

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

JOINT APPLICATION OF MIDDLETOWN	)	
WASTE DISPOSAL, INC. AND THE LOUISVILLE	)	
AND JEFFERSON COUNTY METROPOLITAN	)	
SEWER DISTRICT FOR APPROVAL OF	)	
TRANSFER OF THE MIDDLETOWN	)	Case No.
WASTEWATER TREATMENT PLANT AND	)	2015-00041
COLLECTION SYSTEM TO LOUISVILLE AND	)	
JEFFERSON COUNTY METROPOLITAN	)	
SEWER DISTRICT	)	

ORDER

Middletown Waste Disposal, Inc. ("MWD") and the Louisville and Jefferson County Metropolitan Sewer District ("MSD") (jointly "Applicants") have jointly applied for approval of the transfer of the MWD wastewater treatment plant, collection system, and appurtenances from MWD to MSD.<sup>1</sup> Commission Staff issued, and MWD and MSD responded to, one request for information. There are no intervenors in this proceeding. The matter is now before the Commission for a decision based upon the evidentiary record.

Having considered the record and being otherwise sufficiently advised, the Commission finds that:

1. MWD is a Kentucky Corporation that is organized pursuant to KRS Chapter 271A.<sup>2</sup>

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<sup>1</sup> MSD has joined in the "application as a perfunctory matter per the agreement and not as a mandatory statutory requirement." Joint Application at 5. MSD takes the position that it is exempt from Commission oversight.

<sup>2</sup> Joint Application, Exhibit B.

2. MWD owns and operates sewage collection and treatment facilities that serve approximately 201 customers in Jefferson County, Kentucky.<sup>3</sup>

3. MWD's treatment and collection facilities consist of an extended-aeration sewage treatment plant and aeration lagoon designed to serve a population of 400. The plant was constructed in 1981.<sup>4</sup>

4. MWD does not hold any customer deposits.<sup>5</sup>

5. As of December 31, 2013, MWD had total net utility plant of \$38,792.<sup>6</sup>

6. As of December 31, 2013, MWD had total assets of \$107,641.<sup>7</sup>

7. As of December 31, 2013, MWD had total current and accrued liabilities of \$196,003.<sup>8</sup>

8. MSD is a metropolitan sewer district created pursuant to KRS Chapter 76.

9. MSD provides sanitary sewer and drainage services to approximately 232,000 customers in Jefferson County, Kentucky.<sup>9</sup>

10. MSD operates six large wastewater treatment facilities and 15 or more small wastewater treatment plants, and has a combined daily treatment capacity in excess of 173.5 million gallons.<sup>10</sup>

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<sup>3</sup> *Annual Report of Middletown Waste Disposal, Inc., for the Calendar Year Ended December 31, 2013* ("2013 Annual Report") at 36.

<sup>4</sup> 2013 Annual Report at 34.

<sup>5</sup> Applicants' Response to Commission Staff's First Request for Information ("Staff's First Request"), Item 1.

<sup>6</sup> 2013 Annual Report at 12.

<sup>7</sup> *Id.*

<sup>8</sup> 2013 Annual Report at 13.

<sup>9</sup> Application, numbered paragraph 2.

<sup>10</sup> Application, numbered paragraph 4.

11. As of December 31, 2014, MSD employed over 500 persons, and approximately 20 of these employees are certified wastewater treatment plant operators.<sup>11</sup>

12. As of June 30, 2014, MSD had net plant of approximately \$2,270 million.<sup>12</sup>

13. As of June 30, 2014, MSD had total assets of approximately \$2,577 million and total liabilities of approximately \$1,910 million.<sup>13</sup>

14. For the year ending June 30, 2014, MSD had total operating revenues of approximately \$216 million and total operating expenses of approximately \$136 million.<sup>14</sup>

15. MSD has been in existence since 1946.

16. MSD is governed by a board that consists of eight members who are appointed by the Mayor of the Louisville Metro Government, subject to the approval of the Louisville Metro Council.<sup>15</sup>

17. The approval of the Louisville Metro Council is required before MSD may implement a change in its rates for service.<sup>16</sup>

18. Upon completion of the transfer, MSD plans to continue to charge MWD's current customers the current MWD sewer rate until at least August 1, 2015. After

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<sup>11</sup> Application, numbered paragraph 9.

