



Legal Counsel.

DINSMORE & SHOHL LLP
101 S. Fifth St., Suite 2500
Louisville, KY 40202
www.dinsmore.com

Edward T. Depp
(502) 540-2347 (direct) · (502) 585-2207 (fax)
tip.depp@dinsmore.com

January 27, 2025

RECEIVED

JAN 27 2025

PUBLIC SERVICE
COMMISSION

Via Electronic Filing

Linda C. Bridwell
Executive Director
Public Service Commission
211 Sower Boulevard
P.O. Box 615
Frankfort, Kentucky 40601

**Re: *Gary Smith v. Bluegrass Water Utility Operating Company, LLC,*
 Case No. 2024-00302**

Dear Executive Director Bridwell:

Enclosed for electronic filing is Bluegrass Water Utility Operating Company, LLC's Answer and Motion to Dismiss in the above matter.

The certificate of service below certifies that the enclosed was filed electronically today. The filing may be accessed at the Commission's Electronic Filing Center located at <http://psc.ky.gov/efs/efsmain.aspx>.

Thank you, and if you have any questions with respect to this matter, please call me.

Sincerely yours,

DINSMORE & SHOHL LLP

/s/ Edward T. Depp

Edward T. Depp

January 27, 2025

Page 2

Certification

I hereby certify that a copy of this Read 1st Letter has been served electronically on all parties of record through the use of the Commission's electronic filing system, and there are currently no parties that the Commission has excused from participation by electronic means. Pursuant to the Commission's July 22, 2021 Order in Case No. 2020-00085, a paper copy of this filing has not been transmitted to the Commission.

/s/ Edward T. Depp

Counsel to Big Rivers Electric Corporation

ETD/jhm

Enclosures

**COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION**

In the Matter of:

GARY SMITH

COMPLAINANT

v.

**BLUEGRASS WATER
UTILITY OPERATING COMPANY, LLC**

DEFENDANT

)
)
)
)
)
)
)
)
)
)
)

Case No. 2024-00302

BLUEGRASS WATER’S VERIFIED ANSWER AND MOTION TO DISMISS

Bluegrass Water Utility Operating Company, LLC (“*Bluegrass Water*” or the “*Company*”), by counsel, and pursuant to the January 17, 2025, order (“*Order*”) of the Kentucky Public Service Commission (the “*Commission*”) in this matter, hereby respectfully tenders its verified answer to the December 26, 2024 Amended Complaint (the “*Complaint*”) of Mr. Gary Smith and moves the Commission to dismiss the Complaint for failure to state a claim upon which relief can be granted.¹

I. FACTUAL BACKGROUND.

A. Summary of the Complaint.

The alleged acts forming the basis of the Complaint occurred between August 2022 and September 2023. According to the Complaint, in August or September of 2022, Complainant requested that Bluegrass Water connect a single family dwelling at 2394 Cincinnati Road to Bluegrass Water’s Delaplain system.² As part of its typical administrative process in establishing

¹ Order (Ky. PSC Jan. 17, 2025) at 1-2.

² Appendix to Order (Ky. PSC Jan. 17, 2025) at 4-5.

a new account, Bluegrass Water created a customer account for Complainant and requested a \$500 tap fee to cover the costs of adding the property to the Delaplain system.³ Complainant states that, sometime thereafter, he inquired about the status of the connection.⁴ After several conversations with Bluegrass Water representatives, Complainant was informed that the Kentucky Division of Water's ongoing moratorium (the "*Moratorium*") on new customer additions to the Delaplain system prevented Bluegrass Water from expanding its existing service area to include Complainant's property and fulfilling his request.⁵

B. The Moratorium prevents expansion of the Delaplain Service Territory.

Until significant facility upgrades are completed, Bluegrass Water cannot expand the Delaplain system's service territory or extend service to new customers. While 2394 Cincinnati Road is near the Company's existing Delaplain system, this property is not within the defined then- or now-existing service territory for Delaplain. Perhaps more importantly, and as has been previously communicated to the Complainant, the Delaplain system is still presently under a Moratorium that prohibits new connections until the system can be upgraded to satisfy the Division of Water's regulatory requirements.

The improvements necessary to upgrade the Delaplain system were the subject of a Certificate of Public Convenience and Necessity (CPCN) application in Case No. 2022-00104.⁶ The Company's proposals initially received Commission approval in March of 2023.⁷ However, the Company's discovery of additional issues during subsequent engineering work required the

³ *Id.* at 7-8.

⁴ *Id.* at 4.

⁵ *Id.* at 5. See Kentucky DOW Letter (February 22, 2023) attached herewith as **Exhibit A**.

⁶ Case No. 2022-00104, *Electronic Application of Bluegrass Water Utility Operating Company, LLC for Certificates of Public Convenience and Necessity for Projects at the Delaplain Site* (Ky. PSC Mar. 28, 2022).

