

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

IN THE MATTER OF:

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

**Motion for Leave to Intervene of
Arcadia Pines Sewer Association, Inc., Carriage Park Neighborhood Association, Inc.
Marshall Ridge Sewer Association, Inc. and Randview Septic Corporation**

Comes now Arcadia Pines Sewer Association, Inc. (“Arcadia”), Carriage Park Neighborhood Association, Inc. (“Carriage Park”), Marshall Ridge Sewer Association, Inc. (“Marshall Ridge”) and Randview Septic Corporation (“Randview”) (collectively, “Movants”), by counsel, pursuant to 807 KAR 5:001, Section 4(11), and other applicable law, and do hereby request leave to intervene in this docket, respectfully stating as follows:

1. Arcadia is a non-stock, non-profit corporation with a principal business address of 5339 Shelldrake Lane, Paducah, Kentucky 42001. Arcadia represents the interests of approximately twenty-five (25) homeowners within the Arcadia Pines neighborhood located in McCracken County, Kentucky, who are served by a non-discharging lagoon wastewater treatment facility.¹ The Director of Arcadia Pines is Ms. Tina Martin, whose personal email address is [REDACTED].

¹ See *In the Matter of the 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*, Order, Case No. 2020-00028, pp. 3-4 (Ky. P.S.C. June 19, 2020).

2. Carriage Park is a non-stock, non-profit corporation with a principal business address of 3670 North Brian Avenue, Paducah, Kentucky 42001. Carriage Park represents the interests and enforces the collective obligations of the approximately thirty-eight (38) homeowners who reside in the Carriage Park neighborhood located in McCracken County, Kentucky and two additional landowners whose properties are immediately south of the subdivision.² These residents are all served by a non-discharging lagoon wastewater treatment facility. The President of Carriage Park is Ms. Sharon Sanderson, whose personal email address is [REDACTED].

3. Marshall Ridge is a non-stock, non-profit corporation with a principal business address of 3670 North Brian Avenue, Paducah, Kentucky 42001. Marshall Ridge represents the interests of the approximately forty (40) homeowners in the Marshall Ridge neighborhood located in McCracken County, Kentucky.³ The President of Marshall Ridge is Mr. Doug Jones, whose personal email address is [REDACTED].

4. Randview is a non-stock, non-profit corporation with a principal business address of 935 Paris Road, Mayfield, Kentucky 42066. Randview represents the interests of the approximately fifty-five (55) homeowners and one church who utilize a non-discharging lagoon wastewater treatment facility serving the Randview neighborhood located in Graves County, Kentucky.⁴ The Vice President of Randview is Mr. R. Thomas Waldrop, Jr., whose personal email address is [REDACTED].

5. In *Bailey v. Preserve Rural Roads of Madison County, Inc.*, 394 S.W.3d 350, 356 (Ky. 2010), the Kentucky Supreme Court stated, “[W]e have held that, at a minimum, to establish

² See *id.*, pp. 4-5.

³ See *id.*, p. 5.

⁴ See *id.*, pp. 5-6.

associational standing at least one member of the association must individually have standing to sue in his or her own right.” *Id.*, p. 356 citing *Com. ex rel. Brown v. Interactive Media Entertainment and Gaming Ass'n, Inc.*, 306 S.W.3d 32, 38 (Ky. 2010). Each member of the Movants has an interest in the rates charged for wastewater services and would, subject to the Commission’s discretion to grant intervention, independently have standing to participate in this proceeding. Indeed, the Commission routinely recognizes the ability of an association (*e.g.* Sierra Club, Kentucky Industrial Utility Customers, Kentucky Solar Industries Association, etc.) to intervene in rate cases and construction cases on behalf of its members.

6. The Movants’ wastewater facilities were acquired by Bluegrass Water Utility Operating Company, LLC (“Bluegrass”) as a conveyance of assets following Commission approval of the transfer in Case No. 2020-00028 (the “Transfer Case”).⁵ Although 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.

7. As part of the Transfer Case, Bluegrass indicated that “by mid-2021, it will be filing proposed revisions and adjustments to establish a unified tariff with uniform rates through its service area.”⁶ Bluegrass further advised that it would “file for a general rate adjustment of the rates for the four subject systems – individually, as a group, or as part of a wider adjustment – within 15 months of the last acquisition closing on the [Movants’] facilities, when Bluegrass Water will have a full year of data from owning and operating those systems.”⁷ In accordance

⁵ See *In the Matter of the 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*, Order, Case No. 2020-00028 (Ky. P.S.C. June 19, 2020).

⁶ *Id.*, p. 19.

