

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF HARDIN COUNTY)
WATER DISTRICT NO. 2 FOR APPROVAL)
OF A CONTRACT OF SALE WHEREBY THE)
DISTRICT PROPOSES TO ACQUIRE THE)
EXISTING MUNICIPAL WATER SYSTEM OF)
THE CITY OF UPTON, PURSUANT TO THE)
PROVISIONS OF KRS 278.020(4) AND)
CHAPTER 74 OF THE KENTUCKY REVISED)
STATUTES)

CASE NO. 90-330

O R D E R

On October 29, 1990, Hardin County Water District #2 ("Hardin #2) applied for Commission approval to acquire the water distribution system of the city of Upton, Kentucky, and for such other relief as deemed appropriate by the Commission. After being advised by Commission Staff of certain filing deficiencies, Hardin #2 cured the deficiencies on December 6, 1990.

Having reviewed the application and evidence of record and being otherwise sufficiently advised, the Commission finds that:

1. Hardin #2, a water district organized pursuant to the provisions of KRS Chapter 74, provides water service throughout Hardin County, Kentucky, and a small portion of Larue County. Upton is an incorporated city of the sixth class located in Hardin County, Kentucky. Upton owns and operates a water distribution system which provides water service to approximately 297 customers.

2. Both the city council of Upton and the board of commissioners of Hardin #2 have determined that it is in the public's best interest for Hardin #2 to acquire Upton's waterworks system.

3. Upton and Hardin #2 have entered into a Contract of Sale dated February 20, 1990 whereby Upton agrees to convey and transfer to Hardin #2 and Hardin #2 agrees to acquire from Upton all of the assets and liabilities of Upton's waterworks system. The Contract of Sale is contingent upon Commission approval of the transfer.

4. Upton does not have the financial resources nor the technical expertise to continue providing adequate, dependable, potable water to its residents.

5. The Contract of Sale provides that Hardin #2, upon the transfer, shall immediately assume all of the existing debts, liabilities, and obligations of Upton's waterworks system. These debts and liabilities include the following:

- (a) Upton's 1963 Waterworks Revenue Bonds currently outstanding in the amount of \$57,000, plus accrued interest;
- (b) Upton's 1966 Waterworks Revenue Bonds currently outstanding in the amount of \$26,000, plus accrued interest;
- (c) Upton's Promissory Note owed to Citizens Fidelity Bank and Trust Company, Hardin County, in the unpaid principal amount of \$10,000, plus accrued interest.

6. At the time of closing, Hardin #2 proposes to pay off the \$10,000 Promissory Note owed by Upton. Hardin #2 will defease the outstanding bonds by depositing in an interest-bearing escrow

fund an amount of money which, invested in U.S. Government obligations, will produce a cash flow sufficient to pay the principal and interest on the outstanding bonds and coupons until maturity. Hardin #2 has sufficient funds in an unrestricted reserve account to pay off the promissory note and to fund the required escrow account without incurring any new debt.

7. On March 21, 1990, Hardin #2 assumed control of the operation of Upton's water distribution system due to emergency health hazard conditions. Since then, Hardin #2 has operated Upton's system.

8. As of December 31, 1990, Hardin #2 had total assets of \$8,896,875.55 and long-term and current liabilities of \$5,771,014.35.

9. The written agreement for the acquisition of Upton's water distribution system evidences a form of long-term capital indebtedness and therefore constitutes an evidence of indebtedness requiring Commission approval. KRS 278.300.

10. The issuance of long-term indebtedness evidenced by the written agreement for the acquisition of Upton's water distribution system is for a lawful objective within Hardin #2's corporate purposes, is reasonably necessary and appropriate for such purposes, is necessary for and consistent with the proper performance of its service to the public, and will not impair its ability to perform that service.

11. The Commission "is charged with responsibility, and vested with power, to see that the service of public utilities is

adequate. . . ." Public Service Commission v. Southgate, Ky., 268 S.W. 19, 21 (1954). Insofar as the acquisition of a municipal utility may impact upon a jurisdictional utility's ability to provide adequate and reasonable service, it follows by necessary implication that the Commission has the authority to prevent such acquisition and its approval for such acquisition is required.

12. Hardin #2's acquisition of Upton's water distribution system will not affect Hardin #2's quality of service.

IT IS THEREFORE ORDERED that:

1. Hardin #2's acquisition of Upton's water distribution system be and it hereby is approved.

2. Hardin #2 is hereby authorized to assume the long-term indebtedness evidenced in its written agreement with Upton for the acquisition of Upton's water distribution system.

3. Hardin #2 shall charge uniform rates to all water users, including those previously served by Upton. These rates shall be those currently in force for its existing customers in accordance with its tariff on file at the Commission.

Done at Frankfort, Kentucky, this 7th day of January, 1991.

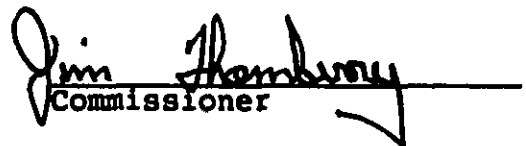
PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman

ATTEST:


Executive Director


Commissioner