

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF GRAVES COUNTY WATER)	CASE NO.
DISTRICT FOR TRANSFER OF OWNERSHIP)	2015-00296
AND CONTROL OF SEDALIA WATER DISTRICT)	

ORDER

On August 25, 2015, the Commission received an application submitted by the Graves County Water District ("Graves District") for Commission approval of a proposed transfer of ownership and control of the Sedalia Water District ("Sedalia District"). On October 13, 2015, documents were entered into the record curing deficiencies in the application, and, on that date, the application was determined by the Commission to meet the minimum filing requirements and was accepted for filing. No person has sought to intervene in this proceeding.

Relevant History of Graves District

In Case No. 2007-00496, the Commission approved the merger of Consumers Water District, Fancy Farm Water District, Hardeman Water District, and South Graves Water District into a single district, and the resulting district was consolidated under the name "Graves County Water District."¹ In Case No. 2012-00358, the Commission approved the merger of Hickory Water District and Graves District, and the resulting district was again consolidated under the name "Graves County Water District."²

¹ Case No. 2007-00496, *Joint Application of Consumers Water District, Fancy Farm Water District, Hardeman Water District, and South Graves Water District for Approval of Merger and Formation of the Graves County Water District* (Ky. PSC May 21, 2008), Order at 7 and 10.

² Case No. 2012-00358, *Joint Application of Hickory Water District and Graves County Water District for Approval of Proposed Merger* (Ky. PSC Sept. 27, 2012), Order at 5 and 8.

Graves District provides water service to approximately 6,179 customers in portions of Graves County and Carlisle County, Kentucky.³ A seven-member board of commissioners manages and controls Graves District.⁴ As of December 31, 2014, Graves District had total assets of \$8,957,014 and net utility plant of \$8,664,300.⁵ As of December 31, 2014, Graves District had total long-term debt of \$1,779,354 and total current and accrued liabilities of \$190,920.⁶ Graves District produces and also purchases the water that it distributes.⁷ Graves District employs five certified operators.⁸

Relevant History of Sedalia District

Sedalia District is a water district organized pursuant to KRS Chapter 74 in 1966, and it provides water service to approximately 142 customers in Graves County, Kentucky.⁹ Sedalia District is managed and controlled by a three-member board of commissioners.¹⁰ As of December 31, 2014, Sedalia District had total assets of \$20,842 and net utility plant of \$15,088.¹¹ As of December 31, 2014, Sedalia District

³ *Annual Report of Graves County Water District to the Public Service Commission for Year Ended December 31, 2014* ("Graves District Annual Report") at reference pages 5 and 27.

⁴ *Id.* at reference page 6; and Case No. 2012-00358, Hickory Water District and Graves County Water District (KY. PSC Sept. 27, 2015), Order at 5.

⁵ *Graves District Annual Report* at reference page 7.

⁶ *Id.* at reference page 9.

⁷ *Id.* at reference page 30.

⁸ PSC Letter Filing Documents into Record (Oct. 13, 2015), electronic mail message from Kevin Leonard dated Oct. 1, 2015.

⁹ *Annual Report of Sedalia Water District to the Public Service Commission for Year Ended December 31, 2014* at reference pages 5 and 21.

¹⁰ *Id.* at reference page 6.

¹¹ *Id.* at reference page 7.

had no long-term debt and total current and accrued liabilities of \$4,485.¹² Sedalia District produces the water that it distributes.¹³ Sedalia District does not employ a certified operator.¹⁴ Graves District currently operates the Sedalia District.¹⁵

Summary of Proposed Transaction

On January 13, 2015, the Commission received a notification that the Sedalia District had contacted Graves District in an effort to relinquish all property to Graves District.¹⁶ Per the notification, Sedalia District informed Graves District that it no longer employed a certified operator; further, Sedalia District stated that it did not employ anyone who could repair and maintain the Sedalia District system or anyone who could perform tasks such as billing, accounting, and collection on behalf of Sedalia District.¹⁷

The notification further stated that, following its review of the options, the Sedalia District Board determined that it was in the best interest of the Sedalia District to convey all property and responsibility for the system to Graves District.¹⁸ A majority of the Sedalia District Board approved this action.¹⁹ Sedalia District Chairman George Cook

¹² *Id.* at reference page 8.

¹³ *Annual Report of Sedalia Water District to the Public Service Commission for Year Ended December 31, 2013* at reference page 23.

¹⁴ PSC Letter Filing Documents into Record (Nov. 24, 2015), letter from Sedalia District Board of Commissioners to Graves County Judge/Executive Tony Smith.

¹⁵ PSC Letter Filing Documents into Record (Nov. 24, 2015), letter from Kevin Leonard to Jeff Derouen dated Jan. 7, 2015.