⁷ *Id.*, pp. 19-20.

with the Commission's Order, Bluegrass completed the acquisition of the Movants' assets on November 19, 2020.⁸

8. Rather than wait until "mid-2021" to file for a unified rate, however, Bluegrass tendered a notice of intent to adjust rates to the Commission on August 28, 2020 – a bare two months after gaining approval to acquire the Movants' assets and nearly three months before actually completing the acquisition. The application was subsequently tendered on October 1, 2020 and accepted for filing as of November 19, 2020.

9. On January 4, 2021, Bluegrass filed the proof of publication of customer notice. The proposed unified rate would substantially increase the cost of receiving wastewater service for each of the Movants' residents. Currently, the rates for wastewater service are between \$15 and \$25 per month.⁹ Under Bluegrass' proposal, the monthly rate would increase to \$96.14 each month. Additional increases in non-recurring fees also appear to be part of Bluegrass's proposal.

10. On September 10, 2020, the Attorney General, by and through his Office of Rate Intervention, filed a motion to intervene on behalf of consumers. The Commission granted the Attorney General's motion by Order entered on September 28, 2020.

11. Although the Attorney General enjoys a statutory right of intervention in rate proceedings before the Commission, the right of all other parties to intervene in a case is a matter within the Commission's discretion. The manner in which this discretion is to be exercised is set forth in 807 KAR 5:001, Section 4(11)(b), which states in relevant part:

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

⁸ The initial one-month post-closing report ordered to be filed by Bluegrass with regard to the Movant's facilities does not yet appear to have been filed, or is simply unavailable, in the matter's post-case correspondence file. *See id.*, Ordering Paragraph 5.

⁹ *See id.*, p. 18.

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.

12. The Movants satisfy the Commission's regulatory criteria for being granted intervention. First, this motion is being filed in a timely manner and before the January 6, 2021 deadline for seeking intervention has passed. Second, the Movants have a special interest in this proceeding that is not otherwise adequately represented and their intervention is likely to present issues and develop facts that assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings.

13. The Movants' interest is separate and distinct from the general interest of all consumers that the Attorney General will be able to represent in this proceeding. The Attorney General has an obligation to represent all consumers,¹⁰ however, this case presents a situation where the interests of Bluegrass's customers are likely to conflict with one another. The Attorney General will likely align with each consumer served by Bluegrass in seeking to keep the revenue requirement as low as possible while assuring that Bluegrass is able to provide adequate, efficient and reasonable service at fair, just and reasonable rates.¹¹ However, the interests of each system now (or in the future) under the common ownership of Bluegrass will diverge on the question of how an authorized revenue requirement should be allocated amongst the various constituents. Bluegrass's application confirms that it is requesting a single, unified rate to serve systems that it currently owns and systems that it hopes to own in the future.¹² As set forth in the testimony attached to Bluegrass's application:

¹⁰ See KRS 367.150(8)(b).

¹¹ See KRS 278.030(1)-(2).

¹² See Bluegrass Application, ¶ 14. The Movants take no position at this point as to whether a single, unified rate may be appropriate in the future. However, bridging the existing gaps in rates between tariffs adopted by Bluegrass,

...because the expenditures and investments necessary to bring some of the worst systems into compliance are significantly greater, that impact would be most significant if rates in this case are set on a system by system basis. Therefore, we propose to mitigate the impact of the rate increases we require by unifying rates for all our Kentucky systems. Under our proposal, all Bluegrass customers in the same rate class would be charged the same statewide rate.¹³

14. The necessity of this single rate is further justified as follows:

First, a unified rate would reduce “rate shock” for customers served by systems that require greater than average expenditures to upgrade their operations in the near term, including capital investments necessary to bring their systems into regulatory compliance. The second reason for proposing unified rates is because such rates reflect the fact that over time all the water and sewer systems we serve will require the same level of capital investments to keep them in compliance with ever more stringent environmental regulations.¹⁴

15. The Homestead Home Owners Association, Inc. (“Homestead HOA”) has previously articulated the basis for why the proposed unified rate structure should not be summarily approved and the Movants adopt and incorporate the arguments raised and asserted by the Homestead HOA in its November 23, 2020 Motion for Leave to Intervene as if set forth herein in full.

16. The Movants’ participation in this proceeding will also present issues and develop facts that assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings. This promises to be a complicated proceeding, as evidenced by the following:

Bluegrass’s own Ky. PSC. No. 1 tariff, and Bluegrass’s proposed tariffs for wastewater systems it does not yet own is clearly a bridge too far for this initial rate case.

¹³ See *id.*, Exhibit 8-A, Testimony of Josiah Cox, p. 72.

