

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of

*Electronic* Application of Bluegrass )  
Water Utility Operating Company, LLC ) Case No. 2020-00290  
for an Adjustment of Rates and Approval )  
of Construction )

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**Applicant’s Response in Opposition to Arcadia Pines, Carriage Park,  
Marshall Ridge and Randview’s Motion for Leave to Intervene**

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Comes now Bluegrass Water Utility Operating Company, LLC (hereinafter “Bluegrass”) and responds in opposition to the Motion for Leave to Intervene of Arcadia Pines Sewer Association, Inc. (“Arcadia Pines”), Carriage Park Neighborhood Association, Inc. (“Carriage Park”), Marshall Ridge Sewer Association, Inc. (“Marshall Ridge”) and Randview Septic Corporation (“Randview”) (collectively, “the Movants”). Bluegrass does not contend that no residential customer or subdivision-related association can ever intervene in a rate case, only that no showing has been made for such intervention in this case. Bluegrass further states as follows:

1. Bluegrass submitted its Application to the Commission in the instant matter on September 30, 2020, for an adjustment of rates and approval of construction; the Application has been deemed filed as of November 19, 2020. The fully-forecasted test year and sewer rates proposed are based on service to systems for which Bluegrass’s acquisition was approved in Case Nos. 2019-00104, 2019-00360, and 2020-00028, and those for which acquisition/transfer approval has been sought in Case No. 2020-00297. In Case No. 2020-00028, Bluegrass Water acquired the systems from Arcadia Pines, Carriage Park, Marshall Ridge, and Randview; the Commission entered an Order granting its approval for acquisition of these systems on June 19, 2020; closing on these systems occurred on November 19, 2020.

2. Arcadia Pines alleges that it “represents the interests” of “approximately” 25 homeowners residing in the Arcadia Pines neighborhood, an area formerly served by Arcadia Pines.<sup>1</sup> Carriage Park alleges it “represents the interests” and “enforces the collective obligations” of “approximately” 38 homeowners residing in the Carriage Park neighborhood, an area formerly served by Carriage Park.<sup>2</sup> Marshall Ridge alleges it “represents the interests” of “approximately” 40 homeowners residing in the Marshall Ridge neighborhood, an area formerly served by Marshall Ridge.<sup>3</sup> Randview alleges it “represents the interests” of “approximately” 55 homeowners and one church residing in the Randview neighborhood, an area formerly served by Randview.<sup>4</sup> None of the Movants currently provide service to these neighborhoods, as the assets and operation of the systems were transferred to Bluegrass Water upon closing on these non-jurisdictional systems in November 2020.

3. None of the Movants claims to be a sewer service customer or to otherwise itself have an interest in the rates or service of a utility. Upon transfer of the assets and operation of their respective systems, the Movants no longer had any role in providing sewer service to their previous customers. Their assertions that they should be granted intervention rests on their

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<sup>1</sup> Arcadia Pines does not provide any support for its claim that it “represents the interests” of the homeowners. Its 2007 Articles of Incorporation identify the corporation’s purpose to “use, operate, and maintain a sewer disposal system” in the Arcadia Pines subdivision.

<sup>2</sup> Carriage Park also does not provide any support for its claim that it “represents the interests” of the homeowners. Its 2007 Articles of Incorporation identify that the corporation is organized and operated exclusively to “use, maintain, and operate” a sewer disposal system to service the lots in the Carriage Park subdivision.

<sup>3</sup> Marshall Ridge also does not provide any support for its claim that it “represents the interests” of the homeowners. Its 1996 Articles of Incorporation are not available online with the Kentucky Secretary of State, but its By-Laws (attached as Exhibit C-1 to the Application in Case No. 2020-00028) provide for a monthly levy for maintenance, scheduled pumping and inspection, and future rebuilding of a sewer system to service the Marshall Ridge subdivision.

<sup>4</sup> Randview also does not provide support for the claim that it “represents the interests” of the homeowners. Its 1994 Articles of Incorporation identify that the purpose of the corporation is to “own and operate a sewer system” for owners of the lots in Randview subdivision.

respective property owners' interests (if any) in those rates and service<sup>5</sup> and incorporates by reference the arguments made in the earlier-filed motion to intervene and reply by the Homestead HOA.

4. The Attorney General of the Commonwealth of Kentucky, by and through the Office of Rate Intervention, has a statutory right to intervene, pursuant to KRS 367.150(8)(b).<sup>67</sup> The Attorney General has extensive experience representing the interests of a broad range of consumers in rate adjustment cases, making intervention by these Movants unnecessary for any cognizable interests of the homeowners to be adequately represented. The only examples of subdivision-related association intervention were in 1990s cases in which the Attorney General did not intervene.<sup>8</sup> The Attorney General's motion for intervention in this case was granted on September 28, 2020. To imply that the Attorney General cannot adequately represent different subsets of Bluegrass customers as to the proposed increases to a universal rate<sup>9</sup> ignores the statutory role of the Attorney General to represent consumers in rate cases.

5. Intervention for all others is permissive and is within the sound discretion of the Commission, but first the party seeking intervention must show it has standing. The residential homeowners would not have standing to intervene separately from the Attorney General in this

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<sup>5</sup> Each Movant claims to represent the homeowners in each respective neighborhood. It is unclear whether these are all the homeowners for the subdivision, or whether either Movant claims to represent any non-homeowner utility consumers residing in the subdivision.

<sup>6</sup> This statute gives the Attorney General the right and obligation to appear before the Commission, *inter alia*, to represent consumers' interests.

<sup>7</sup> Although the Attorney General represents the interests of all customers of a utility, KRS ch. 367 as a whole and KRS 367.150 in particular are focused on protecting consumers who are purchasing or receiving goods or services for personal, family, or household use (*see, e.g.*, KRS 367.170(1)) — here, the residential customers of a utility.