¹⁶ *Id.*

¹⁷ PSC Letter Filing Documents into Record (Nov. 24, 2015), letter from Sedalia District Board of Commissioners to Graves County Judge/Executive Tony Smith.

¹⁸ *Id.*

¹⁹ *Id.*

and Commissioner Mickey Grooms subsequently resigned.²⁰ The term of Sedalia District Commissioner Jimmy Williams expired on January 1, 2015.²¹ The three commissioner positions on the Sedalia District Board of Commissioners are, therefore, currently vacant.

At the November 25, 2014 meeting of the Graves District Board of Commissioners, a majority of the members of the Graves District Board of Commissioners voted to accept the Sedalia District system into the Graves District System.²² On August 25, 2015, Graves District filed an application seeking approval of the proposed transaction for Graves District to take over the Sedalia District. Graves District does not propose to utilize a different name for the resulting district; therefore, the proposal is for the districts to be consolidated under the name "Graves County Water District." Graves District does not propose to change the size of the board of commissioners for the resulting district; therefore, the proposal is for the resulting district to be governed by Graves District's existing seven-member board. Graves District proposes to adopt the existing rates of Sedalia District for post-merger service to the customers currently served by the Sedalia District.²³

²⁰ *Id.*

²¹ Sedalia Water District Registration 2015 filed with the Kentucky Department for Local Government. https://kydlgweb.ky.gov/Entities/SPGE_Reports.cfm?Report=DLG-FMA-D01&Entity_ID=1913&FY=2015

²² PSC Letter Filing Documents into Record (Oct. 13, 2015), Minutes of the Graves District Nov. 25, 2014 Board of Commissioners' meeting at 1.

²³ PSC Letter filing document into the record (Jan. 13, 2016), S. Boyd Neely, Jr. electronic mail message.

Relevant Legal Requirements

Graves District and Sedalia District are water districts created under and subject to the provisions of KRS Chapter 74. KRS 74.363 states:

- (1) Boards of commissioners of any two (2) or more water districts may by concurrent action and by approval of a majority of the membership of the board of each merge their districts into one (1).
- (2) The members of the boards of commissioners of the merged water districts shall serve as members of the board of commissioners of the resulting district, regardless of their normal term expiration, until one (1) year after approval of the merger by the Public Service Commission. Thereafter, the board shall be composed as follows:
 - (a) If the boundaries of the resulting district lie wholly within a single county, the board of commissioners shall be composed of between three (3) and seven (7) members as agreed upon by the merged water districts in their merger documents.
 - (b) If the boundaries of the resulting district lie within two (2) or more counties, the board of commissioners shall be composed of six (6) or more members as agreed upon by the merged water districts in their merger documents.
- (3) Each appointment to the board of commissioners of the resulting district shall be made by the appropriate county judge/executive with the approval of the fiscal court. Each member of the board shall be a resident of the county from which he or she is appointed. The initial terms of the board of commissioners after the merger shall be as follows: approximately one-third (1/3) of the commissioners shall be appointed for a term of two (2) years; approximately one-third (1/3) of the commissioners shall be appointed for a term of three (3) years; and the remaining commissioners shall be appointed for a term of four (4) years. Thereafter, all commissioners shall be appointed for a term of four (4) years. KRS 74.020(2) to (10) shall apply to all commissioners and vacancies on the board of commissioners.

- (4) The resulting district shall have all the assets and legal liabilities of the water districts joining in the merger. The separate existences of the water districts joining in the merger, except the resulting district, shall cease, and the title to all real estate and other property owned by the water districts joining in the merger shall be vested in the resulting district without reversion or impairment. Bonded obligations of any district secured by the right to levy an assessment as provided by KRS 74.130 through 74.230 or secured by the revenue of the systems operated by the district shall continue to be retired or a sinking fund for such purpose created from the tax assessments or revenue from the system operated by the district from funds collected over the same area by the new board of commissioners in accordance with the laws under which the bonds were issued until all bonded obligations of the old district have been retired.

KRS 278.015, in pertinent part, states:

Notwithstanding any of the provisions of KRS Chapter 74, any water district; combined water, gas, or sewer district; or water commission, except a joint commission created under the provisions of KRS 74.420 to 74.520, shall be a public utility and shall be subject to the jurisdiction of the Public Service Commission in the same manner and to the same extent as any other utility as defined in KRS 278.010.

Graves District and Sedalia District, as water districts created under KRS Chapter 74, are subject to the jurisdiction of the Public Service Commission in the same manner as any other utility defined in KRS 278.010.

