

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF RIVER ROAD DISPOSAL)
SYSTEMS TO TRANSFER OWNERSHIP AND) CASE NO. 2013-00380
CONTROL)

ORDER

River Road Disposal Systems ("River Road") has applied for approval to transfer ownership and control of its sewage treatment and collection facilities to Paintsville Utilities Commission ("Paintsville Utilities").¹ Having reviewed the application and being otherwise advised,² the commission finds that:

1. River Road is a privately owned facility.³

¹ Paintsville Utilities is not a signatory to the application and did not intervene in this matter. While no statute expressly requires that Paintsville Utilities be a joint applicant or participate in this matter, we have previously noted that the "better practice is for all corporate entities [acquiring control or ownership of a utility] to jointly apply for Commission approval." Case No. 2002-00018, *Application for Approval of the Transfer of Control of Kentucky-American Water Company to RWE Aktiengesellschaft and Thames Water Aqua Holdings GmbH* (Ky. PSC May 29, 2002) at 11.

² River Road is the only party in this proceeding. The Commission has not received any requests for a hearing in this matter.

³ The records of the Office of the Kentucky Secretary of State do not contain a listing for any corporation or limited liability company under the name "River Road Disposal Systems." River Road Disposal has indicated in other proceedings that it is neither a corporation nor a limited liability company. See, e.g., Application at 2 (Ky. PSC) filed in Case No. 2011-00458, *Application of River Road Disposal System for an Adjustment of Rates Pursuant to the Alternative Rate Filing Procedure for Small Utilities* (Ky. PSC filed Nov. 28, 2011). We have previously found that Rick Cantrell is the owner of River Road. See Case No. 96-458, *River Road Disposal System: Investigation into the Jurisdictional Status of Sewage Treatment Facilities* (Ky. Mar. 5, 1997) at 2. U.S. Environmental Protection Agency records indicate only that River Road is a "privately owned facility" and that Marsha Cantrell is the cognizant official. Search Results from Permit Compliance System-Integrated Compliance Information System <http://www.epa.gov/enviro/facts/pes-icis/search.html> (last visited Dec. 15, 2013). Commission records indicate that Ms. Cantrell has submitted the annual financial and statistical report on River Road's behalf since 1998 and has identified herself in those reports as River Road's Secretary/Treasurer. None of these reports identify an owner of River Road. Ms. Cantrell is identified in the Application in this proceeding as secretary/treasurer. She represents in the Agreement between River Road and Paintsville Utilities that she is duly authorized to act on River Road's behalf.

2. River Road owns and operates sewage treatment and collection facilities (“sewage facilities”) that serve approximately ten customers in the Powell Addition Subdivision of Johnson County, Kentucky.⁴

3. River Road’s facilities consist of a 6,000 gallons per day extended aeration treatment plant and various collection lines.⁵

4. For the calendar year ended December 31, 2012, River Road reported total sewage service revenues of \$6,343 and total sewage operating expenses of \$7,306.⁶

5. As of December 31, 2012, River Road reported net utility plant of \$907.⁷

6. For the calendar year ended December 31, 2012, River Road reported total assets and debits of \$5,367⁸ and total liabilities of \$4,428.⁹

7. Paintsville Utilities is an agency of the city of Paintsville with the responsibility to “supervise, manage and control the municipal water, waste water and natural gas production, purchase and distribution systems and to do so in a fiscally sound way consistent with the essential service and safety needs of the residential and commercial consumers of the city utilities. . . .”¹⁰

⁴ Application ¶¶ 1 and 4; *Annual Report of River Road Disposal Systems to the Public Service Commission for the Calendar Year Ended December 31, 2012* (“Annual Report”) at 1 and 8.

⁵ *Annual Report* at 11.

⁶ *Id.* at 8.

⁷ *Id.* at 2.

⁸ *Id.*

⁹ *Id.* at 3.