¹⁴ See *id.*, Exhibit 8-D, Testimony of Brent G. Thies, p. 7.

a. Bluegrass has no employees and relies entirely upon its affiliation with a complex web of corporate parents and contractors to provide service.¹⁵ Assuring that its proposed rates are appropriate will therefore require more than a traditional understanding of the utility's operating costs alone.

b. Bluegrass is proposing new rates using a forecasted test year, which typically involves more complexity than a rate case relying upon a historic test year, because of a greater reliance upon forecasts and projections.

c. Bluegrass proposes to include approximately \$6.4 million in new investments in its rate base, including capital for systems that it does not yet own.¹⁶ This is in addition to over \$1.1 million in "repairs, replacements and improvements" for each of its four "districts."¹⁷ The application includes little evidence to support the need for such investment and does not demonstrate the extent to which the investment may or may not involve wasteful duplication.

d. Several portions of Bluegrass's filing appear to be premature as it has not yet been granted authority to acquire several systems which it includes in its rate filing. While this raises a question as to whether the application should be dismissed without prejudice, at a minimum, it will require a degree of inquiry that exceeds even that of a traditional rate case using a forecasted test year. The Commission will find it challenging to fully consider a forecasted test year rate proposal that includes projects for facilities not yet owned by the applicant.

e. Bluegrass does not yet appear to have fulfilled the Commission's condition of establishing a 50/50 equity to debt ratio, as required by the Commission's final Order

¹⁵ See *id.*, ¶¶ 10-11, Exhibit 5.

¹⁶ See *id.*, ¶ 26.

¹⁷ See *id.*

in the Transfer Case. This will necessitate additional scrutiny of the Company's capitalization for ratemaking purposes.

f. Per testimony attached to the application, the proposed revenue deficiency in this case is \$2,172,762 for sewer and \$336,747 for water, which represent a 188.12% deficiency for sewer and 374.16% for water respectively.¹⁸ It is clear that Bluegrass intends to spread the costs of its major improvements to a few facilities over its entire rate base. This raises questions as to whether the proposed rate design is fair, violative of the matching principle or unduly preferential to certain customers.

g. Bluegrass is requesting the Commission to authorize the opportunity to earn an overall rate of return on common equity of 11.80% on its jurisdictional rate base,¹⁹ which vastly exceeds current market conditions.

h. Bluegrass is proposing a cost of long-term debt of 9.50% for ratemaking purposes,²⁰ which appears to be based upon a projection and not actual experience. Given current market conditions and the representations as to its financial wherewithal in the Transfer Case, Bluegrass's request seems unusually and artificially high.

17. Much of Bluegrass's rate increase is dependent upon future capital spending that does not appear to be fully justified or immediately necessary. Due to the Movants' unique and particular knowledge of each of the four non-discharging wastewater lagoon systems serving their residents, and owing to the fact that each Movant in fact owned each such system up until a date less than sixty (60) days from the date of this filing, the Movants also possess knowledge

¹⁸ See *id.*, Exhibit 8-D, Testimony of Brent G. Thies, p. 6.

¹⁹ See *id.*, Exhibit 8-E, Testimony of Dylan D'Ascendis, p. 4.

²⁰ See *id.*, Exhibit 8-F, Testimony of Jennifer Nelson, p. 9.

and information that will assist the Commission in fully developing the record with regard to Bluegrass's request for authority to make significant capital expenditures.

18. Through counsel, the Movants are well-suited to thoughtfully and efficiently delve into the details of each of these issues to assist the Commission in developing a full record and protecting the interests of their members.

WHEREFORE, on the basis of the foregoing, the Movants respectfully request the Commission to grant them leave to intervene in this proceeding and award any and all relief to which they or their members may be entitled.

Respectfully submitted,



David S. Samford
L. Allyson Honaker
GOSS SAMFORD, PLLC
2365 Harrodsburg Road, Suite B-325
Lexington, KY 40504
(859) 368-7740
david@gosssamfordlaw.com
allyson@gosssamfordlaw.com

*Counsel for Arcadia Pines Sewer Association, Inc.,
Carriage Park Neighborhood Association, Inc.
Marshall Ridge Sewer Association, Inc. and
Randview Septic Corporation*

CERTIFICATE OF SERVICE

This will certify that the foregoing document was filed via the Commission's electronic filing system today. The undersigned hereby certifies that the electronic filing is a true and accurate copy of the documents being filed in paper medium; the electronic filing was transmitted to the Commission on January 6, 2021; there are currently no parties that the Commission has excused from participation by electronic means in this proceeding; paper copies of this information will be hand-delivered to the Commission within thirty (30) days of the lifting of the present State of Emergency relating to the COVID-19 pandemic.



*Counsel for Arcadio Pines Sewer Association, Inc.,
Carriage Park Neighborhood Association, Inc.
Marshall Ridge Sewer Association, Inc. and
Randview Septic Corporation*