

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE PETITION OF BOONE COUNTY WATER AND)	
SEWER DISTRICT AND BOONE COUNTY,)	
KENTUCKY FOR APPROVAL OF AGREEMENT)	CASE NO. 95-336
WITH SANITATION DISTRICT NO. 1 OF)	
CAMPBELL AND KENTON COUNTIES, KENTUCKY)	

O R D E R

Boone County Water and Sewer District ("Boone District") and Boone County, Kentucky ("Boone County") have applied for Commission approval of an agreement with Sanitation District No. 1 of Campbell and Kenton Counties, Kentucky ("Sanitation District") under which Boone District's sewage treatment facilities will be transferred ultimately to Sanitation District. Boone County requests authorization to issue certain revenue bonds.

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

1. Boone District is a water and sewer district organized under the provisions of KRS Chapter 74 and is a political subdivision of the Commonwealth of Kentucky. Louisville Extension Water District v. Diehl Pump & Supply Co., Inc., Ky., 246 S.W.2d 585 (1952).

2. Boone District owns, operates, and manages facilities which are used for and in connection with the treatment of sewage for the public for compensation and which provide sanitary sewer service to approximately 6,000 persons residing in the unincorporated areas of Boone County, Kentucky.

3. Boone County is a political subdivision of the Commonwealth of Kentucky. See City of Lexington v. Hagar, Ky., 337 S.W.2d 27, 28 (1960).

4. For the period ending June 30, 1994, Boone County had total assets and other resources of \$3,787,439 and total liabilities of \$1,736,616.

5. Sanitation District is a sanitation district organized under the provisions of KRS Chapter 220 and is a political subdivision of the Commonwealth of Kentucky. See KRS 220.110(1).

6. Sanitation District has been in existence since 1946 and currently operates wastewater treatment facilities which serve over 71,200 customers in Campbell and Kenton counties.

7. For the period ending June 30, 1994, Sanitation District had total assets and other resources of \$141,370,108 and total liabilities of \$2,547,302.

8. For the period ending June 30, 1994, Sanitation District had total utility plant of \$84,107,497.

9. Sanitation District currently employs one Class I operator, one Class III, and eleven Class IV Wastewater Treatment Plant Operators.

10. All wastewater which Boone District facilities currently collect is transported to Sanitation District's facilities for final treatment.

11. On May 30, 1990, Boone District executed an agreement with Sanitation District for the construction of sewer collection lines in its Richwood and Taylorsport Service Areas.¹

12. Under the terms of the May 30, 1990 Agreement, Boone District was obligated to pay Sanitation District approximately \$3,663,225 on June 28, 1995 for the facilities constructed.

13. On September 16, 1992, Boone District, Boone County, and Sanitation District executed an agreement for the construction of sewage collection facilities to serve Boone District's Central Service Area.² Boone County guaranteed payment of Boone District's obligations for the facilities constructed under this Agreement and the May 30, 1990 Agreement.

14. To meet its obligations under the May 30, 1990 Agreement, Boone District issued approximately \$3,680,000 in bond anticipation notes.

15. To facilitate the issuance of the bond anticipation notes and to reduce financing costs, Boone County and Boone District entered into a lease agreement on June 28, 1995. Under the terms of the lease agreement, Boone District leased its sewage treatment facilities to Boone County for a term of one year. Unless Boone

¹ For Commission review and approval of this agreement, see Case No. 90-216, Agreement of Boone County Water and Sewer District and Sanitation District No. 1 of Campbell and Kenton Counties (Ky. P.S.C. Nov. 1, 1990).

² For Commission review and approval of this agreement, see Case No. 92-245, The Application of Boone County Water & Sewer District for Approval of a Sewer Service Agreement with Sanitation District No. 1 of Campbell and Kenton Counties (Ky. P.S.C. June 16, 1992).

County notifies Boone District to the contrary, the lease is renewed each year until the retirement of the bond anticipation notes. Boone County will pay rental payments to Boone District in an amount necessary to pay the principal and any interest on the bond anticipation notes to the extent that Boone District's system revenues are inadequate.¹

16. On June 28, 1995, Boone District, Boone County, and Sanitation District executed an agreement which provides for the ultimate transfer of Boone District's sewage treatment facilities to Sanitation District ("Merger Agreement").

17. The Merger Agreement provides for the following:

a. Boone County shall pay Sanitation District \$3,663,224.46 for all obligations arising out of the May 1990 Agreement.

b. Boone County shall pay Sanitation District \$9,727,467 for all obligations arising out of the September 16, 1992 Agreement.

c. Boone District will transfer all of its sewage treatment facilities to Boone County in exchange for Boone County's assumption of all outstanding obligations associated with the May 1990 Agreement and the September 16, 1992 Agreement.

