

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF OAKWOOD SEWAGE)
COMPANY FOR AN ORDER APPROVING A) CASE NO. 2011-00206
TRANSFER OF OWNERSHIP AND CONTROL)

ORDER

On June 14, 2011, Robert E. Offutt, doing business as Oakwood Sewage Company, applied for Commission approval of the transfer of ownership and control of sewage treatment and collection facilities to the city of Madisonville, Kentucky ("Madisonville"). Having considered the application and the evidence of record,¹ the Commission finds that:

1. Mr. Offutt, doing business as Oakwood Sewage Company, owns and operates sewage treatment and collection facilities that serve approximately 73 customers in the Oakwood Subdivision of Madisonville, Hopkins County, Kentucky.²
2. As of December 31, 2010, Oakwood Sewage Company had utility plant of \$70,449 and accumulated depreciation of \$53,812, or a net utility plant of \$16,637.³
3. As of December 31, 2010, Oakwood Sewage Company reported no liabilities and equity capital of \$21,752.⁴

¹ Mr. Offutt is the only party to this proceeding. Although Madisonville's attorney is a signatory to the application and the application requests that Madisonville be served with a copy of all pleadings and orders in this matter, Madisonville is not an applicant nor has it requested intervention in this matter. No person has requested intervention in this matter.

² *Annual Report of Oakwood Sewage Company to the Kentucky Public Service Commission for the Year Ending December 31, 2010* at 1 and 12 (hereinafter *Annual Report*).

³ *Id.* at 2.

⁴ *Id.* at 3.

4. For the calendar year ending December 31, 2010, Oakwood Sewage Company had utility operating revenues of \$24,526 and utility operating expenses of \$31,380, which results in total utility operating income of (\$6,854).⁵

5. Madisonville is a city of the fourth class and is located in Hopkins County, Kentucky.⁶

6. Madisonville is organized and governed under the mayor-council plan.⁷

7. Madisonville operates a wastewater collection and treatment system that currently serves 8,535 customers inside and outside Madisonville's corporate limits⁸ and also treats wastewater from the cities of Hanson and Earlington.⁹

8. For the fiscal year ended June 30, 2010, Madisonville reported total assets of \$108,900,314, total liabilities of \$234,774,499, and total net assets of \$74,125,815.¹⁰ For the same period, Madisonville reported total revenues of \$57,864,305 and total expenses at \$50,806,481, for a change in net assets of \$7,057,824.¹¹

9. For the fiscal year ended June 30, 2010, Madisonville's Water and Sewer Division reported total assets of \$55,040,621 and total liabilities of \$24,807,050. It

⁵ *Id.* at 8.

⁶ KRS 81.010(4).

⁷ Madisonville, Kentucky Code of Ordinances § 31.01 (2011). *See also* KRS 83A.130.

⁸ City of Madisonville, Kentucky, *Comprehensive Annual Financial Report for the Year Ended June 30, 2010* (Dec. 6, 2010) at 130.

⁹ *See* http://www.madisonvillegov.com/Madisonville_Kentucky/index.asp?Page=Wastewater%20Treatment (last visited Aug. 18, 2011).

¹⁰ *Id.* at 13.

¹¹ *Id.* at 14.

reported total water and sewer net capital assets of \$44,153,029.¹² For the same period, it reported operating revenues of \$10,266,127; total operating expenses of \$7,477,723; and total non-operating revenues of (\$885,002).¹³

10. Madisonville currently employs approximately 55 persons to operate its water and wastewater systems.¹⁴ The Kentucky Division of Water has certified thirteen of these employees as wastewater treatment operators.¹⁵

11. Madisonville's wastewater treatment and collection system consists of 160 miles of wastewater collection main, 50 lift stations and a wastewater treatment plant that is designed to treat an average daily flow of 6.0 million gallons of wastewater.¹⁶

12. Madisonville's wastewater treatment plant currently averages 4.8 million gallons per day.¹⁷

13. On October 4, 2010, Mr. Offutt and Madisonville executed an agreement whereby Mr. Offutt agreed to convey to Madisonville, for a purchase price of \$30,000, his treatment plant, all sewer mains, manholes, and all easements and right-of-ways that he owned within the area that Oakwood Sewage Company presently provides service.

¹² *Id.* at 19.

¹³ *Id.* at 20.

¹⁴ *Id.* at 129.

¹⁵ See http://www.madisonvillegov.com/Madisonville_Kentucky/index.asp?Page=Wastewater%20Treatment (last visited Aug. 18, 2011).

¹⁶ *Id.*; *Comprehensive Annual Financial Report* at 131.

¹⁷ *Id.*

14. Oakwood Sewage Company does not require its customers to make a deposit before receiving service. Therefore, there are no customer deposits to be refunded.¹⁸

15. The area in which Oakwood Sewage Company presently provides sewer service and in which its facilities are located is within the corporate limits of Madisonville and is in the area that Madisonville's wastewater system serves.

