

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

ORDER

This matter is before the Commission on a motion for a deviation from regulations regarding customer notice for a rate application filed by Bluegrass Water Utility Operating Company, LLC (Bluegrass Water) on November 18, 2020. Specifically, Bluegrass Water requests:

an Order granting a deviation from any conflicting regulatory requirements such that notice by Bluegrass Water to the potential future customers in Case No. 2020-00297 that meets the content, manner, and timing requirements of 807 KAR 5:001 Section 17 is sufficient to allow an adjustment of their rates on an Application deemed filed no earlier than when notice to those customers was given.¹

Having reviewed Bluegrass Water's motion and being otherwise sufficiently advised, the Commission denies Bluegrass Water's motion for the reasons discussed in more detail below.

Bluegrass Water tendered its application for approval of construction and an adjustment of rates based on a forecasted test year pursuant to 807 KAR 5:001, Section 16, on October 1, 2020. In an October 30, 2020 letter, Commission Staff notified Bluegrass Water that its application was rejected because it contained several filing

¹ Bluegrass Water's Motion at 5.

deficiencies Commission Staff identified therein. On October 30, 2020, the Commission also issued an Order indicating that the application could not be accepted for filing until those filing deficiencies were corrected by Bluegrass Water.

The Commission also noted in the October 30, 2020 Order that Bluegrass Water indicated that it did not provide customer notice to customers of the systems it was approved to purchase in Case No. 2020-00028² on which it had not closed or the utilities for which it was requesting approval to purchase in Case No. 2020-00297.³ The Commission noted that the failure to provide such notice alone would not render the application deficient because 807 KAR 5:001, Section 17, did not appear to require that potential future customers receive notice of a proposed change in a utility's existing rates. However, the Commission stated that the customers of those systems are different from potential future customers who may choose to relocate into a utilities service area after a rate adjustment has been proposed because they are current customers of systems that Bluegrass Water is seeking to purchase and will, therefore, be bound to obtain service from those systems at rates approved by the Commission. For that reason, the Commission noted that it has established additional requirements to protect those customers.⁴

² Case No.2020-00028, *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* (Ky. PSC June 19, 2020).

³ Case No. 2020-00297, *Electronic Proposed Acquisition by Bluegrass Water Utility Operating Company, LLC and The Transfer of Ownership and Control of Assets by: Delaplain Disposal Company; Herrington Haven Wastewater Company, Inc.; Springcrest Sewer Company, Inc.; and Woodland Acres Utilities, LLC.* (Ky. PSC Jan. 14, 2021).

⁴ Order at 3 (Ky. PSC Oct. 30, 2020).

Specifically, pursuant to 807 KAR 5:011, Section 11, a person purchasing an existing utility is required to adopt the predecessor utility's existing tariffs on file with the Commission, including any rates and service requirements therein, before filing a new or revised tariff for the predecessor utility or incorporating the predecessor utility into the successor utility's existing tariff. Further, when filing a new or revised tariff that changes the predecessor utility's rates, the purchaser is required, at a minimum, to provide notice to the Commission pursuant to KRS 278.180 and customer notice pursuant to 807 KAR 5:011, Section 8. When a new or revised tariff that changes the predecessor utility's rates is filed, the Commission may allow the rate to go into effect as proposed, provided proper notice was given,⁵ or suspend the rate pursuant to KRS 278.190 to further investigate the rates.