⁷ See *id.* (Order of March 30, 2023).

Company to submit a modified plan, which the Commission ultimately approved on May 9, 2024.⁸ Engineering and construction preparations are now underway, and work on the facility improvements is expected to commence no later than May 9, 2025. Upon completion of the improvements, Bluegrass Water will so advise the Division of Water and seek termination of the existing Moratorium.

C. Bluegrass Water's Communications with Complainant.

Bluegrass Water's customer records confirm that Complainant requested service at 2394 Cincinnati Road and that the Company created Complainant's customer account and invoiced him for the \$500 tap fee. However, as work in preparation for the Delaplain project began, the Company determined that it could not establish a predictable timeframe for fulfilling Complainant's connection request. Therefore, on August 17, 2023, the Company refunded Complainant's \$500 tap fee. Company records reflect that, during an August 24, 2023, telephone conversation with Complainant, he acknowledged receipt of this \$500 refund.

Since the Commission issued its January 17, 2025 Order, the Company has again reached out to Complainant to convey these circumstances and explain why he cannot presently be connected to the Delaplain system. In particular, Bluegrass Water reiterated to Complainant that because the Moratorium remains in effect, it cannot add new customers or expand its Delaplain service area at this time. This conversation was followed-up by a letter to Complainant on January 21, 2025, confirming that once facility upgrades are complete and the Moratorium is lifted, the Company will have the capability expand its service area to include 2394 Cincinnati Road, and it would be happy to engage with Complainant at that time regarding potential connection to the system.⁹

⁸ See *id.* (Order of March 18, 2024); *id.* (Order of May 9, 2024).

⁹ Attached herewith as **Exhibit B**.

II. ANSWER

In response to Complainant's averments, Bluegrass Water states as follows:

1. Bluegrass Water admits the names and addresses contained in paragraphs (a) and (b) of the complaint.

2. Bluegrass Water generally denies the allegations stated in paragraph (c) of the Complaint, with the exception of the following:

a. In response to Complainant's request that the Company provide service to the single family home at 2394 Cincinnati Road, Bluegrass Water created an account for Complainant and invoiced Complainant \$500 for the tap fee required to join the Delaplain system.

b. When Complainant reached out regarding any progress on interconnection, Complainant was informed by Bluegrass Water representatives that the Division of Water's Moratorium on new connections prevented Bluegrass Water from connecting 2394 Cincinnati Road in the near term, and he was refunded the full \$500 tap in fee on August 17, 2023.

c. On August 25, 2023, Bluegrass Water sent a letter informing Complainant that 2394 Cincinnati Road is not within the existing service area of the Company's Delaplain facility, and that service cannot be provided to 2394 Cincinnati Road until such time as the Delaplain system improvements are completed.

3. With respect to the original September 5, 2024 Complaint, Bluegrass Water denies the following allegations:

a. That customers other than Complainant have been added to the Delaplain system during the Moratorium.

b. That the Company has specifically sought to exclude Complainant from accessing the Delaplain system, or has otherwise denied Complainant's service request for any reason other than the Moratorium and Complainant's location outside of the current Delaplain system service area.

4. All averments in the Complaint not expressly and affirmatively admitted herein are hereby expressly denied.

III. MOTION TO DISMISS

In addition to the foregoing Answer, Bluegrass Water moves to dismiss the Complaint for failure to state a claim for which this Commission may grant relief. Bluegrass Water moves for dismissal of the Complaint on three grounds: (1) Bluegrass Water's alleged actions were carried out in compliance with the Kentucky Division of Water's Moratorium;¹⁰ (2) Complainant's property at 2394 Cincinnati Road remains outside of Bluegrass Water's current service area;¹¹ and (3) the Company refunded the entirety of Complainant's tap fee on August 17, 2023.¹² Given these circumstances, the Complaint does not, and cannot, state a claim upon which relief may be granted. Therefore, Bluegrass Water respectfully requests that the Commission dismiss the Complaint in its entirety.

IV. CONCLUSION

¹⁰ See **Exhibit A**.

¹¹ Appendix to Order (Ky. PSC Jan. 17, 2025) at 9.

¹² See Answer at ¶ 2(b).

Having answered the Complaint in this manner, Defendant Bluegrass Water respectfully requests the following:

1. That the Complaint be dismissed in its entirety
2. That this matter be removed from the Commission's active docket; and
3. Any other relief to which Bluegrass Water may be entitled.

This 27th day of January, 2025.