16. Assuming a monthly water consumption of 5,000 gallons, a customer that Oakwood Sewage Company presently serves will, upon completion of the proposed transaction, have a monthly bill of \$38.75, or \$17.35 per month more than his or her present bill.¹⁹

17. Upon completion of the proposed transaction, Madisonville will assess the same rates to customers whom Oakwood Sewage Company presently serves as it presently assesses to all other customers.²⁰

18. Upon completion of the proposed transaction, Madisonville will connect Oakwood Sewage Company's collection system to its collection system, discontinue the operation of Oakwood Sewage Company's sewage treatment plant, and dismantle that plant.

19. The proposed transaction will likely eliminate wasteful duplication of costs, result in greater economies, less cost, and a higher degree of service to the general public.

¹⁸ Application at ¶ 14; *Annual Report* at 3.

¹⁹ For Madisonville's rates for sewer service, see Madisonville, Kentucky Code of Ordinances § 52.17 (2011).

²⁰ *Id.*

CONCLUSIONS OF LAW

Based upon the findings set forth above, the Commission makes the following conclusions of law:

1. Mr. Offutt, doing business as Oakwood Sewage Company, is a utility subject to Commission jurisdiction.²¹

2. Madisonville is a municipal corporation.

3. Madisonville is not a utility and is not subject to Commission jurisdiction except in those instances in which it provides utility services to public utilities.²²

4. Madisonville is a "corporation" and a "person" for purposes of KRS Chapter 278.²³

5. KRS 278.020(4) provides that "[n]o person shall acquire or transfer ownership of, or control, or the right to control, any utility under the jurisdiction of the commission . . . without prior approval by the commission." As Madisonville is a person and is acquiring ownership of Oakwood Sewage Company's facilities, this statute is applicable to and requires Commission approval of the proposed transfer.

6. KRS 278.020(5) provides that "[n]o individual, group, syndicate, general or limited partnership, association, corporation, joint stock company, trust, or other entity (an "acquirer"), whether or not organized under the laws of this state, shall acquire control, either directly or indirectly, of any utility furnishing utility service in this state, without having first obtained the approval of the commission." As Madisonville is a

²¹ KRS 278.010(3)(f).

²² KRS 278.010(3); KRS 278.200; *Simpson County Water District v. City of Franklin, Ky.*, 872 S.W.2d 460 (1994); *McClellan v. Louisville Water Co.*, Ky., 351 S.W.2d 197 (1961).

²³ KRS 278.010(1) and (2).

corporation and is acquiring control of Oakwood Sewage Company's utility operations through the acquisition of the facilities that Oakwood Sewage Company uses to provide utility service, this statute is applicable to and requires Commission approval of the proposed transfer.

7. In view of its financial assets and its status as a municipal corporation, Madisonville has sufficient financial integrity to ensure the continuity of utility service.

8. Madisonville has the financial, technical, and managerial abilities to provide reasonable service to the present customers of Oakwood Sewage Company.

9. The consolidation of Oakwood Sewage Company's system into Madisonville's collection system is consistent with the Commonwealth's policy of promoting the consolidation of wastewater distribution systems and the creation of regionalized wastewater suppliers.²⁴

10. Madisonville has the legal authority to provide wastewater service to the area that Oakwood Sewage Company presently serves after the proposed transfer occurs.²⁵

11. The proposed transfer is in accordance with law and for a proper purpose.

12. Upon completion of the proposed transaction, Oakwood Sewage Company's facilities will no longer be subject to Commission jurisdiction.

IT IS THEREFORE ORDERED that:

1. Madisonville's proposed acquisition of the assets and liabilities of Oakwood Sewage Company is approved.

²⁴ See, e.g., KRS 224A.300(1).

²⁵ KRS 96.350(1).

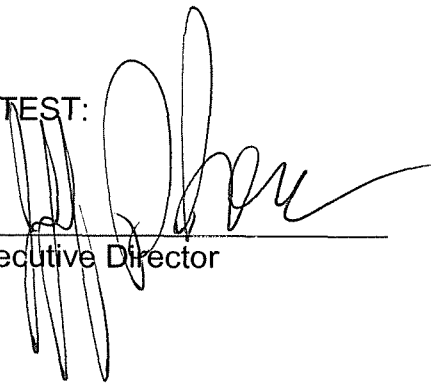
2. Mr. Offutt shall be responsible for submitting to the Commission a financial and statistical report, as described in Administrative Regulation 807 KAR 5:006, Section 3 for that period in 2011 in which he owns and operates Oakwood Sewage Company's facilities.

3. Mr. Offutt and Madisonville shall notify the Commission in writing of the transfer of assets within 10 days of the transfer's occurrence.

By the Commission

ENTERED ^{PA}
AUG 29 2011
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:



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