

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)	

**The Homestead Home Owners Association, Inc.’s
Motion for Leave to Intervene**

Comes now The Homestead Home Owners Association, Inc. (“Homestead HOA”), by counsel, pursuant to 807 KAR 5:001, Section 4(11), and other applicable law, and does hereby request leave to intervene in this docket, respectfully stating as follows:

1. Homestead HOA is a non-stock, non-profit corporation with a principal business address of 105 Homestead Parkway, Georgetown, Kentucky. Homestead HOA is the homeowners association for the Homestead neighborhood located in Scott County, Kentucky.

2. Through its corporate status, Homestead HOA represents the interests and enforces the collective obligations of the approximately two hundred fifty (250) homeowners who reside in the subdivision. 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 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 Homestead HOA 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. The President of the Homestead HOA is Mr. Val Watson, whose personal email address is

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3. The Homestead subdivision is serviced by a wastewater facility acquired by Bluegrass Water Utility Operating Company, LLC (“Bluegrass”) following Commission approval of the transfer in Case No. 2019-00104 (the “Transfer Case”).¹ Bluegrass filed an Adoption Notice on October 14, 2019 and adopted the filed tariffs of Bluegrass’s predecessor, LH Treatment Company, LLC. Bluegrass admits that the wastewater facility serving the Homestead neighborhood is in “better shape” than many of the other facilities either owned by Bluegrass or the subject of a pending application from Bluegrass for approval to purchase such facilities.² Indeed, Bluegrass’s first Annual Report filed on November 9, 2020 indicates that no deficiencies have been identified by the Division of Water, all measurements are within acceptable ranges and no work orders have been issued for the Homestead facility since Bluegrass acquired ownership.³

4. On August 28, 2020, Bluegrass filed its Notice of Intent to File an Application for an Adjustment of Rates and Approval of Construction. Bluegrass proposes to increase wastewater rates for the Homestead HOA’s customers from \$30.00 per month to \$96.14, a

¹ See *In the Matter of the Electronic Proposed Acquisition by Bluegrass Water Utility Operating Company, LL and the transfer of Ownership and Control of Assets by P.R. Wastewater Management, Inc., Marshall County Environmental Services, LLC, LH Treatment Company, LLC, Kingswood Development Inc., Airview Utilities, LLC, Brocklyn Utilities, LLC Fox Run Utilities, LLC and Lake Columbia Utilities, Inc.*, Order, Case No. 2019-00104 (Ky. P.S.C. Aug. 14, 2019).

² See Bluegrass Application, Exhibit 8-A, Testimony of Josiah Cox, p. 49.

³ See Bluegrass Annual Report, Case No. 2019-00109 (Filed Nov. 9, 2020).

220.5% increase.⁴ Additional increases in non-recurring fees also appear to be part of Bluegrass's proposal.

5. 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.

6. 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 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.

7. Homestead HOA satisfies the Commission's regulatory criteria for being granted intervention. First, this motion is being filed in a timely manner and before any deadline for seeking intervention has passed. In fact, Bluegrass's application has not yet even been accepted for filing. Second, Homestead HOA has a special interest in this proceeding that is not otherwise adequately represented and its 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.

8. Homestead HOA's 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

⁴ See Bluegrass Application, Exhibit 1-B, Exhibit 3.

General has an obligation to represent all consumers,⁵ however, this case presents a situation where the interests of Bluegrass's customers will inherently 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.⁶ 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.⁷ As set forth in the testimony attached to Bluegrass's application:

...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.⁸

9. 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

⁵ See KRS 367.150(8)(b).

⁶ See KRS 278.030(1)-(2).

⁷ See Bluegrass Application, ¶ 14. Homestead HOA does not take a 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 tariff's adopted by Bluegrass, 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.

⁸ See Bluegrass Application, Exhibit 8-A, Testimony of Josiah Cox, p. 72.

serve will require the same level of capital investments to keep them in compliance with ever more stringent environmental regulations.⁹

10. If approved, this would necessarily require some of Bluegrass's consumers to heavily subsidize other consumers.¹⁰ The application and supporting testimony confirms that the Homestead HOA's members would be forced to pay a significant premium for standard service, but it does not provide any substantive support for why this proposed rate design is appropriate or what alternative rate designs were considered. While moving to a single, statewide rate design may be appropriate over the long-term, making a dramatic adjustment to a single rate now will be highly prejudicial to the members of the Homestead HOA and other systems who are in much better shape than other assets acquired by Bluegrass.

11. The magnitude of such a subsidy is amplified by the fact that Bluegrass's rate application is coupled with a request for a Certificate of Public Convenience and Necessity, pursuant to KRS 278.020, to invest approximately \$6.4 million in additional capital into discreet portions of its widely scattered and diverse system.¹¹ Of that amount, only \$89,500 in capital expenditures (plus an additional \$48,950 for construction and investigation services) is allocated to Homestead's facility.¹² With a statutory charge to represent all consumers, the Attorney General will find it difficult to fully represent the consumers attached to each system when their interests are clearly antagonistic to one another on the question of whether a single, unitary rate is fair, just and reasonable. For this reason, the Attorney General's participation in this case –

⁹ See Bluegrass Application, Exhibit 8-D, Testimony of Brent G. Thies, p. 7.

¹⁰ Homestead HOA's intervention is not unlike that of Kentucky Industrial Utility Customers, Inc., which, although aligned with the Attorney General on revenue requirement issues nevertheless often has a unique and distinct position on questions of rate design where its interests are unaligned with other customers classes.

¹¹ See Bluegrass Application, ¶ 25.

¹² See Bluegrass Application, Exhibit 8-C, Testimony of Jacob Freeman, pp. 26-27.

while certainly welcome – is not in and of itself, sufficient to assure that the Homestead HOA’s special and particularized interest is fully and adequately represented.

12. Homestead HOA’s 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:

a. Bluegrass has no employees and relies entirely upon its affiliation with a complex web of corporate parents and contractors to provide service.¹³ 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.¹⁴ This is in addition to over \$1.1 million in “repairs, replacements and improvements” for each of its four “districts.”¹⁵ 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

¹³ See Bluegrass Application, ¶¶ 10-11, Exhibit 5.

¹⁴ See Bluegrass Application, ¶ 26.

¹⁵ See *id.*

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 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.¹⁶ 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,¹⁷ which vastly exceeds current market conditions.

h. Bluegrass is proposing a cost of long-term debt of 9.50% for ratemaking purposes,¹⁸ 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.

¹⁶ See Bluegrass Application, Exhibit 8-D, Testimony of Brent G. Thies, p. 6.

¹⁷ See Bluegrass Application, Exhibit 8-E, Testimony of Dylan D'Ascendis, p. 4.

¹⁸ See Bluegrass Application, Exhibit 8-F, Testimony of Jennifer Nelson, p. 9.

13. Through counsel, Homestead HOA is well-suited to thoughtfully and efficiently delving into the details of each of these issues to assist the Commission in developing a full record and protecting the interests of its members, especially on question regarding rate design.

WHEREFORE, on the basis of the foregoing, Homestead HOA respectfully requests the Commission to grant it leave to intervene in this proceeding on behalf and award it any and all relief to which it or its members may be entitled.

Respectfully submitted,



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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 November 23, 2020; 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.

A handwritten signature in blue ink, reading "David D. Sepl". The signature is written in a cursive style with a large, stylized initial "D".

*Counsel for The Homestead Home
Owners Association, Inc.*