

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF MURRAY NO. 3 WATER)	
DISTRICT FOR AN ORDER APPROVING A)	CASE NO.
TRANSFER OF OWNERSHIP AND)	2014-00291
CONTROL)	

ORDER

Murray No. 3 Water District ("Murray No. 3") and the city of Murray, Kentucky, ("Murray") jointly petitioned for Commission approval to transfer ownership and control of Murray No. 3's water distribution system to Murray. Having reviewed the application and being otherwise advised, the Commission finds that:

1. Murray No. 3 is a water district established pursuant to KRS Chapter 74.¹
2. Murray No. 3 owns and operates a water distribution system that serves approximately 354 customers in Calloway County, Kentucky.²
3. As of December 31, 2013, Murray No. 3 had total assets of \$96,169.77³ and total liabilities of \$96,169.77.⁴

¹ Amended Joint Application ("Amended Application") ¶ 1.

² Joint Applicants' Response to Commission Staff's First Request for Information to Murray No. 3 Water District and city of Murray, Kentucky ("Joint Applicants' Response to Request for Information"), Item 13. (Filed Nov. 12, 2014).

³ *Annual Report of Murray #3 Water District to the Public Service Commission for the Calendar Year Ended December 31, 2013* ("Annual Report") at 7.

⁴ *Id.* at 8.

4. As of December 31, 2013, Murray No. 3 had net utility plant of \$49,594.45.⁵

5. For the calendar year ended December 31, 2013, Murray No. 3 had operating revenues of \$70,551.84 and utility operating expenses of \$83,514.35, which results in utility operating income of (\$12,962.51).⁶

6. For the calendar year ended December 31, 2013, Murray No. 3 had net income of (\$12,939.50).⁷

7. For the calendar year ended December 31, 2013, Murray No. 3 employed two part-time employees.⁸

8. Murray is a city of the third class.⁹

9. Murray owns and operates a water treatment and distribution system that provides water service to 9,147 customers inside and outside Murray's corporate boundaries and provides Murray No. 3's total water requirements.¹⁰

10. For the fiscal year ended June 30, 2013, Murray reported total assets of \$59,795,000 and total liabilities of \$8,571,000.¹¹

⁵ *Id.* at 7.

⁶ *Id.* at 9.

⁷ *Id.*

⁸ *Id.* at 5.

⁹ Amended Application ¶ 6; KRS 81.010(3).

¹⁰ Amended Application ¶ 2, 6, 15; Joint Applicants' Response, Item 12.

¹¹ City of Murray FY2013 Audited Financial Statements at 6, Joint Applicants' Supplemental Response to Request for Information ("Joint Applicants' Supplemental Response"), Item 5.

11. For the fiscal year ended June 30, 2013, Murray reported total assets for water and sewer operations of \$32,114,729 and total liabilities for water and sewer operations of \$5,359,343.¹²

12. As of June 30, 2012, Murray had utility plant in service of \$53,645,443.¹³

13. For the fiscal year ended June 30, 2013, Murray's water and sewer operations had total operating revenues of \$5,354,067 and total operating expenses of \$5,447,551.¹⁴ Murray also reported net operating income of \$281,010.¹⁵

14. The Kentucky Division of Water has licensed eight of Murray's employees as certified distribution operators and four of Murray's employees as certified water system operators.¹⁶

15. At a public hearing held on April 1, 2014, Murray No. 3's Board of Commissioners approved the transfer of all assets of Murray No. 3 to Murray and authorized the Board Chairman to proceed with the transfer.¹⁷

16. On April 10, 2014, Murray's City Council approved the acquisition of all assets of Murray No. 3 and authorized Murray's Mayor to proceed with the acquisition.¹⁸

¹² *Id.* at 15. This amount includes wastewater services.

¹³ *Id.* This amount includes plant used to provide wastewater services.

¹⁴ *Id.* at 16. This amount includes wastewater system revenues and expenses.

¹⁵ *Id.* This amount includes wastewater system revenues and expenses.

¹⁶ Joint Applicants' Response, Item 3.

¹⁷ *Id.*, Item 10, Exhibit H.

¹⁸ *Id.*, Exhibit G.

