

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
Reply in Support of 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 tender its reply in support of its request for leave to intervene in this docket, respectfully stating as follows:

Homestead HOA filed its motion for leave to intervene on November 23, 2020. The applicant, Bluegrass Water Utility Operating Company, LLC (“Bluegrass”), tendered its response in opposition to the motion on December 7, 2020 and essentially raised two arguments. First, Bluegrass asserts that the Attorney General will adequately represent the interests of all Bluegrass’s customers. Second, Bluegrass asserts that Homestead HOA lacks associational standing because its homeowners would themselves lack standing to intervene in this instance.

Bluegrass’s argument that Homestead HOA has no special interest in this case assumes that a single, homogenous rate is the best rate design for socializing the widely disparate costs of service across a system that it does not yet even completely own, when in fact that is one of the ultimate issues of the case. Contrary to Bluegrass’s assertion, Homestead HOA specifically identified the issues and facts in its motion

which give rise to its special interest.¹ There is a legitimate and serious question of whether the proposed rate design is fair, just and reasonable under the particular circumstances of this proceeding. That conflict is especially important now, as this is Bluegrass's first rate case filing as a consolidated system and it is likely that the neighborhoods served by Bluegrass will be forced to live with this precedent for many years to come. The Attorney General will no doubt do an excellent job in helping to assure that Bluegrass's revenue requirement is as low as permitted under the facts and law, however, he cannot fully weigh in on the proposal to adopt the single, uniform rate without prejudicing some neighborhoods and favoring others. This conflict is tangible, not just theoretical. Homestead HOA clearly has a special interest in this proceeding for all the specific reasons set forth in its motion, which Bluegrass's response generally ignores.

With regard to the associational standing argument, it must be pointed out that Bluegrass admits its legal theory is on uncertain ground when it states: "Finally, the HOA *arguably* does not meet the burden or associational standing...."² The legal standard for associational standing is set forth in *Bailey v. Preserve Rural Roads of Madison County, Inc.*, 394 S.W.3d 350 (Ky. 2010), which provides:

The United States Supreme Court has identified three requirements that an association must meet to sue on behalf of its members:

(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.

While Kentucky has never officially adopted this entire test, we 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.³

¹ See Homestead HOA's Motion for Leave to Intervene, pp. 4-7.

² See Bluegrass's Response, p. 5 (emphasis added).

³ *Bailey*, p. 356.

Bluegrass correctly concedes that the Kentucky Supreme Court has only required a showing that its members would have standing to sue in their own right.⁴ Clearly, the customer of a utility has standing as a matter of law to challenge the rates charged by a utility. This rule of law is expressed in KRS 278.260 which gives the Commission jurisdiction to hear a customer's challenge as to the fairness, justness and reasonableness of a utility's rates. Similarly, KRS 278.270 allows a customer to file a complaint to challenge the adequacy of a utility's service. Apart from these statutory authorities, the Commission's own regulations (807 KAR 5:001, Section 17(2)) require a utility to publish notice of a proposed rate increase to customers. Bluegrass's argument that Homestead HOA lacks standing because its members (who are Bluegrass's customers) somehow also lack standing is plainly inconsistent with these textual authorities. Over twenty years of Commission precedent firmly establishes that a homeowners' association may intervene on behalf of its members in a rate proceeding.⁵

Homestead HOA also satisfies the second and third elements of the federal associational standing criteria (even though they do not apply here). For instance, Bluegrass's speculative assertion that the Homestead HOA's corporate purpose is somehow ungermane to its members' interests in this case is also a fiction. Homestead HOA clearly has an interest in maintaining the "amenities" of the neighborhood it serves,⁶ which includes its access to adequate and efficient wastewater service at fair, just and reasonable rates. When the neighborhood was developed, such efforts were undertaken with the fundamental understanding that wastewater would be processed through a centralized facility, not individual septic tanks. Shrubberies and landscaping are nice. Wastewater facilities is essential. Protecting the neighborhood's consistent and unified interest in this community infrastructure clearly falls within the general purpose of

⁴ See *id.* citing *Com. ex rel. Brown v. Interactive Media Entertainment and Gaming Ass'n, Inc.*, 306 S.W.3d 32, 38 (Ky. 2010).

⁵ See, e.g., *In the Matter of the Application of Hayfield Utilities, Inc. for a Rate Adjustment Pursuant to the Alternative Rate Filing Procedure for Small Utilities*, Order, Case No. 97-00457 (Ky. P.S.C Oct. 9, 1998); *In the Matter of the Application of Springcrest Sewer Company, Inc. for Transfer of the Equestrian Woods Septic System and for the Establishment of Initial Rates*, Order, Case No. 95-00289 (Ky. P.S.C Mar. 22, 1996); *In the Matter of the Application of Covered Bridge Utilities, Inc. for an Adjustment of Rates Pursuant to the Alternate Rate Filing Procedure for Small Utilities*, Order, Case No. 97-00455 (Ky. P.S.C. July 13, 1998).

⁶ See Bluegrass Response, p. 5.

any homeowners association. The Homestead HOA's interest here is germane to its broader purpose as an incorporated homeowners association. It also bears emphasis that, while the interests of the homeowners within the Homestead subdivision have standing under Kentucky law to challenge Bluegrass's rates, the participation of each individual member is not necessary. It is sufficient for the association to represent the collective interest of all affected homeowners. Indeed, that is the very purpose of associational standing.

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 December 11, 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 horizontal line underneath it.

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