

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF THE LOUISVILLE AND)
JEFFERSON COUNTY METROPOLITAN)
SEWER DISTRICT FOR AN ORDER) CASE NO. 2009-00494
APPROVING A TRANSFER OF OWNERSHIP)
AND CONTROL)

ORDER

On February 26, 2010, the Commission approved the Louisville and Jefferson County Metropolitan Sewer District's ("MSD") acquisition of Shadowwood Waste Environmental, LLC's ("Shadowwood") sewage treatment and collection facilities subject to certain conditions. Objecting to those conditions, MSD commenced an action for review of the Commission's Order.¹ This action recently concluded when Franklin Circuit Court approved a settlement agreement² between MSD and the Commission and remanded the Commission's Order of February 26, 2010, to the Commission with instructions to take all actions consistent with the settlement agreement's provisions.³

Pursuant to the Franklin Circuit Court's Order of July 19, 2013, the Commission
HEREBY ORDERS that:

1. Conclusion of Law 18 set forth in the Order of February 26, 2010, is stricken.

¹ *Louisville and Jefferson County Metropolitan Sewer Dist. v. Kentucky Pub. Serv. Com'n*, No. 10-CI-00357 (Franklin Cir. Ct. Ky. filed Mar. 5, 2010).

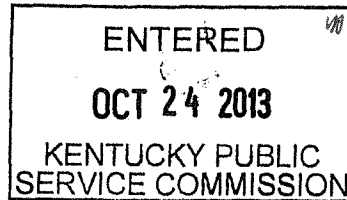
² A copy of the Settlement Agreement is appended to this Order.

³ *Louisville and Jefferson County Metropolitan Sewer Dist. v. Kentucky Pub. Serv. Com'n*, No. 10-CI-00357 (Franklin Cir. Ct. Ky. July 19, 2013).

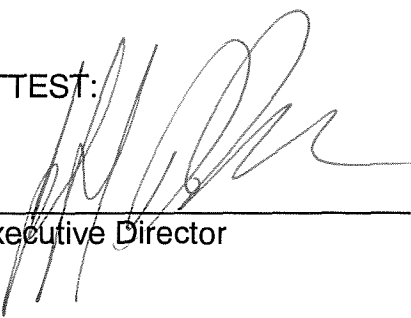
2. Ordering Paragraphs 1 and 2 of the Order of February 26, 2010, are stricken.

3. MSD's acquisition of Shadowwood's sewage treatment and collection facilities is approved without conditions as of February 26, 2010.

By the Commission



ATTEST:



Executive Director

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2009-00494 DATED OCT 24 2013

SETTLEMENT AGREEMENT

This Settlement Agreement is made and entered into on this 7th day of December, 2012, between Louisville-Jefferson County Metropolitan Sewer District ("MSD") and the Kentucky Public Service Commission ("PSC").

WITNESSETH:

WHEREAS, MSD is a metropolitan sewer district organized pursuant to KRS Chapter 76 that owns and operates six regional wastewater treatment centers and 15 small package sewage treatment facilities that serve more than 226,000 customers in Jefferson County, Kentucky;

WHEREAS, the PSC is a body corporate with the statutory duty to regulate utilities and to enforce the provisions of KRS Chapter 278, and has "exclusive jurisdiction over the regulation of rates and service of utilities" in the Commonwealth;

WHEREAS, Shadowwood Waste Environmental, LLC ("Shadowwood Waste") is a Kentucky limited liability company organized pursuant to KRS Chapter 275 that owned and operated a sewage collection and treatment facilities that served approximately 207 customers in the northeastern portion of Jefferson County, Kentucky;

WHEREAS, since on or after January 1, 1975, Shadowwood Waste has been a utility and subject to PSC regulation;

WHEREAS, on or about September 17, 2008, Shadowwood Waste executed a bill of sale and deed in which it purported to convey to MSD for \$45,000 all interest in Shadowwood Waste's sewage treatment and collection facilities and the real property on which these facilities were located;

WHEREAS, on December 29, 2009, MSD filed an application with the PSC, which was docketed as PSC Case No. 2009-00494, in which MSD argued that its acquisition of control and ownership of Shadowwood Waste's facilities was not subject to PSC jurisdiction or, in the alternative, for PSC approval of its acquisition of control and ownership of the facilities;

WHEREAS, on February 26, 2010, the PSC issued an Order in Case No. 2009-00494, in which it found that, pursuant to KRS 278.020(5) and (6), MSD's acquisition of control and ownership of Shadowwood Waste's facilities was subject to PSC jurisdiction, required PSC approval, and should be approved subject to certain conditions;