17. On June 17, 2014, the Calloway County Fiscal Court approved Murray's acquisition of all assets of Murray No. 3 and authorized the Calloway County Judge/Executive to proceed with the acquisition.¹⁹

18. On November 5, 2014, and November 6, 2014, respectively, Murray and Murray No. 3 executed an agreement for the transfer of ownership and control of Murray No. 3's water distribution system.²⁰ This agreement provides:

a. Murray No. 3 will transfer to Murray all of its assets, consisting of personal and real property.²¹

b. Murray will assume all liabilities of Murray No. 3.²²

c. Murray will install system development improvements within Murray No. 3's water service area in Calloway County to bring the system up to appropriate standards.²³

d. Upon the closing of the transaction, Murray No. 3 will transfer any balances remaining in customer accounts to Murray.²⁴ Murray No. 3 does not hold any customer security deposits, since it does not require a deposit to secure utility service.²⁵

e. Murray will treat the customers of Murray No. 3 in the same manner and assess the same rates that are assessed to Murray's customers outside Murray's

¹⁹ *Id.*, Exhibit F.

²⁰ *Id.*, Item 1, Asset Acquisition Agreement ("Acquisition Agreement").

²¹ Acquisition Agreement at 4.

²² Acquisition Agreement at 4.

²³ *Id.*

²⁴ *Id.* at 14.

²⁵ Amended Application at ¶ 17; Joint Applicants' Response, Item 11.

city limits. Upon the closing of the transaction, Murray No. 3 customers will be assessed Murray's outside-city-limits water rates.²⁶

19. Murray's current rates for water service to customers residing outside Murray's corporate limits are higher than Murray No. 3's current rates for water service.²⁷ On March 19, 2014, Murray provided notice to customers of Murray No. 3 regarding the rate adjustment that would result from the proposed transfer.²⁸

20. The proposed transaction will further Murray No. 3's effort to discontinue providing services as a water district, and Murray's intent to bring its facilities and services to the area currently served by Murray No. 3.²⁹

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

1. Murray No. 3 is a utility subject to Commission jurisdiction.³⁰
2. As a city, Murray is not a utility and is not subject to Commission jurisdiction.³¹

²⁶ *Acquisition Agreement* at 14, Exhibit P; Joint Applicants' Response, Item 8.

²⁷ For the schedule of Murray's rates, see Amended Application at Exhibit P. Under Murray No. 3's present rate schedule, a customer would pay a monthly bill of \$19.88 for 5,000 gallons of water. Under Murray's schedule of rates for outside city customers, the same customer would pay \$23.53 for 5,000 gallons of water.

²⁸ Joint Applicants' Response, Item 4.

²⁹ Amended Application at ¶ 14.

³⁰ KRS 278.010(3)(d); KRS 278.015.

³¹ *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).

3. Murray is a “corporation”³² and a “person”³³ for purposes of KRS Chapter 278.

4. 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 Murray is a person and is acquiring ownership of Murray No. 3’s water distribution facilities, this statute is applicable to and requires Commission approval of the proposed transfer.

5. KRS 278.020(6) 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 Murray is a corporation and is acquiring control of Murray No. 3’s utility operations through the acquisition of its water distribution facilities, this statute is applicable to and requires prior Commission approval of the transfer of those facilities.

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

7. The consolidation of Murray No. 3’s distribution system into Murray’s distribution system is consistent with the Commonwealth’s policy of promoting the

³² See KRS 278.010(1) (providing that a corporation “includes private, quasipublic, and public corporations, and all boards, agencies, and instrumentalities thereof.”). Cities are municipal corporations. See, e.g., *Wilson v. Central City*, 372 S.W.3d 863, 866 (Ky. 2012) (“a city is both a ‘municipality’ and a ‘municipal corporation’”).

³³ 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”).

consolidation of water distribution systems and the creation of regionalized water suppliers.³⁴

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

9. Upon completion of the proposed transfer, Murray No. 3's facilities will no longer be subject to Commission jurisdiction.

10. Murray has the financial, technical, and managerial abilities to provide reasonable service to those persons that Murray No. 3 currently serves.

11. The proposed transfer is consistent with the public interest and should be granted.

IT IS THEREFORE ORDERED that:

1. The proposed transfer of ownership and control of Murray No. 3's facilities to Murray is approved.

2. Murray No. 3 and Murray shall notify the Commission in writing of the transfer of assets within 10 days of the transfer's occurrence.

3. Within 60 days of the transfer's occurrence, Murray No. 3 shall submit to the Commission, using the Commission's electronic filing system, a financial and statistical report as required by 807 KAR 5:006, Section 4, for its operations for the period from January 1, 2014, until the date of transfer of ownership.

4. Any documents filed pursuant to ordering paragraph 2 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 a showing of good cause and for such extension.

³⁴ KRS 224A.300(1)

By the Commission
ENTERED
DEC 23 2014
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:



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