¹⁰ Paintsville, Ky., Code of Ordinances § 53.15 (1995 & Supp. 2012), available at [http://www.amlegal.com/nxt/gateway.dll/Kentucky/paintsville_ky/cityofpaintsvillkentuckycodeofordinance?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:paintsville_ky](http://www.amlegal.com/nxt/gateway.dll/Kentucky/paintsville_ky/cityofpaintsvillkentuckycodeofordinance?f=templates$fn=default.htm$3.0$vid=amlegal:paintsville_ky) (last visited Dec. 15, 2013).

8. Paintsville Utilities has been in existence since 1927.¹¹
9. Paintsville Utilities presently provides natural gas service to 1,660 customers, water service to 7,803 customers, and sewage collection and treatment service to 2,478 customers.¹²
10. As of June 30, 2012, Paintsville Utilities had total assets of \$83,284,055 and total liabilities of \$30,227,778.¹³
11. As of June 30, 2012, Paintsville Utilities had net utility plant, including construction work in progress, of \$73,890,546.¹⁴
12. For the fiscal year ended June 30, 2012, Paintsville Utilities had total operating revenues of \$7,945,535. Paintsville Utilities' sewer operations accounted for \$2,237,790 of these revenues.¹⁵
13. For the fiscal year ended June 30, 2012, Paintsville Utilities had total operating expenses of \$5,670,558.¹⁶
14. For the fiscal year ended June 30, 2012, Paintsville Utilities had net income of \$890,359.¹⁷

¹¹ Paintsville Utilities, <http://www.paintsvilleutilities.com/about> (last visited November 6, 2013).

¹² *Id.*

¹³ Wells & Company, P.S.C., *Paintsville Utilities Commission: Audited Financial Statements and Supplemental Financial Information June 30, 2012* (Oct. 26, 2012) ("*Audit Report*") at 3 and 4.

¹⁴ *Id.* at 3.

¹⁵ *Id.* at 5. Paintsville Utilities reports sewer revenues separately.

¹⁶ *Id.* at 5. Paintsville Utilities does not report sewer operating expenses separately.

¹⁷ *Id.*

15. As of June 25, 2013, Paintsville Utilities owns and operates two wastewater treatment plants; the Honey Branch Regional Sewage Treatment Plant and the Paintsville Sewage Treatment Plant.¹⁸

16. The Honey Branch Sewage Treatment Plant has a treatment capacity of 1 million gallons per day. Approximately 22.8 miles of collection mains, 0.12 miles of interceptor mains, and seven lift stations are involved in the transport of wastewater to this facility.¹⁹

17. The Paintsville Sewage Treatment Plant has a treatment capacity of 990,000 gallons per day. Approximately 38.52 miles of collection mains, 0.05 miles of interceptor mains and 13 lift stations are involved in the transport of wastewater to this facility.²⁰

18. As of the date of the application, Paintsville Utilities employed five employees who hold at least a Class II treatment or collection certificate.²¹

19. River Road and Paintsville Utilities have reached an agreement for the transfer of ownership and control of River Road's sewage facilities.²² This agreement provides:

¹⁸ Kentucky Infrastructure Authority, Kentucky Wastewater Management Plan (June 25, 2013) 176-177, *available at* http://kia.ky.gov/NR/rdonlyres/9A094655-E931-4A98-8F07-914CE0A50D2E/0/CW_ManagementPlan_State_062513.pdf.

¹⁹ *Id.* at 176.

²⁰ *Id.* at 177.

²¹ "Paintsville Utilities Commission Licensed Operators" (filed in Case No. 2013-00183, *Application of Appalachian Waste Control, Inc. to Transfer Ownership and Control* (Ky. PSC filed May 15, 2013)).

²² Application Ex. A.

a. River Road will transfer to Paintsville Utilities all personal and real property that River Road owns and uses in the operation of its sewage facilities.

b. Paintsville Utilities will assume all debt associated with River Road's wastewater facilities.

c. Paintsville Utilities will treat the customers of River Road sewage facilities in the same manner and assess the same rates that are assessed to other Paintsville Utilities customers.