WHEREAS, on March 12, 2010, MSD brought in Franklin Circuit Court an action for review of the PSC's Order of February 26, 2010 and this action was docketed as Civil Action No. 2010-CI-00357;

WHEREAS, on July 12, 2011, Franklin Circuit Court entered an Opinion and Order in Civil Action No. 2010-CI-00357 in which it held the PSC's Order of February 26, 2011 exceeded the PSC's statutory authority;

WHEREAS, the PSC appealed the Franklin Circuit Court's Opinion and Order of July 12, 2011 to the Kentucky Court of Appeals;

WHEREAS, the PSC's appeal has been docketed as Appeal No. 2011-CA-002020 and is currently pending before the Kentucky Court of Appeals; and

WHEREAS, MSD acknowledges that:

1. KRS 278.020 requires a utility subject to PSC jurisdiction to obtain prior PSC approval before transferring control or ownership of its facilities to another party, regardless of whether the acquiring party is subject to PSC jurisdiction;

2. KRS 278.020 requires prior PSC approval of the transfer of ownership or control to MSD of a utility subject to PSC jurisdiction;

3. As to the transfer of ownership or control of any utility subject to PSC approval, such transfer of ownership or control made on or after February 26, 2010 without prior PSC approval renders that transfer of ownership or control void;

WHEREAS, the PSC and MSD have reached an agreement to resolve the appeal and the underlying dispute regarding the extent of the PSC's authority over MSD's acquisition of sewer utilities that are subject to the PSC's jurisdiction;

NOW THEREFORE, the PSC and MSD agree that:

1. The Franklin Circuit Court Opinion and Order of July 12, 2011 in Civil Action No. 2010-CI-00357 should be withdrawn and the PSC's Order of February 26, 2010 should be remanded to the PSC with instructions to amend that Order to remove any conditions to the PSC's approval of MSD's acquisition of control and ownership of Shadowwood Waste's facilities and to make the PSC's approval of MSD's acquisition of control and ownership of Shadowwood Waste's facilities unconditional and effective as of February 26, 2010.

2. The PSC shall not initiate any administrative proceeding or any other legal proceeding regarding MSD's acquisition of ownership or control of any sewer collection or treatment facilities that occurred prior to February 26, 2010.

3. Should MSD seek to acquire any utility subject to PSC jurisdiction, on or after the date that this Settlement Agreement is approved by Franklin Circuit Court, MSD will ensure that an application for PSC approval of the proposed acquisition is filed with the PSC and that PSC approval of the proposed acquisition is obtained prior to the acquisition. This Settlement Agreement does not, however, require that MSD be the applicant or a joint applicant for such approval so long as an application for PSC approval is made.

4. The parties shall jointly move the Kentucky Court of Appeals to remand Appeal No. 2011-CA-002020 to the Franklin Circuit Court with instructions to consider this Settlement Agreement.

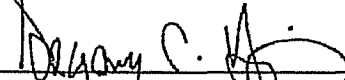
5. If Kentucky Court of Appeals remands Appeal No. 2011-CA-002020 to the Franklin Circuit Court for the lower court's consideration of this Agreement, the parties shall request that Franklin Circuit Court approve the terms of this Agreement, withdraw its Opinion and Order of July 12, 2011 in Civil Action No. 2010-CI-00357, and remand the PSC's Order of February 26, 2010 to the PSC with instructions to amend that Order to conform to the terms of this Settlement Agreement.

6. If the Kentucky Court of Appeals denies the parties' joint motion to remand Appeal No. 2011-CA-002020 to the Franklin Circuit Court or if Franklin Circuit Court considers this Agreement and does not approve it in its entirety, to include the withdrawal of the Opinion and Order of July 12, 2011, neither the terms of this Settlement Agreement, except for Paragraph 7, nor any matters raised during settlement negotiations shall be binding on either signatory or be construed against either MSD or the PSC.

7. The parties shall take all actions necessary to obtain the redocketing of Appeal No. 2011-CA-002020 with the Kentucky Court of Appeals for that Court's full consideration if the Franklin Circuit Court considers this Settlement Agreement and does not approve it in its entirety, to include the withdrawal of the Opinion and Order of July 12, 2011.

IN WITNESS WHEREOF, MSD and PSC have executed this Settlement Agreement the day and year first above written by and through their duly authorized attorneys.

LOUISVILLE-JEFFERSON COUNTY METRO-POLITAN SEWER DISTRICT

BY: 

TITLE: Interim Executive Director.

KENTUCKY PUBLIC SERVICE COMMISSION

BY: 

TITLE: Executive Advisor / Attorney

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