

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE JOINT APPLICATION OF THE BUTLER	)	
COUNTY WATER SYSTEM, INC. AND	)	
ROCHESTER WATER DISTRICT FOR (A)	)	
APPROVAL OF A JOINT AGREEMENT TO	)	
MERGE WHEREBY ROCHESTER WATER	)	
DISTRICT WOULD BE MERGED INTO BUTLER	)	
COUNTY WATER SYSTEM, INC. PURSUANT	)	
TO THE PROVISIONS OF KRS 278.020(4) AND	)	CASE NO. 97-008
807 KAR 5:001; (B) FOR APPROVAL OF THE	)	
APPLICATION OF BUTLER COUNTY WATER	)	
SYSTEM, INC.'S PREVAILING RATES,	)	
CLASSIFICATIONS AND ADMINISTRATIVE	)	
REGULATIONS TO THE CUSTOMERS AND	)	
TERRITORY OF ROCHESTER WATER	)	
DISTRICT BEING ACQUIRED PURSUANT TO	)	
THE PROVISIONS OF 807 KAR 5:011,	)	
SECTION 11; AND (C) FOR AUTHORITY FOR	)	
THE BUTLER COUNTY WATER SYSTEM, INC.	)	
TO INCUR CERTAIN INDEBTEDNESS AS	)	
REQUIRED PURSUANT TO KRS 278.300	)	

O R D E R

On January 6, 1997, Butler County Water System, Inc. ("Butler Water") and Rochester Water District ("Rochester") submitted an application requesting the Commission's approval of the proposed merger of Rochester with Butler Water. The application could not be accepted as filed due to the fact that there is no statutory provision that provides for the merger of a water district into a water association. The application was therefore supplemented on February 20, 1997, at which time the applicants agreed that the Commission could treat the proposed merger as a transfer. Pursuant to KRS 278.020(4), the Commission may approve the transfer of ownership or control of a utility

under its jurisdiction to another utility by sale of assets, transfer of stock, or otherwise. In this case, Rochester intends to transfer its assets, which is its treatment and distribution system, along with its liabilities, which is an outstanding indebtedness of \$462,730.10, to Butler Water. After the transfer, Rochester will still exist on paper as a legal entity until dissolved by order of the county judge/executive pursuant to KRS 74.367, but will no longer be in operation.

Pursuant to the merger agreement entered into by the joint applicants, as well as the application filed with the Commission, following the transfer Butler Water proposes to apply its current rates to Rochester's former customers rather than adopt Rochester's rates. Thus the application requests Commission approval of the merger/transfer, approval of the debt assumption, and approval of the application of Butler Water's rates, classifications and administrative regulations to the customers and territory to be acquired from Rochester.

Rochester is a water district which provides service to 723 customers in Butler and Muhlenberg counties. It pumps and treats its own water. Rochester has two rate schedules, one for its original customers, and one for the former customers of Huntsville-South Hill Water System, Inc. ("Huntsville-South Hill"). Rochester recently acquired Huntsville-South Hill, and adopted Huntsville-South Hill's existing rates for service rendered to its former customers.<sup>1</sup> According to the joint application, Rochester does not have the financial resources nor the technical expertise to continue to provide adequate,

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<sup>1</sup> Case No. 96-041, The Joint Application of the Rochester Water District and the Huntsville-South Hill Water System, Inc. For Approval of A Contract of Sale Whereby the Rochester Water District Proposes To Acquire The Existing Water Distribution System of the Huntsville-South Hill Water System, Inc., Pursuant to the Provisions of KRS 278.020(4) and 807 KAR 5:001, Section 8. Final Order dated March 22, 1996.

dependable, potable water to its customers. Rochester therefore determined that it would be in the best interest of its customers and would better serve the public purpose for which it was created by merging with Butler Water. The two systems are adjacent to each other and can be integrated into one united system. This physical union is expected to be accomplished by means of a federally financed construction project, after which Rochester's water treatment plant would be taken out of service.

Butler Water is a water association with 3,052 customers. Butler Water operates an extensive transmission and distribution system, serving virtually all sections of Butler County outside of the City of Morgantown and Rochester service areas. It pumps and treats its own water, and also purchases water from Morgantown Utilities. Butler Water has shown that it has the financial, technical, and managerial abilities to operate Rochester's system. Butler Water intends to assume the debts and obligations of Rochester, which includes an outstanding indebtedness to Rural Development in the amount of \$398,031.78, and an outstanding indebtedness to General Electric Capital Corporation in the amount of \$64,698.32. Both of these agencies have been notified and have expressed their agreeability to the proposal, with final approval pending the issuance of a final Order in this proceeding.

