

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 Rates and Approval of)
Construction)
Case No. 2020-00290

**Applicant’s Motion for Deviation from Requirements
relating to Customer Notice**

Comes now Bluegrass Water Utility Operating Company, LLC (hereinafter “Bluegrass”) pursuant to 807 KAR 5:001 Section 22, and respectfully requests that the Commission permit deviation from regulations regarding notice to customers for a rate adjustment application. For its Motion, Bluegrass hereby states as follows:

1. Bluegrass filed an Application in Case No. 2020-00297 for acquisition of four wastewater utilities on September 16, 2020. These systems are Delaplain Disposal Company, Herrington Haven Wastewater Company, Inc., Springcrest Sewer Company, Inc., and Woodland Acres Utilities, LLC.

2. 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 fully-forecasted test year and sewer rates proposed are based on service to its previously acquired systems from Case Nos. 2019-00104 and 2019-00360, as well as those systems approved but not yet acquired in Case No. 2020-00028, and those not yet approved for acquisition in Case No. 2020-00297.

3. Pursuant to 807 KAR 5:001 Section 17(2), the applicant utility must provide notice of an application for a general rate adjustment to its customers no later than the date the application is submitted to the Commission, and this regulation provides several methods by

which to provide notice. The content of the notice provided must comply with the specific requirements listed in 807 KAR 5:001 Section 17(4), subparts (a)-(j). Bluegrass gave the required notice to its existing customers on September 30, 2020, and otherwise met the deadlines of Section 17. *See* Application ¶ 16 & Exhibit 3.

4. The customers of the systems for which Bluegrass obtained approval to serve in Case No. 2020-00028 are not yet its customers, but will be when closings on the systems have occurred. The customers of the systems pending acquisition approval in Case No. 2020-00297 are not yet customers of Bluegrass, and will not be unless and until the Commission has entered an Order approving the transfer/acquisition, and closings on the systems occur.

5. By Order entered October 30, 2020 (pp. 7-8), the Commission concluded that the Application was deficient as to four enumerated requirements in 807 KAR 5:001 Section 16(7) & (8) and had not yet been accepted as filed due to those deficiencies, and that it was necessary to suspend the rates proposed.

6. The 10/30/20 Order also addressed the issue of notice to potential customers by stating that, standing alone, a lack of notice to them pursuant to 807 KAR 5:001 Section 17 would not render the application deficient, because this regulation “does not appear to require that potential future customers receive notice of a proposed rate change.” (10/30/20 Order p. 3) However, the 10/30/20 Order found that the Application was deficient relating to the 2020-00028 customers based on the approval order entered in that case and that notice would need to be given to these not-yet customers of any proposed change in their rates. (*Id.*) In accordance with the directives in the 10/30/20 Order (pp. 5, 7), Bluegrass will first close on the 2020-00028 systems, then file revisions to its existing tariff with the initial rates approved in the 2020-00028 final Order, and then provide notice to its new customers in compliance with the requirements in

807 KAR 5:001, Section 17. Per the 10/30/20 Order (p.7), these steps must be taken “before this application is filed (or deemed filed upon correction of any other deficiencies).”

7. Unlike the 2020-00028 systems (which are not utilities), the transferring utilities/co-applicants in 2020-00297 each have an existing tariff on file with the Commission; the Application proposes an adjustment to the rates in those tariffs. The 10/30/20 Order suggests (but does not directly conclude) that there is a deficiency for the Application to the extent that it proposes an adjustment to the rates of the 2020-00297 transferring utilities’ customers if they become customers of Bluegrass because those potential Bluegrass customers have not been given notice meeting the standards of 807 KAR 5:001 Section 17 (for rate-adjustment applications) or 807 KAR 5:011 Section 8 (for tariff filings).

8. This Motion thus asks for a deviation from any requirements of regulations which require notice of rate adjustments to customers (interpreted as existing customers) no later than the date a rate-adjustment application is submitted to the Commission (*see, e.g.*, 807 KAR 5:001 Section 17(2)(b)(2)), proper notice be provided to the public in order for statutory notice to the Commission be effective (*see, e.g.*, 807 KAR 5:011 Section 9(a)), and that a submission like the Application is considered filed only if it meets all 807 KAR ch.5 requirements (*see, e.g.*, 807 KAR 5:001 Section 8(12)), such that the Application will be deemed filed upon the correction of other identified deficiencies and the mailing of a written notice complying with 807 KAR 5:001 Section 17 to each customer of the systems for which transfer/acquisition authority is requested in Case No. 2020-00297. In addition to the extent that any interpretation of existing regulations requires that a rate-adjustment application is limited to proposing an adjustment of rates to customers then served under the applicant’s tariffs, Bluegrass requests a deviation from the regulations so-interpreted.

9. Bluegrass seeks a ruling from the Commission that it may provide effective notice of the rate adjustment to the anticipated future customers from Case No. 2020-00297 prior to closing on the systems and adoption of the rates sheets of the existing tariffs associated with these systems. Bluegrass further requests that notice to those customers otherwise meeting the requirements of 807 KAR 5:001 Section 17 would qualify the application for filing as of the date that notice is mailed (if other deficiencies have been cured).

10. Good cause exists to permit the deviation(s) requested. Notice to these potential customers that meets the 807 KAR 5:001 Section 17 standards fully protects their due-process rights to notice and an opportunity to be heard without impinging on Bluegrass's due-process rights regarding regulation of its rates. That notice would "ensure that customers of a utility being purchased receive notice of any proposed changes in their rates in time to raise objections or concerns...." (10/30/20 Order p.4). Furthermore, Bluegrass is proposing unified rates in the Application, which would align with the KRS 278.170(1) requirement that a utility not maintain an unreasonable difference between localities. Excluding the 2020-00297 localities/systems from the proposed unified rates solely because they were not provided with sewer service by Bluegrass at the time the Application was filed would unreasonably require the maintenance of differences between the 2020-00297 systems and between those systems and the ones previously acquired by Bluegrass.

11. Bluegrass recognizes that this request involves a "question of first impression" or, at the least, the application and interpretation of the Commission's regulations to novel circumstances. Bluegrass stands ready to assist the Commission's consideration of this request by submitting further written briefing or presenting oral argument.

WHEREFORE, Bluegrass respectfully requests an Order granting a deviation from any conflicting regulatory requirements such that notice by Bluegrass to the potential future customers in Case No. 2020-00297 that meets the content, manner, and timing requirements of 807 KAR 5:001 Section 17 is sufficient to allow an adjustment of their rates on an Application deemed filed no earlier than when notice to those customers was given.

Respectfully submitted,

/s/ Kathryn A. Eckert

Katherine K. Yunker

Kathryn A. Eckert

McBrayer PLLC

201 East Main St., Suite 900

Lexington, KY 40507

(859) 231-8780

kyunker@mcbayerfirm.com

keckert@mcbayerfirm.com

*Counsel for Bluegrass Water Utility Operating
Company*