

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of

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

**Applicant's
Response to HOA's Motion for Leave to Intervene**

Comes now Bluegrass Water Utility Operating Company, LLC (hereinafter "Bluegrass") and for its response to the Homestead Home Owners Association, Inc.'s (hereinafter "HOA") Motion for Leave to Intervene, hereby 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 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.
2. The Commission issued a deficiency letter ("10/30/20 Letter") on October 30, 2020, along with an Order ("10/30/20 Order") outlining additional information and steps related to the identified deficiencies.
3. Bluegrass submitted a Motion to Deviate from Notice Requirements on November 18, 2020. Bluegrass also submitted its Notice of Filing to Cure Deficiencies on November 19, 2020, along with Supplements to the Application regarding the notice to customers in Case Nos. 2020-00028 and 2020-00297. No ruling has been made on the Motion to

Deviate, and the Commission has not yet ruled on whether and as of what date the Application is deemed filed in this matter.

4. The HOA filed its motion for leave to intervene on November 23, 2020. The only person with a statutory right to intervene is the Attorney General of the Commonwealth of Kentucky, by and through the Office of Rate Intervention (Attorney General), pursuant to KRS 367.150(8)(b). The Attorney General was granted intervention on September 28, 2020. Intervention by all others is permissive and is within the sound discretion of the Commission.

5. 807 KAR 5:001 Section 4(11)(b) states that the Commission shall grant a person leave to intervene if the commission finds that he or she has made a timely motion for intervention and that he or she has a special interest in the case that is not otherwise adequately represented or that his or her intervention 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. KRS 278.040(2) requires that a person seeking intervention must have an interest in the rates or service of a utility, as those are the only matters that are subject to the Commission's jurisdiction.

6. The Commission has consistently stated that “any 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.”¹

¹ See, *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

7. The HOA has failed to demonstrate any special interest not adequately represented or identify any issues or facts it can present that would assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings. The purpose of a private homeowner's association, such as the HOA here, is to oversee and manage neighborhood common areas and amenities as well as insuring property owners obey any by-laws or other governing documents. While it is true that the Commission has allowed intervention by other "associations" in the past (*see* HOA Motion, ¶ 2), any such association must first prove standing, then show that it has special interests not adequately represented by the Attorney General, and identify any issues or facts it can present to assist the Commission with its decision in the matter.²

8. In reviewing requests for intervention on behalf 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 HOA's current members would be impacted by Bluegrass's application fails to qualify as a special interest, because Bluegrass provides service to more than 2,000 customers, and each one of these customers will be impacted financially by the issues in this rate case.³ The Attorney General has

² For example, the HOA's example of the Sierra Club is helpful here. 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. In its 11/9/18 Order, the Commission found that the interests expressed by the members of the Sierra Club, as residential customers of the utility, 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, who is a party to this proceeding, and that the Attorney General has extensive experience in similar rate cases; therefore, intervention by Sierra Club would not assist the Commission in fully considering the matter without unduly complicating the proceedings, and intervention was denied. *Id.*, pp. 2-3.

³ *See, In the Matter of the Application of Big Rivers Electric Corporation for a General Adjustment in Rates Supported by Fully Forecasted Test Period*, Ky. PSC Case No. 2013-00199, 11/12/13 Order, denying the motion of a labor union (IBEW) to intervene in the matter.

extensive experience representing the interests of a broad range of consumers in rate adjustment cases, making intervention by the HOA unnecessary.⁴

9. The whole of the HOA's argument seems to hinge on the assertion that there may be a conflict between those residents in the affected neighborhood, versus the rest of Bluegrass's 2,000-plus customers spread across its various systems, that would prevent the Attorney General from providing adequate representation to all of Bluegrass's customers in the pending matter. However, any "conflict" anticipated here does not create the special interest necessary, nor provide identification of the issues and facts it could present to assist the Commission that would justify its intervention in this matter. The HOA has no special knowledge or experience that would assist the Commission in investigating the proposed rates in this matter. Essentially, it seeks to step into the role of Attorney General to represent the individuals living in this neighborhood who would be affected by the outcome of the pending rate case. The interest the HOA claims to protect therefore is a general interest rather than a special one, and the HOA has not identified any issues or facts it can present that would assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings.

10. The role of the Attorney General in similar rate cases is to represent consumers' interests who will be affected by proposed rate changes. The affected Bluegrass customers in this matter are nearly all residential customers. This is considered a generalized interest among all residential customers, as all will be financially impacted by the suggested adjustments in rates. This does not rise to the level of suggested conflict or special interest "subset" presented in

⁴ See, *In the Matter of Electronic Application of Kentucky Utilities Company for an Adjustment of its Rates* Ky. PSC Case No. 2018-00294; 11/9/18 Orders denying intervention by the Sierra Club and Community Action Council; see also *In the Matter of the Application of Big Rivers Electric Corporation for a General Adjustment in Rates Supported by Fully Forecasted Test Period*, Ky. PSC Case No. 2013-00199, 11/12/13 Order, denying the motion of a labor union (IBEW) to intervene in the matter.

support of the HOA's need to intervene.⁵ The Attorney General has extensive experience representing residential consumers in similar rate cases, all with expectations of varying financial impact and the effects on each customer. The HOA has not articulated a special interest which is not receiving adequate representation by the Attorney General as a result.

11. Finally, the HOA arguably does not meet the burden for associational standing identified in *Com. ex rel. Brown v. Interactive Media Entertainment and Gaming Ass'n, Inc.*, 306 S.W.3d 32, 38 (Ky.2010) (citing *Hunt v. Washington State Apple Adver. Comm'n*, 432 U.S. 333, (1977)) to even participate in the rate case. The Supreme Court of the United States articulated the following requirements an association must meet to have associational standing:

- (a) its members would otherwise have standing to sue in their own right;
- (b) the interests it seeks to protect are germane to the organization's purpose; and
- (c) neither the claim asserted nor the relief requested requires the participation of the individual members in the lawsuit.

Id. While Kentucky has only officially recognized (a) in addressing associational standing, (b) and (c) are helpful for purposes of this Motion. The HOA's purpose is to govern the by-laws, common areas, and amenities of the neighborhood it oversees – which is not germane to the relationship between individual customers and the wastewater utility servicing these individuals. As to the final element, the claims made by the HOA in requesting intervention all require the participation of its individual members in the matter—as each must speak to the individual impact of the suggested rate adjustments. Based on *Brown*, the HOA fails to have associational standing and should not be allowed to intervene in this case.

12. The HOA will still have plenty opportunity to participate in the case without being granted intervenor status. It can review all documents filed in the case and monitor the

⁵ See, *In the Matter of Electronic Application of Kentucky Utilities Company for an Adjustment of its Rates*, Ky. PSC Case 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.

proceedings as the case progresses. It may also file comments as frequently as it chooses, which will be entered in the record of the case. Finally, the HOA may also attend and present public comment at the expected evidentiary hearing if such takes place in this matter.

13. In conclusion, the HOA has failed to show any special interest that would be above and beyond that of the generalized interest of its residential customers as already provided representation by the Attorney General. The HOA has 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 has 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 HOA should not be allowed to intervene in this matter.

WHEREFORE, Bluegrass respectfully requests an Order DENYING to the HOA's Motion for Leave to Intervene.

Respectfully submitted,

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