Rochester is subject to the Commission's jurisdiction pursuant to KRS 278.010(3)(d), KRS 278.015, and KRS 278.040(2). Butler Water is subject to the Commission's jurisdiction pursuant to KRS 278.010(3)(d), KRS 278.012, and KRS 278.040(2). KRS 278.020(4) requires persons under the jurisdiction of the Commission to receive Commission approval prior to the acquisition or transfer of ownership or control of a utility.

KRS 278.020(5) prohibits any entity from acquiring control of any utility under the jurisdiction of the Commission without prior approval.

On November 14, 1996, Butler Water and Rochester entered into a Joint Agreement to Merge in which Butler Water would be the surviving legal entity. While the Joint Agreement to Merge incorrectly refers to KRS 74.361 as the governing statute, what is proposed in the Agreement is in fact a transfer subject to Commission approval.

Based on the evidence of record, the Commission finds that the transfer of Rochester to Butler Water as proposed in the Joint Agreement to Merge is feasible, is in the public interest, is consistent with KRS 278.020(4) and (5), and will not result in diminished financial, technical, or managerial ability to provide adequate water service to the customers of the applicants. Butler Water's proposal to apply its current rates to Rochester's former customers is also acceptable to the Commission. While the joint applicants originally depicted the proposed change in rates for Rochester's customers as a decrease, it was determined that this would not necessarily be the case. Based on an average monthly usage of 5,000 gallons, a residential customer of Butler Water now pays \$27.76 a month for water. Due to the fact that Rochester has two rate schedules, 501 of Rochester's customers currently pay \$31.63 a month for 5,000 gallons of water, but 222 of Rochester's customers, the former customers of Huntsville-South Hill, are currently paying \$25.43 a month for 5,000 gallons of water. The proposed change in rates will thus result in a rate increase, rather than the purported decrease, for 31 percent of Rochester's 723 customers.

In order to address this matter, the joint applicants published notice of the proposed change in rates on three consecutive Wednesdays in The Butler County and The Green River Republican Banner in compliance with 807 KAR 5:001, Section 10(3). The Commission has received no complaints or requests for intervention from any customer of Butler Water or Rochester. Furthermore, following the proposed transfer, the record and the 1996 Annual Report filed with the Commission on behalf of Huntsville-South Hill indicate that the rate increase to its former customers is less than Rochester would need to operate separately and comply with Division of Water regulations.<sup>2</sup>

Pursuant to KRS 278.030, a utility may demand, collect, and receive fair, just, and reasonable rates for the services it renders. From the information available to the Commission, it appears that the rates proposed in the joint application will be fair, just, and reasonable for the customers of Butler Water following the transfer.

IT IS THEREFORE ORDERED that:

1. The proposed transaction consisting of the transfer of all the assets of Rochester to Butler Water and the assumption of all the debts and liabilities of Rochester by Butler Water as well as responsibility for its management, operation, and maintenance, as set out in the joint application filed in this proceeding and in the Joint Agreement to Merge entered into by the parties to this proceeding, is approved.
2. Within 10 days after the county judge/executive by order dissolves Rochester pursuant to KRS 74.367, a copy of that order shall be filed with the Commission.

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<sup>2</sup> An exhibit filed with the joint application indicates that the Division of Water is concerned about several aspects of Rochester's operations, most notably its shortage in certified staff and its faulty chlorination devices.

3. The joint applicants' request for approval of the application of Butler Water's rates, classification, and administrative regulations to the customers and territory to be acquired in the transfer is approved.

4. Butler Water shall notify the Commission within ten days of the date of completion of the transfer or, in the alternative, Rochester shall notify the Commission if the transfer does not occur.

5. Within 10 days of the completion of the transfer, Butler Water shall file a revised tariff reflecting the change in its service territory resulting from the transfer.

6. Upon receipt by the applicants of General Electric Capital Corporation's approval of the transfer of assets and debt assumption by Butler Water, a copy of such approval shall be filed with the Commission.

7. Upon receipt by the applicants of Rural Development's approval of the transfer of assets and debt assumption by Butler Water, a copy of such approval shall be filed with the Commission.

8. Within 60 days of the transfer of Rochester's assets and liabilities to Butler Water, Butler Water shall file with the Commission the journal entries recording the transaction.

9. Within 60 days of the date the transfer is completed, Rochester shall file with the Commission an annual report for the portion of 1997 in which it operated its water distribution system.

Done at Frankfort, Kentucky, this 16th day of June, 1997.

PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

  
Commissioner

ATTEST:

  
Executive Director