the filing requirements were met and the statutory deadlines were extended).

Commission finds that it will be necessary to suspend the rates in this matter for six months from the effective date pursuant to KRS 278.190 and to establish a procedural schedule in a subsequent order to ensure the orderly review of this matter.

IT IS THEREFORE ORDERED THAT:

1. Bluegrass Water's application in this matter is deficient for the reasons discussed herein above.

2. Bluegrass Water shall specify whether it is still seeking to establish or increase rates for the systems it was approved to purchase in Case No. 2020-00028 in this matter when responding to the deficiencies identified herein.

3. Bluegrass Water's application in this matter shall not be accepted for filing until the deficiencies identified herein are cured.

4. The rates proposed by Bluegrass Water shall not become effective on October 31, 2020, for the reasons discussed above.

By the Commission

ENTERED
OCT 30 2020
rCS
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:



Deputy Executive Director

Case No. 2020-00290

*Angela M Goad
Assistant Attorney General
Office of the Attorney General Office of Rate
700 Capitol Avenue
Suite 20
Frankfort, KENTUCKY 40601-8204

*John G Horne, II
Office of the Attorney General Office of Rate
700 Capitol Avenue
Suite 20
Frankfort, KENTUCKY 40601-8204

*Kathryn A Eckert
McBrayer PLLC
201 East Main Street
Suite 900
Lexington, KENTUCKY 40507

*Katherine Yunker
McBrayer PLLC
201 East Main Street
Suite 900
Lexington, KENTUCKY 40507

*Larry Cook
Assistant Attorney General
Office of the Attorney General Office of Rate
700 Capitol Avenue
Suite 20
Frankfort, KENTUCKY 40601-8204

*Bluegrass Water Utility Operating Company, LLC
1650 Des Peres Road, Suite 300
St. Louis, MO 63131

*J. Michael West
Office of the Attorney General Office of Rate
700 Capitol Avenue
Suite 20
Frankfort, KENTUCKY 40601-8204