KRS 278.020(5) states:

No person shall acquire or transfer ownership of, or control, or the right to control, any utility under the jurisdiction of the commission by sale of assets, transfer of stock, or otherwise, or abandon the same, without prior approval by the commission. The commission shall grant its approval if the person acquiring the utility has the financial, technical, and managerial abilities to provide reasonable service.

KRS 278.020(6) states:

No 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. Any acquisition of control without prior authorization shall be void and of no effect. As used in this subsection, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a utility, whether through the ownership of voting securities, by effecting a change in the composition of the board of directors, by contract or otherwise. Control shall be presumed to exist if any individual or entity, directly or indirectly, owns ten percent (10%) or more of the voting securities of the utility. This presumption may be rebutted by a showing that ownership does not in fact confer control. Application for any approval or authorization shall be made to the commission in writing, verified by oath or affirmation, and be in a form and contain the information as the commission requires. The commission shall approve any proposed acquisition when it finds that the same is to be made in accordance with law, for a proper purpose and is consistent with the public interest. The commission may make investigation and hold hearings in the matter as it deems necessary, and thereafter may grant any application under this subsection in whole or in part and with modification and upon terms and conditions as it deems necessary or appropriate. The commission shall grant, modify, refuse, or prescribe appropriate terms and conditions with respect to every such application within sixty (60) days after the filing of the application therefor, unless it is necessary, for good cause shown, to continue the application for up to sixty (60) additional days. The order continuing the application shall state fully the facts that make continuance necessary. In the absence of that action within that period of time, any proposed acquisition shall be deemed to be approved.

Discussion

The Commission finds that a majority of the Graves District Board of Commissioners approved a transaction through which Graves District will take control

over the territory, assets, and operation of the Sedalia District. The Commission finds that a majority of the Sedalia District Board of Commissioners approved a transaction through which Graves District will take control over the territory, assets, and operation of the Sedalia District. We find that Graves District and Sedalia District propose to merge their districts into a single district and conclude that the transaction is governed by KRS 74.363.

KRS 74.363(2) sets forth the requirements for the composition of the board of commissioners of the resulting district of this proposal. The Commission finds that the boundaries of Graves District lie within two or more counties; therefore, the resulting district will lie within two or more counties. Pursuant to KRS 74.363(2)(b), the board of commissioners of the resulting district shall be composed of six or more members as agreed upon by the merged district. We find that Graves District and Sedalia District propose to utilize Graves District's current seven-member Board of Commissioners as the board of commissioners of the resulting district. We conclude that the size of Graves District's current Board of Commissioners satisfies the minimum size requirement for the board of commissioners of the resulting district.

Pursuant to KRS 74.363(2), the members of the boards of commissioners of the merged water districts shall serve as the members of the board of commissioners of the resulting district, regardless of their normal term expiration, until one year after approval of the merger by the Commission. We find that each of the three positions on the Sedalia District Board of Commissioners are vacant, and we conclude, therefore, that there are no members of the Sedalia District Board of Commissioners to serve on the board of commissioners of the resulting district. We find and conclude that Graves

District's current Board of Commissioners will be, pursuant to KRS 74.363(2), the members of the board of commissioners for the resulting district.

KRS 74.363(3) sets forth the initial terms of the board of commissioners for the resulting district. We find that KRS 74.363(3) requires that approximately one-third of the commissioners of the resulting district shall be appointed for a term of two years, approximately one-third of the commissioners shall be appointed for a term of three years, and the remaining commissioners shall be appointed for a term of four years. Thereafter, in accordance with KRS 74.363(3), all commissioners shall be appointed for a term of four years, and KRS 74.202(2) to (10) shall apply to all commissioners and vacancies on the board of commissioners of the resulting district.

We find that KRS 74.363(4) addresses the assets and legal liabilities of the water districts joining in the merger. We conclude that the separate existences of Graves District and Sedalia District will cease and that title to all real estate and other property owned by Graves District and Sedalia District shall, by operation of KRS 74.363(4), be vested in the resulting district without reversion or impairment. We find that KRS 74.363(4) addresses the bonded obligations of the water districts joining in the merger, and we conclude that the resulting district is required to continue retiring all bonded obligations of Graves District and Sedalia District secured by the right to levy an assessment or by the revenue of the systems in a manner that is in accordance with KRS 74.363(4).

In furtherance of this requirement, we find that Graves District should establish two divisions, with Division 1 containing the current customers of Graves District and Division 2 containing the current customers of Sedalia District. By establishing two

districts, the customers of Graves District will continue to retire its existing debt, while the Sedalia District has no existing debt.

