

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

JOINT APPLICATION OF KNOTT COUNTY)	
WATER AND SEWER, INC. AND)	
TROUBLESOME CREEK ENVIRONMENTAL)	CASE NO.
AUTHORITY, INC. FOR AN ORDER)	2015-00301
APPROVING THE TRANSFER OF OWNERSHIP)	
AND CONTROL OF A JURISDICTIONAL ASSET)	

ORDER

On September 1, 2015, Knott County Water and Sewer District (“Knott District”) and Troublesome Creek Environmental Authority, Inc. (“Troublesome Creek”) (collectively “Joint Applicants”) filed a Joint Application requesting the Commission to transfer ownership and control of Troublesome Creek’s Ball Creek Wastewater Treatment Plant (“Ball Creek Plant”) to Knott District. 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 evidence and being otherwise sufficiently advised, the Commission finds that:

1. On August 8, 2006, the county judge/executives of Breathitt, Knott, and Perry counties, Kentucky, formed and incorporated Troublesome Creek under the provisions of KRS Chapter 273 to improve the water quality of the Troublesome Creek Watershed.¹

¹ Case No. 2010-00017, *Application of Troublesome Creek Environmental Authority, Inc., a Public Non-Profit Corporation, for a Certificate of Public Convenience and Necessity to Construct Facilities and to Operate, for Initial Rates, and for Authority to Incur Indebtedness* (Ky. PSC Feb. 16, 2010) at 1.

2. Troublesome Creek owns and operates a wastewater collection, transmission, and treatment system that is referred to as the Ball Creek Plant.² It is currently providing wastewater service for compensation to 30 active customers³ in Knott County, Kentucky.⁴

3. As of December 31, 2014, Troublesome Creek reported total assets of \$4,479,390.

4. As of December 31, 2014, the only liability identified by Troublesome Creek is a pre-paid tap fee of \$40,000, although the liability was not reported on the 2014 balance sheet.⁵

5. As of December 31, 2014, Troublesome Creek reported net utility plant of \$4,477,957.

6. For the calendar year ending December 31, 2014, Troublesome Creek reported operating revenues of \$6,738 and sewage operating expenses of \$253,775, which resulted in a net operating loss of (\$247,397).⁶

² Joint Application at 2.

³ Joint Applicants' Responses to the Commission Staff's Initial Request for Information ("Staff's Initial Request"), Item 12.

⁴ *Annual Report of Troublesome Creek Environmental Authority, Inc. c/o KRADD to the Public Service Commission for the Calendar Year Ended December 31, 2014* at 9.

⁵ Joint Application, Exhibit 2, Agreement of Sale and Transfer ("Agreement") at 5; and Exhibit G, January 4, 2012 letter from Western Pocahontas Properties ("Western Properties"). Western Properties agreed to advance \$40,000 to Troublesome Creek to fund "the cost of start-up and initial operating expenses for the Ball Creek Wastewater Treatment facility." The entire \$40,000 would be made available to Western Properties as a credit against future tap fees, commercial or residential. Joint Applicants' Responses to Staff's Initial Request, Item 5.a. and 5.b. Troublesome Creek recorded the tap fee advance as \$20,000 of income in 2012 and again in 2013. Joint Applicants state that a prior period balance sheet adjustment is needed to reclassify the income as an advance tap fee payment.

⁶ Troublesome Creek 2014 Report at 25. Correcting the 2014 operating expenses to eliminate the capital expenditures of \$114,661 results in an actual net operating loss of (\$132,736).

