

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)	

**Deer Run Estates Homeowners Association, Inc.’s
Motion for Leave to Intervene**

Comes now The Deer Run Estates Homeowners Association, Inc. (“Deer Run 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. Deer Run HOA is a non-stock, non-profit corporation with a principal business address of P.O. Box 953, Georgetown, Kentucky, 40324. Deer Run HOA is the homeowners association for the Deer Run neighborhood located in Scott County, Kentucky.

2. Through its corporate status, Deer Run HOA represents the interests and enforces the collective obligations of the approximately seventy-eight (78) 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 Deer Run 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 Deer Run HOA is Ms. Dana Atwood, whose personal email address is [REDACTED].

3. The Deer Run Estates subdivision is serviced by a wastewater facility currently owned by Delaplain Disposal Company (“Delaplain Facility”) that Bluegrass Water Utility Operating Company, LLC (“Bluegrass”) seeks Commission approval to acquire in Case No. 2020-00297.¹ In its Application in Case No. 2020-00297, Bluegrass states: “Over time, Bluegrass Water will integrate the four acquired systems with others operated in Kentucky so that regulatory and technical standards are met on a uniform basis, and customers will be served under a unified tariff.”²

4. On August 28, 2020, Bluegrass filed its Notice of Intent to File an Application for an Adjustment of Rates and Approval of Construction in the present docket. The Application and supporting exhibits make it clear, however, that the transition to a single, uniform rate will take place immediately if Bluegrass’s rate application is approved. In fact, Bluegrass proposes to increase wastewater rates for customers who are members of the Deer Run HOA’s from \$12.50 per month to \$96.14 per month, a 669% increase.³ Owing to the Delaplain Facility’s unique status in also servicing commercial and industrial customers, Bluegrass is also proposing a volumetric rate increase for those commercial and industrial customers from \$8.89 per 1,000

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: Delaplain Disposal Company; Herington Haven Wastewater Company, Inc.; Springcrest Sewer Company, Inc. and Woodland Acres Utilities, LLC*, Application, Case No. 2020-00297 (filed Ky. P.S.C. Sept. 16, 2020).

² See *id.*, p. 14.

³ See Delaplain Disposal Company Tariff (<https://www.psc.ky.gov/tariffs/Sewer/Delaplain%20Disposal%20Company/Tariff.pdf>); Bluegrass’s Application, Exhibit B-3. Bluegrass appears to have omitted the residential rate increase for the subdivisions attached to the Delaplain Facility from its customer notice.

gallons to \$25.65 per 1,000 gallons, which is a smaller 188.52% 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. Deer Run 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, Deer Run 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. In addition to the arguments set forth in both The Homestead Home Owners Association, Inc.'s ("Homestead HOA") motion for leave to intervene and reply in support of its

⁴ See Bluegrass Application, Exhibit 1-B, Exhibit 3; Bluegrass Application, Exhibit 8-D, Testimony of Brent G. Thies, p. 6.

motion for leave to intervene, which Deer Run HOA adopts and incorporates by reference herein, additional grounds exist for demonstrating Deer Run HOA's unique interest.

8. In addition, Deer Run HOA is concerned that the proposed rate design between it and the commercial and industrial customers served by the Delaplain Facility are imbalanced. It is patently unfair, unjust and unreasonable for commercial and industrial customers to only experience a 188% rate increase when its residential customers experience a 669% increase. The Application does not include evidence to support Bluegrass's position that the occasional capacity deficits at the Delaplain Facility should be charged to residential customers, nor does it offer substantive information to support the basis for why the single unified rate should be immediately applied to a system it does not yet even own. Deer Run HOA's ability to gain a greater understanding of these specific and unique concerns is further frustrated by the significant redactions included in Bluegrass's filings in Case No. 2020-00297.

9. For this reason, the Attorney General's participation in this case – while certainly welcome – is not in and of itself, sufficient to assure that Deer Run HOA's special and particularized interest is fully and adequately represented, particularly in relation to the rate design between the residential customers and the commercial/industrial customers served by the Delaplain Facility.

10. Through counsel, Deer Run HOA is well-suited to thoughtfully and efficiently delve into the details of these issues to assist the Commission in developing a full record and protecting the interests of its members, especially on questions regarding rate design.

WHEREFORE, on the basis of the foregoing, Deer Run 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,

A handwritten signature in blue ink, appearing to read 'D. S. Samford', is written over a horizontal line.

David S. Samford

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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 December 18, 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, appearing to read 'D.A. Spill', is written above a horizontal line.

*Counsel for Deer Run Estates
Homeowners Association, Inc.*