20. Upon completion of the transfer, a River Road customer who uses 5,000 gallons of water or less each month will pay a lower monthly bill for sewage treatment service than he or she would pay if River Road continued to operate the sewage facilities.²³

21. The proposed transfer will promote the consolidation of sewage systems in Johnson County, Kentucky, and is likely to lead to the improvement of sewage service for the residents of Johnson County.

Based upon these findings, the Commission makes the following conclusions of law:

1. River Road is a utility subject to Commission jurisdiction.²⁴
2. Paintsville Utilities is an agency of the city of Paintsville.
3. The city of Paintsville is a municipal corporation.

²³ For a schedule of Paintsville Utilities' rates, see <http://www.paintsvilleutilities.com/wp-content/uploads/2009/08/Rate-Sheet07012012.pdf> (last visited November 5, 2013). Under River Road's current rate schedule, a customer pays a monthly fee of \$57.38. Under Paintsville Utilities current rate schedule for wastewater users, a customer who uses 5,000 gallons of water monthly will pay a monthly rate of \$39.17.

²⁴ KRS 278.010(3)(f).

4. As Paintsville is a city, it is not a utility and is not generally subject to Commission jurisdiction.²⁵

5. Paintsville is a “corporation”²⁶ and a “person”²⁷ for purposes of KRS Chapter 278.

6. KRS 278.020(5) 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 Paintsville Utilities is a person and is acquiring ownership of River Road sewage facilities, this statute is applicable to and requires prior Commission approval of the proposed acquisition.

7. KRS 278.020(6) provides “[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 Paintsville Utilities is a corporation and is acquiring control of River Road’s utility operations through the acquisition of its sewage facilities, this statute is applicable to and requires prior Commission approval of the transfer of those facilities.

²⁵ *Simpson County Water District v. City of Franklin*, 872 S.W.2d 460 (Ky. 1994); *McClellan v. Louisville Water Co.*, 351 S.W.2d 197 (Ky. 1961).

²⁶ See KRS 278.010(1) (providing that a corporation “includes private, quasipublic, and public corporations, and all boards, agencies, and instrumentalities thereof, associations, joint-stock companies, and business trusts”).

²⁷ See KRS 278.010(2) (providing that a person includes “natural persons, partnerships, corporations, and two (2) or more persons having a joint or common interest”).

8. In view of its financial assets and its status as an agency of a municipal corporation, Paintsville Utilities has sufficient financial integrity to ensure the continuity of utility service.

9. Paintsville Utilities has the financial, technical, and managerial abilities to provide reasonable service to those persons that River Road currently serves.

10. KRS 224A.300(1) provides that the regionalization and consolidation of water and wastewater systems should be encouraged.

11. Paintsville Utilities' acquisition of River Road's sewage facilities is in accordance with law, is for a proper purpose, and is consistent with the public interest.

12. Upon Paintsville Utilities' acquisition of River Road sewage facilities, those facilities will no longer be subject to Commission jurisdiction.

IT IS THEREFORE ORDERED that:

1. The proposed transfer of ownership and control of River Road sewage facilities to Paintsville Utilities is approved.

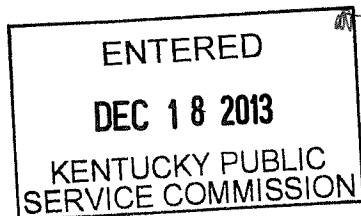
2. Within 10 days of completion of the transfer of ownership of the River Road sewage facilities to Paintsville Utilities, River Road and Paintsville Utilities shall notify the Commission in writing that the proposed transfer has occurred.

3. Within 120 days of the date of this Order, River Road shall file with the Commission a financial and statistical report for its operations for the period from January 1, 2013, until the date of transfer of ownership.

4. Any documents filed pursuant to ordering paragraphs 2 and 3 shall reference this case number and shall be retained in the utility's general correspondence file.

5. The Executive Director is delegated authority to grant reasonable extensions of time for the filing of any documents required by this Order upon the showing of good cause for such extension by River Road or Paintsville Utilities.

By the Commission



ATTEST:

A handwritten signature in black ink, appearing to be "J. M. [unclear]", written over a horizontal line.

Executive Director

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