7. For the calendar year ended December 31, 2014, Troublesome Creek reported net income of (\$135,538).⁷

8. Troublesome Creek does not have any employees to manage or operate its wastewater system.⁸

9. On September 16, 2013, Joint Applicants entered into a temporary Memorandum of Understanding whereby Knott District assumed temporary operational responsibility of the Ball Creek Plant until the permanent transfer of control is approved by the Commission.⁹ Troublesome Creek's utility accounts, such as telephone and electricity, have already been placed in Knott District's name.¹⁰

10. Troublesome Creek cannot borrow funds or acquire grants for strictly operational costs, putting its ability to perform the routine maintenance of the Ball Creek Plant and to reliably and economically serve existing customers at risk.¹¹

11. Knott District is a water district organized pursuant to KRS Chapter 74. It provides retail water service for compensation to approximately 2,609 customers that reside in Knott County, Kentucky. Knott District also provides wholesale water service

⁷ *Id.* at 26. In 2014, Troublesome Creek received coal severance grants of \$109,070 that were recorded as "Income from Nonutility Income." Eliminating the capital expenditures of \$114,661 from operating expenses and the grants of \$109,070 from nonutility income results in an actual net loss of (\$129,948).

⁸ Joint Application at 2.

⁹ *Id.*

¹⁰ *Id.* at 3.

¹¹ *Id.*

to Letcher County Water District, Phoenix Development, and to the cities of Hindman and Vicco, Kentucky.¹²

12. Knott District's wastewater division owns and operates a wastewater collection, transmission, and treatment system that provides wastewater service for compensation. It serves 131 residential customers in the city of Pippa Passes, Kentucky.¹³

13. As of December 31, 2014, Knott District reported total wastewater assets of \$333,206 and no liabilities.

14. As of December 31, 2014, Knott District reported net wastewater utility plant of \$316,355.

15. For the calendar year ended December 31, 2014, Knott District reported sewage operating revenues of \$37,886 and sewage operating expenses of \$60,040, which resulted in a net operating loss of (\$22,154) for sewage operations.¹⁴

16. Knott District's sewer operations currently have two employees: a licensed Wastewater Treatment Plant Operator and a licensed Wastewater Collections Operator. The licensed Wastewater Collections Operator was scheduled to take the exam to become a licensed Wastewater Treatment Plant Operator on November 20, 2015.¹⁵

¹² *Annual Report of Knott County Water and Sewer District to the Public Service Commission for the Calendar Year Ended December 31, 2014* at 14, 53, and 59.

¹³ *Annual Report of Knott County Water and Sewer District to the Public Service Commission for the Calendar Year Ended December 31, 2014* at 9 and 25.

¹⁴ \$37,886 (Operating Revenue) - \$60,040 (Operating Expenses) = (\$22,154).

¹⁵ Joint Applicants' Responses to Staff's Initial Request, Item 1.

17. Knott District also operates a water utility serving approximately 2,600 customers. For 2014, its water operating revenues were \$1,983,061, its operating expenses were \$3,211,608, and its net income was (\$1,228,546).

18. Joint Applicants have reached an agreement for the sale and transfer of ownership and control of Troublesome Creek's Ball Creek Plant.¹⁶ This agreement, as modified by an amendment entered into on October 27, 2015,¹⁷ provides:

a. Troublesome Creek is required to prepare a spreadsheet of recognized and expected corporate governance expenses over a two-year period.¹⁸ The Joint Applicants agree that Knott District is obligated to pay the spreadsheet expenses for two years beginning with the October 27, 2015 date of the amendment.¹⁹

b. Troublesome Creek estimates its annual budgets of its expenses for the years 2015, 2016, and 2017 to be \$7,500, \$8,156, and \$8,268 respectively.²⁰

c. The annual payments are for supporting Troublesome Creek so that it can complete the Highway 80 Corridor sewer line project.²¹

d. The original agreement limited the annual payments to Troublesome Creek to \$7,500 and continued for two years or until the completion of the Highway 80 Corridor sewer line project.²²

¹⁶ Joint Application, Exhibit 2.

¹⁷ Joint Applicants' Responses to Commission Staff's October 19, 2015 Informal Conference Request for Information ("Responses to Informal Conference Request"), Item 3 at 3.

¹⁸ *Id.* at 4

¹⁹ *Id.*

²⁰ *Id.* at 2.

²¹ *Id.* at 3.