The Commission finds that Graves District and Sedalia District are utilities subject to the jurisdiction of the Commission pursuant to KRS 278.015; therefore, we conclude that the provisions of KRS Chapter 278 apply to this transaction, including KRS 278.020. We find that, pursuant to KRS 278.020(5), the parties must demonstrate that the resulting district will have the financial, technical, and managerial abilities to provide reasonable service. We find that, pursuant to KRS 278.020(6), the parties must demonstrate that the proposed transaction is in accordance with law, for a proper purpose, and is consistent with the public interest.

We find Graves District provides water service to approximately 6,179 customers in portions of Graves County and Carlisle County, Kentucky.²⁴ As of December 31, 2014, Graves District had total assets of \$8,957,014 and net utility plant of \$8,664,300.²⁵ As of December 31, 2014, Graves District had total long-term debt of \$1,779,354 and total current and accrued liabilities of \$190,920.²⁶ Graves District employs five certified operators.²⁷ We find that Graves District has the technical, financial, and managerial abilities to provide reasonable service to the customers of Sedalia District, and we conclude that the proposed transaction satisfies KRS 278.020(5).

²⁴ *Graves District Annual Report* at reference pages 5 and 27.

²⁵ *Id.* at reference page 7.

²⁶ *Id.* at reference page 9.

²⁷ PSC Letter Filing Documents into Record (Oct. 13, 2015), electronic mail message from Kevin Leonard dated Oct. 1, 2015.

We find that the transaction proposed by Graves District and Sedalia District is permissible under and governed by KRS 74.363 and KRS 278.020, and we further find that Graves District and Sedalia have complied with the requirements of KRS 74.363 and KRS 278.020. We conclude that the proposed transaction is in accordance with law. We find that the General Assembly has determined the following:

[R]eduction of the number of operating water districts in the Commonwealth will be in the public interest, in that mergers of such districts will tend to eliminate wasteful duplication of costs and efforts, result in a sounder and more businesslike degree of management, and ultimately result in greater economies, less cost, and a higher degree of service to the general public; and that public policy favors the merger of water districts wherever feasible.²⁸

We find that the proposed transaction will eliminate the wasteful duplication of costs and efforts, result in a sounder and more businesslike degree of management, will result in greater economies and less cost, and will result in a higher degree of service to the general public. Therefore, we conclude that the transaction is for a proper purpose and consistent with the public interest. We conclude that the transaction satisfies KRS 278.020(6).

IT IS HEREBY ORDERED that:

1. The proposed merger between Graves District and Sedalia District is approved, subject to the conditions set forth in ordering paragraphs 2 through 12, as of the date of this Order.

2. The name of the resulting district of this merger shall be "Graves County Water District."

²⁸ KRS 74.361(1).

3. The current members of the Graves District board of commissioners shall, in accordance with KRS 74.363(2), continue to serve as members of the board of commissioners of the resulting district for one year from the date of this Order.

4. No later than one year from the date of this Order, Graves District shall file documentation of compliance with KRS 74.363(3), which requires appointments to be made to its board of commissioners with initial terms of two years for approximately one-third of the commissioners, three years for approximately one-third of the commissioners, and four years for the remaining commissioners.

5. Graves District shall establish two divisions. Division 1 shall contain the customers of Graves District's current service territory. Division 2 shall contain the customers of Sedalia District's current service territory.

6. Within 30 days of the date of this Order, the resulting district of this merger shall file an adoption notice in accordance with 807 KAR 5:011, Section 11, adopting, ratifying, and making its own the rates, rules, classifications, and administrative regulations of Graves District and Sedalia District in effect at the time of the merger. The rates, rules, classifications, and administrative regulations of Graves District shall apply to the new Division 1. The rates, rules, classifications, and administrative regulations of Sedalia District shall apply to Division 2.

7. Within 30 days of the date of this Order, Graves District shall file with the Commission the journal entries that will be used to record the proposed merger.

8. Within 90 days of the date of this Order, Graves District shall execute all documents and perform all other actions necessary to effect the proposed merger.

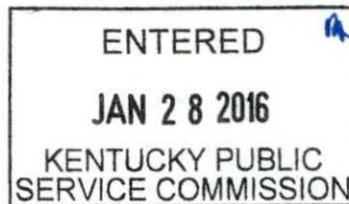
9. Any material revisions to the proposed merger shall be approved by the Commission in order for the amendment to be effective.

10. The merged water district shall retire bonded obligations secured by the revenue from Graves District and not Sedalia District in accordance with KRS 74.363(4).

11. If at any time the cost balance of the debt service account is not sufficient to pay principal or interest payments, the additional cash deposit that is necessary into the debt service account to make payment shall come from revenues received through the assessment of Division 1 water service rates.

12. Any documents filed in the future pursuant to the ordering paragraphs of this Order shall reference this case number and shall be retained in the utility's general correspondence file.

By the Commission



ATTEST:



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