¹ For Commission review and approval of this agreement, see Case No. 95-288, The Petition of Boone County Water & Sewer District for Approval of Lease With Boone County, Kentucky (Ky. P.S.C. Sept. 12, 1995).

d. To pay for all obligations arising from the May 1990 and September 16, 1992 Agreements, Boone County will issue revenue bonds in the amount of \$13.5 million.

e. After payment of the obligations arising out of the May 1990 and September 16, 1992 Agreements, Boone County will lease the sewage treatment facilities to Sanitation District for a period sufficient to pay the revenue bonds.

f. On the date when Boone County leases the sewage treatment facilities to Sanitation District, Sanitation District will expand its jurisdictional boundaries and its sanitary sewer responsibilities to include Boone County, Kentucky.

g. Pursuant to KRS 220.135(5)(c), Boone County will assess a surcharge to all Sanitation District customers within Boone County to retire the revenue bonds issued to pay Boone District's obligations. Boone District will collect the surcharge.

h. Upon retirement of the revenue bonds, Boone County will cease assessing the surcharge and will transfer legal title of the sewage treatment facilities to Sanitation District.

18. Boone District with Sanitation District's agreement and consent has placed the proceeds from its bond anticipation note issuance into escrow pending Commission review of the Merger Agreement. Should the Commission approve the Merger Agreement, the proceeds in escrow will be used to retire the bond anticipation notes.

19. On September 29, 1995, Boone District, Boone County, and Sanitation District executed an Operating Agreement. Under the

terms of the Operating Agreement, Boone District will operate the sewage treatment facilities in question until their transfer to Boone County and subsequent lease to Sanitation District. Upon the facilities' transfer to Boone County and lease to Sanitation District and the expansion of Sanitation District's boundaries to include Boone County, Kentucky, Sanitation District will assume full operational control over the facilities.

20. Boone County has the financial, technical, and managerial abilities to provide reasonable utility service to the persons who currently receive sanitary sewer service from Boone District.

21. Sanitation District has the financial, technical, and managerial abilities to provide reasonable utility service to the persons who currently receive sanitary sewer service from Boone District.

22. The Merger Agreement is in the public interest and should be approved.

23. The proposed issuance of \$13.5 million in revenue bonds is for the lawful objects within Boone County's corporate purposes, is necessary and appropriate for and consistent with the proper performance by Boone County of its service to the public, and will not impair its ability to perform that service.

24. The surcharge which Boone County intends to assess to all persons within Boone County, Kentucky, who connect to the sewage treatment facilities in question shall be subject to Commission

jurisdiction and must be filed with the Commission in accordance with KRS 278.160 and 278.180.

25. Upon Sanitation District's assumption of operational control of the facilities in question and until Boone County's transfer of full legal title to Sanitation District, Commission jurisdiction over Sanitation District's operation of those facilities shall be no greater than that currently possessed over facilities which the Sanitation District owns outright.⁴

26. In view of their financial assets and their status as political subdivisions of the Commonwealth, Boone County and Sanitation District have sufficient financial integrity to ensure the continuity of sewage service. A copy of a valid third-party beneficiary agreement guaranteeing the continued operation of Boone District sewage treatment facilities is therefore not required. 807 KAR 5:001, Section 3(1)(a).

IT IS THEREFORE ORDERED that:

1. The Merger Agreement is approved.

⁴ For a discussion of the Commission's present jurisdiction over sanitation districts, see Letter from Forest M. Skaggs, Executive Director, to Sanitation Districts (April 5, 1988). The Commission has endorsed the interpretation expressed therein on several occasions. See, e.g., Case No. 90-108, Americoal Corp. v. Boone County Water and Sewer District, 3 (Oct. 30, 1990); Case No. 90-216, Agreement of Boone County Water and Sewer District and Sanitation District No. 1 of Campbell and Kenton Counties, 2-4 (Nov. 1, 1990); Case No. 90-335, Petition for Commission Approval To Merge The Silver Heights Sewer Construction District Into the Louisville and Jefferson County Metropolitan Sewer District, 1-2 (Nov. 9, 1990). This interpretation remains subject to Commission review and reevaluation.

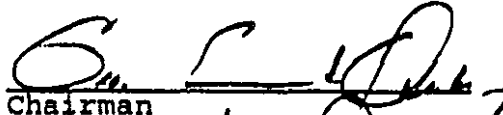
2. Boone County is authorized to issue revenue bonds in the principal amount of \$13.5 million. The proceeds of this issuance shall be used only for the lawful purposes specified in the application of Boone County and Boone District.

3. In accordance with KRS 278.160 and 278.180, Boone County shall file its proposed surcharge rate with the Commission at least 30 days prior to the effective date of the surcharge.

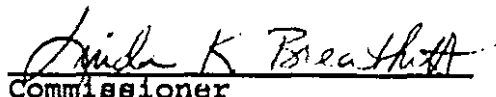
Nothing contained herein shall be deemed a warranty or finding of value of securities or financing authorized herein on the part of the Commonwealth of Kentucky or any agency thereof.

Done at Frankfort, Kentucky, this 3rd day of November, 1995.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director