²² *Id.*

e. Upon Commission approval of the transfer, the customers of Troublesome Creek will be charged the same rates contained in Knott District's current tariff on file with the Commission.²³

f. Knott District agrees to assume the \$40,000 liability Troublesome Creek owes to Western Pocahontas Properties for the pre-paid tap fees.²⁴

19. Knott District agrees to pay Troublesome Creek's expenses listed in Troublesome Creek's annual budget in order to financially support Troublesome Creek so that the Highway 80 Corridor sewer line project will be completed.²⁵

20. The Highway 80 Corridor sewer line project will be funded with grants totaling \$2,684,850²⁶ and will add approximately 120 new customers²⁷ to Troublesome Creek's customer base upon its completion and transfer to Knott District.

21. Upon completion of the transfer of the Ball Creek Plant, a Troublesome Creek customer will pay a lower monthly bill for sewage treatment service than he or she would pay if Troublesome Creek were to continue to operate the Ball Creek Plant.

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

²³ *Id.* at 4.

²⁴ Joint Application, Exhibit 2, Agreement of Sale and Transfer at 5; and Exhibit G, January 4, 2012, letter from Western Pocahontas Properties.

²⁵ *Id.*

²⁶ Joint Applicants' Supplemental Responses to Commission Staff's October 19, 2015 Informal Conference Request for Information, Item 3.

²⁷ Joint Applicants' Responses to Staff's Informal Conference Request, Item 1 at 2.

1. Troublesome Creek and Knott District are utilities subject to Commission jurisdiction.²⁸

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 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.”

3. 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.”

4. Upon completion of the proposed transfer, Knott District will have the financial, technical, and managerial abilities to provide reasonable service to the combined system. However, based on a review of Knott District’s annual reports for both water and sewer operations, Knott District should give serious consideration to filing an application for an adjustment of rates pursuant to the Commission’s alternative rate adjustment procedures set forth in 807 KAR 5:076.

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

²⁸ KRS 278.010(3)(f).

6. Knott District's acquisition of Troublesome Creek's Ball Creek Plant is in accordance with law, is for proper purpose, and will be consistent with the public interest only if the Joint Applicants accept and agree to limit the annual payments from Knott District to Troublesome Creek to an amount of actual expenses not to exceed \$7,500 and to be paid only until the Highway 80 Corridor sewer line project is completed or December 31, 2017, whichever occurs first. The Joint Applicants will need to agree to terminate the existing agreement regarding the payment of expenses at the sooner of two years from the date of this Order or until the completion of the Highway 80 Corridor sewer line project, whichever occurs first.

IT IS THEREFORE ORDERED that:

1. The proposed transfer of Troublesome Creek's Ball Creek Plant to Knott District is approved subject to the condition that Knott District shall limit the annual amounts paid to Troublesome Creek to actual expenses not to exceed \$7,500, with such payments to terminate upon completion of the Highway 80 Corridor sewer line project or December 31, 2017, whichever occurs first. The proposed transfer shall not proceed unless, within seven days of the date of this Order, a written acknowledgment is filed on behalf of Knott District by its chairman of the board, or other individual authorized to act by and on behalf of Knott District, accepting and agreeing to be bound by this condition.

2. Within ten days of the completion of the proposed transfer, Knott District shall:

a. Advise the Commission in writing of the transfer's completion.

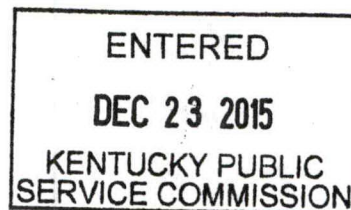
b. File with the Commission the journal entries that Knott District will use to record the proposed asset transfer.

3. Troublesome Creek shall file with the Commission a financial and statistical report for its operations from January 1, 2016, until the date of transfer of the asset ownership.

4. Knott District's rates, classifications, and requirements on file with the Commission and currently in effect shall be the rates, classification, and requirements for the former customers of Troublesome Creek.

5. 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.

By the Commission



ATTEST:


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