<sup>8</sup> *See* Bluegrass's Response in Opposition to the Deer Run and Longview HOAs Motions to Intervene, p. 5 fn. 13, filed January 5, 2021.

<sup>9</sup> *See* Homestead HOA's Reply in Support of its Motion to Intervene, p. 2, filed December 11, 2020.

matter. Additionally, the interests the Movants seek to protect have not been shown to be germane to their purpose, *e.g.*, through Articles or By-Laws. Per the corporate documents for each Movant, each corporation's only purpose is to operate and maintain a sewer system for these areas; upon transfer and sale to Bluegrass Water, this purpose ended.<sup>10</sup>

6. Even if the Commission were to find that the Movants have bare standing, the request for intervention still fails. Section 4(11)(b) of 807 KAR 5:001 states that a motion for intervention may be granted if it finds that the movant has a special interest in the case that is not otherwise adequately represented or that the movant is likely to present issues or to develop facts that assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings. Movants for intervention must be specific in their showing of a special interest or about issues/facts that they can present or develop.<sup>11</sup>

7. The Movants have failed to demonstrate any cognizable special interest not adequately represented or to identify any issues or facts they can present that would assist the Commission in fully considering the matter.<sup>12</sup> In reviewing requests for intervention on behalf

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<sup>10</sup> In the Motion (p.3, ¶6), Movants claim that “[A]lthough the Movants no longer have an ownership interest in the wastewater facilities, they continue to have an interest in the rates charged to their respective residents for wastewater service.” However, Movants fail to articulate any basis for the claimed “interest” in the rates charged.

<sup>11</sup> See, *e.g.*, *In the Matter of Electronic Application of Kentucky-American Water Company for an Adjustment of Rates*, Ky. PSC Case No. 2018-00358, 12/5/18 Order, p. 2: “[A]ny person requesting to intervene in a Commission proceeding must state with specificity the person’s special interest that is not adequately presented, or the issues and facts the person will present that will assist the Commission in fully considering the matter. A mere recitation of the quantity of water consumed by the movant or a general statement regarding a potential impact of a possible modification of rates will not be deemed sufficient to establish a special interest.”

<sup>12</sup> For example, the Commission denied the Sierra Club’s motion to intervene in *In the Matter of Electronic Application of Kentucky Utilities Company for an Adjustment of its Rates*, Ky. PSC Case No. 2018-00294. The 11/9/18 Order found that the interests expressed by the members of the Sierra Club are similar to the interests of other residential customers served by the same utility. Furthermore, the Commission found that those interests are adequately represented by the Attorney General and that the Attorney General has extensive experience in similar rate cases. *Id.*, pp. 2-3. See also, *Id.*, Ky. PSC Case

of “subsets” of residential customers in other rate cases, the Commission has consistently recognized that customer status is not a special interest meriting full intervention. A generalized representation that the homeowners remaining in the Movants’ prior service area (which is now provided by Bluegrass) would be impacted by Bluegrass’s application is not a special interest; Bluegrass provides sewer (and water) service to more than 2000 customers, and each one of these customers has an interest in having other customers pay more so that it can pay less.

8. The Movants have also each failed to make a showing of how it will likely present issues or develop facts to assist the Commission in fully considering the matter. They have not articulated any specifics about issues or facts; the only mention is of the “issue” of rate design, which along with revenue requirement is typical for rate cases and is already presented in this case.<sup>13</sup> These same associations did not keep the information or records required by the Commission of jurisdictional utilities, and were unable to provide information requested by Bluegrass during the due diligence phase of closing on the systems. It is thus very unlikely for the Movants to have anything to contribute since the Movants are not themselves utility customers, have no experience in rate-making or Commission matters and cannot contribute useful information about the systems beyond what Bluegrass already presented in the underlying acquisition matter.<sup>14</sup>

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No. 2018-00294, 11/9/18 Order denying the Community Action Council’s Motion to Intervene on behalf of the subset low-income residential customers.

<sup>13</sup> Movants present a recitation of issues from Bluegrass’s Application (Motion p. 7, ¶ 16), but these issues have already been presented in the case through the Application itself.

<sup>14</sup> Compare with 10/25/18 Order, *In the Matter of Electronic Application of Kentucky Utilities Company for an Adjustment of its Rates*, Ky. PSC Case No. 2018-00294, by which the PSC granted intervention to Kentucky Industrial Utility Customers (KIUC). KIUC’s Motion to Intervene explained that the Attorney General would not provide adequate representation because its focus was residential consumers; and also showed that through the group’s extensive experience intervening in multiple other rate cases, it could assist the Commission with developing the issues.

9. The Movants, like the individual customers in the neighborhoods,<sup>15</sup> have plenty of opportunity to participate in the case without being granted intervenor status. They can review all documents filed in the case and monitor the proceedings as the case progresses. Each Movant may also file comments as frequently as it chooses, which will be entered in the record of the case. In addition, representatives of the Movants may attend and present public comment at any evidentiary hearing held in this matter.

10. In conclusion, the Movants have failed to show any special interest that would be above and beyond that of the generalized interest of residential customers, which is already adequately represented by the Attorney General. The Movants have also failed to demonstrate any special training, knowledge or experience that would provide any assistance to the Commission in the pending case, as well as have failed to present issues or to develop facts that assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings. Therefore, the Movants should not be allowed to intervene in this matter.

WHEREFORE, Bluegrass respectfully requests that the Commission DENY the Motion for Leave to Intervene of Arcadia Pines, Carriage Park, Marshall Ridge and Randview.

Respectfully submitted,

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<sup>15</sup> The Movants do not address the likelihood that some of “their” homeowners are among the customers who have requested individual intervention in this case.