<sup>12</sup> Louisville and Jefferson County Metropolitan Sewer District, *Comprehensive Annual Financial Report for Fiscal Years Ended June 30, 2014 and 2013* ("MSD Comprehensive Report") at 18, available at [http://www.msdlouky.org/aboutmsd/pdfs/MSD\\_CAFR\\_FINAL\\_2014.pdf](http://www.msdlouky.org/aboutmsd/pdfs/MSD_CAFR_FINAL_2014.pdf).

<sup>13</sup> *Id.*

<sup>14</sup> MSD Comprehensive Report at 19.

<sup>15</sup> MSD Comprehensive Report at 23, Note 1(A).

<sup>16</sup> *Id.*

August 1, 2015, and contingent upon MSD diverting flows from the MWD treatment plant, MSD rates and charges will be applied.<sup>17</sup>

19. On March 9, 2015, MWD mailed notice of the rate change to its customers.<sup>18</sup>

20. On February 2, 2014, MWD and MSD executed a Letter of Intent that provides:

a. MSD will pay \$750,000 to MWD for MWD's wastewater treatment plant, collection system, and appurtenances.

b. MSD and MWD will execute a final purchase agreement within seven business days after MWD receives approval from the Public Service Commission to transfer ownership to MSD.

c. MWD will remain responsible for the operation of MWD's treatment plant and collection system until MSD is able to divert the flows from the MWD plant to MSD.

d. The estimated diversion of flows from the MWD treatment plant to MSD is May or June 2015.

e. MSD will be responsible for the demolition of the existing MWD plant following the diversion of flow; however, MWD is not transferring the ownership of any real property to MSD.

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<sup>17</sup> Applicants' Response to Staff's First Request, Item 3.a.

<sup>18</sup> Applicants' Response to Staff's First Request, Item 3.b.

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

1. MWD is a utility subject to the Commission's jurisdiction.<sup>19</sup> MSD is not a utility and is therefore not subject to Commission regulation.<sup>20</sup>

2. 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 by the sale of assets . . . without prior approval by the commission." As MWD is a utility under the jurisdiction of the Commission and MWD is proposing to transfer ownership of the MWD wastewater treatment plant, collection system, and appurtenances, KRS 278.020(5) is applicable and the statute requires Commission approval of the transfer.

3. In view of its financial assets and its status as a political subdivision of the Commonwealth, MSD has sufficient financial integrity to ensure the continuity of utility service.

4. MSD has the financial, technical, and managerial abilities to provide reasonable service to MWD's present customers.

5. MSD's acquisition of MWD's wastewater treatment plant, collection system, and appurtenances is in accordance with law, for a proper purpose, and is consistent with the public interest.

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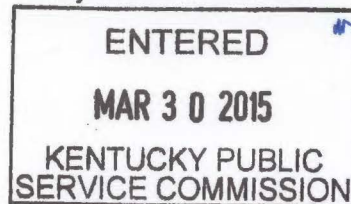
<sup>19</sup> KRS 278.010(3)(f).

<sup>20</sup> See KRS 278.010(3)(f), expressly excluding from definition of "utility" any person who owns facilities that are subject to regulation by a metropolitan sewer district.

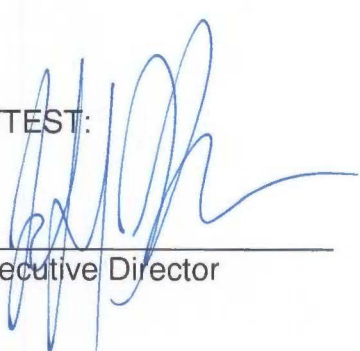
IT IS THEREFORE ORDERED that:

1. MWD's transfer of its wastewater treatment plant, collection system, and appurtenances to MSD is approved.
2. Within ten days of completion of the transfer of ownership of MWD's wastewater treatment plant, collection system, and appurtenances, MWD shall file with the Commission written notice of the transfer's occurrence.
3. Within 120 days of the date of this Order, MWD shall file with the Commission a financial and statistical report for its sewer operations for the period from January 1, 2015, until the date of the transfer of ownership.
4. Any documents filed in the future 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 extension of time for filing any documents required by this Order upon MWD's showing of good cause for such an extension.

By the Commission



ATTEST:

  
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Executive Director

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