Respectfully submitted,

/s/ Edward T. Depp

Edward T. Depp

John D. A. Lavanga

Dinsmore & Shohl LLP

101 S. Fifth St., Suite 2500

Louisville, KY 40202

tip.depp@dinsmore.com

john.lavanga@dinsmore.com

Telephone: (502) 540 – 2300

Facsimile: (502) 585 – 2207

*Counsel to Bluegrass Water Utility Operating
Company, LLC*

Certification

I hereby certify that a copy of this filing and its exhibits has been served electronically on the Kentucky Public Service Commission. Additionally, a true and accurate copy of the foregoing was placed in the U.S. Mail, postage prepaid, on January 27, 2025 to the following:

Gary Smith
2410 Cincinnati Rd.
Georgetown, KY 40324

Pursuant to the Commission's July 22, 2021 Order in Case No. 2020-00085, a paper copy of this filing has not been transmitted to the Commission.

/s/ Edward T. Depp
*Counsel to Bluegrass Water Utility
Operating Company, LLC*

**COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION**

In the Matter of:

GARY SMITH

COMPLAINANT

v.

**BLUEGRASS WATER
UTILITY OPERATING COMPANY, LLC**

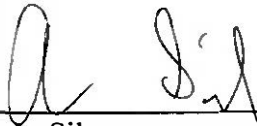
DEFENDANT

Case No. 2024-00302

BLUEGRASS WATER'S ANSWER AND MOTION TO DISMISS

VERIFICATION

I, Aaron Silas, verify, state, and affirm that the Answer and Motion to Dismiss filed with this verification is true and accurate to the best of my knowledge, information, and belief formed after a reasonable inquiry.



Aaron Silas
Director, Regulatory Operations
Bluegrass Water Utility Operating Company, LLC

STATE OF MISSOURI

COUNTY OF ST. LOUIS

)
) ss:
)

SUBSCRIBED AND SWORN TO before me on this the 24th day of January, 2025.

My commission expires: 04-10-2027


Notary Public

Exhibit A



ANDY BESHEAR
GOVERNOR

REBECCA W. GOODMAN
SECRETARY

**ENERGY AND ENVIRONMENT CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION**

ANTHONY R. HATTON
COMMISSIONER

300 SOWER BOULEVARD
FRANKFORT, KENTUCKY 40601
TELEPHONE: 502-564-2150
TELEFAX: 502-564-4245

February 22, 2023

Ms. Mandy Sappington
Delaplain Disposal
1630 Des Peres Road Ste 140
Saint Louis MO 63131-1871

RE: Sewer Line Extension Denial in Progress to Prevent Pollution from the Delaplain Disposal
Permit No. KY0079049
Scott County, Kentucky
AI ID: 3901

Dear Ms. Sappington:

The Division of Water (DOW) has determined that Delaplain Disposal is out of compliance according to 401 KAR 5:005 and therefore Delaplain Disposal will remain on the Division of Water's Facility Line Extension Ban List. Compliance records indicate that Delaplain Disposal is receiving more than 100% of their design capacity for the last year. The design capacity for Delaplain Disposal is 0.24 million gallons per day (MGD), Delaplain Disposal's monthly average for the past year is 0.253 MGD.

An Exemption Request has been submitted for the R and L Carriers Georgetown Development project. The request proposes an additional flow of 6,400 gallons per day over the design capacity. What is the justification for the additional flow?

The sewer line extension and tap on ban imposed on Delaplain Disposal will not allow any new sewer line extensions or any new taps on to existing lines without prior approval from this office. This ban will not apply to any preexisting subdivisions. Delaplain Disposal will be removed from the Facility Line Extension Ban List once this office has received sufficient evidence that the twelve month average annual flow for Delaplain Disposal has returned to compliance according to 401 KAR 5:005 Section 9.

A request for exemption to the line extension and tap on ban can be submitted using the Line Extension Ban Exemption Request Form, to Chris Luffy at Christopher.luffy@ky.gov or the above address. The Line Extension Ban Exemption Request Form can be found on the Division of Water's Wastewater Municipal Planning website. All exemption requests submitted must be signed by an authority for the city. These requests are reviewed on a case-by-case basis and approved or denied based on the nature of the request, the condition of the system, and the progress the city has made in complying with all pertinent regulations, permits, and orders.

If you have any questions or would like to discuss this matter, please contact me at (Email) Christopher.luffy@ky.gov.

Sincerely,



Chris Luffy
Municipal Water Pollution Prevention Program
Coordinator
Wastewater Municipal Planning Section

cc: Division of Plumbing

Exhibit B



BLUEGRASS WATER

Utility Operating Company

A CSWR Managed Utility

January 21, 2025

To Whom This May Concern,

Bluegrass Water Utility Operating Company is writing to confirm that once the expansion project for its Delaplain system has been completed, it will have the capability to provide service to the residence at 2394 Cincinnati Road Georgetown, KY 40324. The residence is outside the service territory for Bluegrass Water UOC and has no obligation to provide service.

Please contact us with any questions at 1-866-752-8982 or support@bluegrasswateruoc.com.

Sincerely,

Bluegrass Water Utility Operating Company



bluegrasswateruoc.com



1-866-752-8982



support@bluegrasswateruoc.com