In the October 30, 2020 Order, the Commission indicated that the requirements of 807 KAR 5:011, Section 11, would apply to the utilities that Bluegrass Water is seeking approval to purchase in Case No. 2020-00297 but that those requirements did not explicitly apply to the systems Bluegrass Water was approved to purchase in Case No. 2020-00028 on which it had not closed because they were not utilities. However, the Commission noted that it imposed a similar requirement in the final Order in Case No. 2020-00028 by requiring Bluegrass Water to file a tariff adopting the existing rates of those systems before seeking to amend those rates pursuant to KRS Chapter 278 and 807 KAR Chapter 5. The Commission then noted that if Bluegrass Water intended for the application filed in this matter to serve as a request to adjust the rates of the systems

⁵ See, e.g., *City of Russellville v. Public Service Com'n of Kentucky*, No. 2003-CA-002132-MR, 2005 WL 385077 (Ky. App. 2018) (unpublished) (indicating that the failure to provide proper statutory would result in the proposed rate being void even if it were mistakenly accepted by the Commission).

at issue in Case No. 2020-00028 that it must complete the purchase of those systems, file a tariff with the initial rates approved in Case No. 2020-00028, and provide those customers with proper notice of the rate adjustment proposed herein before this application is filed (or deemed filed upon correction of the deficiencies identified by Commission Staff).⁶

As noted above, Bluegrass Water has requested a deviation from any regulatory requirement that would prohibit the application from being accepted as a request for an adjustment to rates of the customers of the utilities at issue in Case No. 2020-00297, provided that Bluegrass Water provides those customers notice pursuant to 807 KAR 5:001, Section 17, which it indicated it has now done. Bluegrass Water indicated that it interpreted the October 30, 2020 Order in this matter as finding that there was a deficiency in the filing requirements of the application to the extent it was intended to pertain to the systems at issue in Case No. 2020-00297 and sought to cure that deficiency by providing those customers notice of the purposed change pursuant to 807 KAR 5:001, Section 17, and then obtaining a deviation from any requirement in the regulations that prevents a utility from proposing a rate adjustment for the customers of another utility it is proposing to purchase.

As an initial matter, the Commission observes that it did not identify a deficiency with respect to the utilities at issue in Case No. 2020-00297, but rather, did not interpret Bluegrass Water's application to be a request to amend the rates of those utilities pursuant to KRS 278.180 and KRS 278.190.⁷ Although the application indicates that the

⁶ *Id.* at 4–7.

⁷ *See id.* at 5.

proposed rates are based on the revenue and expenses of all of Bluegrass Water's systems and anticipated systems, including the utilities it proposed to purchase in Case No. 2020-00297, the tariff filed with the application, which Bluegrass Water referenced as providing notice to the Commission pursuant to KRS 278.180, does not list the territories currently served by those systems in the "General Index of Territory Served" and later tariff sheets refer to that general index when discussing the service areas to which the residential rates will apply.⁸ Further, Bluegrass Water indicated that it intended to follow the requirements set forth in 807 KAR 5:011, Section 11, for adopting the tariff of an existing utility before then amending the rates and tariff with a subsequent filing.⁹ Pursuant to that procedure, as noted above, the purchasing utility would first adopt the tariff of the existing utility and then file a tariff to bring the system within its unified rate, if any, or within the system at some other rate, and that second filing would be the proposed rate adjustment pursuant to KRS 278.180 and KRS 278.190. Thus, the Commission interpreted Bluegrass Water's application as a request to amend the rates of customers served by the systems it owned when it tendered the application and the systems at issue in Case No. 2020-00028 with the expectation, as indicated in the October 30, 2020 Order, that Bluegrass Water would follow the required procedures set forth in 807 KAR 5:011,

⁸ See Application at 7, Exhibit 1-B.

⁹ See Application at 5; see also Case No. 2020-00297, *Electronic Proposed Acquisition by Bluegrass Water Utility Operating Company, LLC and the Transfer of Ownership and Control of Assets by: Delaplain Disposal Company; Herrington Haven Wastewater Company, Inc.; Springcrest Sewer Company, Inc.; and Woodland Acres Utilities, LLC*, Application (filed Sept. 16, 2020) at 11 ("Following the Closing on these assets, Bluegrass Water will provide service in accordance with each transferring utilities' current sewer tariff on file with the Commission. In all cases, there will be continuity of service to the existing customers. Bluegrass Water will file an adoption notice for the existing tariffs after closing on the respective sewer systems, and then shortly thereafter will file revisions to the current Bluegrass Water sewer tariff related to the acquisitions.").

Section 11, along with any other applicable regulations, to adopt and then amend the rates for the systems at issue in Case No. 2020-00297 after it closes on them.

There is some merit to allowing this application to serve as a request to increase the rates of the utilities at issue in Case No. 2020-00297 because it could be more efficient. However, Bluegrass Water has not actually purchased the utilities at issue in Case No. 2020-00297,¹⁰ and the Commission has not made a determination regarding whether a unified rate is appropriate. Further, notice from a utility that is not currently serving customers would not likely have the same effect as notice from a utility that is serving them and could cause confusion. Moreover, customers could be put in a position of having to expend funds to oppose a rate increase that might never apply to them. Thus, the Commission finds that good cause does not exist for allowing Bluegrass Water to deviate from the requirements of 807 KAR 5:011, Section 11, to file an application for a general rate adjustment pursuant to 807 KAR 5:001, Section 16, for utilities it has not yet purchased.

In fact, while 807 KAR 5:011 does allow for deviations for good cause,¹¹ KRS Chapter 278 likely would prohibit the type of deviation requested by Bluegrass Water under the circumstances. Specifically, KRS 278.180(1) states that “no change shall be made by any utility in any rate except upon thirty (30) days’ notice to the commission,

¹⁰ The final Order in Case No. 2020-00297 approving the transfer was not entered until January 14, 2021, and in previous cases, such as Case No. 2020-00028, Bluegrass Water closed on the systems it was purchasing about five months after the transfer. The final Order in Case No. 2020-00297 also required Bluegrass Water to file notice of the transfer within ten days of closing and no such notice has been filed.

¹¹ See 807 KAR 5:011, Section 15.

stating plainly the changes proposed to be made and the time when the changed rates will go into effect.” This statutory notice is required to change the rates of the utilities at issue in Case No. 2020-00297. However, there is a strong argument that KRS Chapter 278 would prohibit Bluegrass Water from filing a tariff proposing to amend the filed rates of utilities it does not own.¹² Thus, the requirements in 807 KAR 5:011, Section 11, ensure that the statutory requirements are followed and, therefore, that a proposed rate increase is not later determined to be void *ab initio*.¹³

For the reasons discussed above, as indicated in the final Order in Case No. 2020-00297 and pursuant to 807 KAR 5:011, Section 11, Bluegrass Water must file adoption notices for the tariffs of each of the utilities at issue in Case No. 2020-00297 before seeking to amend the rates with notice to the Commission pursuant to KRS 278.180 and notice to customers. Further, as indicated in the previous orders in this matter, the Commission considers the application in this matter, which was deemed filed as of November 19, 2020, as a proposal to change the rates systems Bluegrass Water owned when the application was deemed filed, including the systems at issue in Case No. 2020-00028, and a request for construction approval.¹⁴

¹² See, e.g., *Bullitt Utilities, Inc. v. Kentucky Public Service Commission*, No. 2018-CA-000559-MR, 2019 WL 2157926 (Ky. App. 2018) (unpublished) (indicating that a receiver operating a utility as opposed to the owner of a utility that abandoned it is the entity entitled to request a rate increase pursuant to KRS Chapter 278 and stating that “it would be absurd to allow two different entities . . . to file and collect surcharges from the same customers based on the same utility services”).

¹³ See, e.g., *City of Russellville* (where a proposed rate increase improperly accepted by the Commission was later determined to be void *ab initio*).

¹⁴ The Commission will consider Bluegrass Water’s proposed construction for the systems at issue in Case No. 2020-00297, because nothing would prohibit such a request from being reviewed before a utility completes the purchase of a relevant system.

IT IS THEREFORE ORDERED that Bluegrass Water's November 18, 2020 motion for a deviation that the application to be considered an application for a general rate adjustment for the systems at issue in Case No. 2020-00297 is hereby denied.

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By the Commission



ATTEST:


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