

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF COVERED BRIDGE	)	
UTILITIES, INC. FOR APPROVAL OF THE	)	
TRANSFER OF THE COVERED BRIDGE	)	CASE NO. 99-496
WASTEWATER TREATMENT PLANT TO THE	)	
OLDHAM COUNTY SANITATION DISTRICT	)	

O R D E R

Covered Bridge Utilities, Inc. ("Covered Bridge") has applied for Commission approval of its proposed sale of assets, including its wastewater treatment facilities, to the Oldham County Sanitation District ("Oldham District"). Having considered the evidence of record and being otherwise sufficiently advised, the Commission finds that:

1. Covered Bridge, a Kentucky corporation, owns and operates sewage treatment facilities in Oldham County, Kentucky that serve approximately 145 customers for compensation in the Covered Bridge Farms, The Meadows at Covered Bridge, and Hunting Creek Section 7 Subdivisions of Oldham County, Kentucky.

2. Covered Bridge's sewage treatment facilities consist of a sewage treatment plant with a maximum daily treatment capacity of 140,000 gallons.

3. Covered Bridge is not subject to regulation by a metropolitan sewer district.

4. Covered Bridge is a utility that is subject to Commission jurisdiction.

KRS 278.010(3)(f).

5. On December 7, 1999, Covered Bridge executed a Purchase Agreement to convey all of its wastewater collection, conveyance, and treatment facilities to Oldham District. Under the terms of this Agreement, Oldham District agrees to pay Covered Bridge \$380,000 for these facilities over a period of four years and to assume responsibility for the complete cleanup and restoration of Covered Bridge's tertiary lagoons to the standards established by the Kentucky Natural Resources and Environmental Protection Cabinet. The cleanup and restoration costs are currently estimated to be \$21,000.

6. The Purchase Agreement between Covered Bridge and Oldham District further provides that the rate currently assessed to Hayfield Utilities, Inc. for sewage treatment service will continue in effect at its current level until January 1, 2003.

7. Oldham District is a special district<sup>1</sup> created pursuant to KRS 67.715(2).<sup>2</sup>

8. Oldham District's territory includes all areas of Oldham County, Kentucky, exclusive of the cities of LaGrange and Crestwood.

9. On December 3, 1996, Oldham County Judge/Executive, with the approval of Oldham County Fiscal Court, created Oldham District for the purposes "enumerated in KRS Chapter 220.030 which includes providing for the collection and

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<sup>1</sup> KRS 65.005(1)(a) defines a "special district" as "any agency, authority, or political subdivision of the state which exercises less than statewide jurisdiction and which is organized for the purpose of performing governmental or other prescribed functions within limited boundaries. It includes all political subdivisions of the state except a city, a county, or a school district."

<sup>2</sup> The county judge/executive or county judges/executive of multi-county districts may, with approval of the fiscal court or fiscal courts, create any special district or abolish or combine any special district, provided the district was created solely by the county judge/executive or county judges/executive or solely by one or more such fiscal courts.

disposal of sewage and other liquid wastes produced within the district; and incident to such purposes and to enable their accomplishment, to construct, with all appurtenances thereto, laterals, trunk sewers, intercepting sewers, siphons, pumping stations, treatment and disposal works, to maintain, operate and repair same, and do al [sic] other things necessary for the fulfillment of the purposes of KRS 220.010 to 220.520.” Oldham County, Ky. Fiscal Court Ordinance No. 96-830-26 (Dec. 3, 1996) at 2.

10. Oldham County Fiscal Court granted to Oldham District “all powers and duties to reasonably, necessarily and effectively implement the provisions of and carry out the duties prescribed by KRS Chapter 220” and direct that Oldham District be “structured consistent with the provisions of KRS Chapter 220.” Id. at 1-2.

11. As of June 30, 1999, Oldham District had total utility plant, including construction work in progress, of \$316,897.

12. As of June 30, 1999, Oldham District had total assets of \$627,376 and no liabilities.

13. For the year ended June 30, 1999, Oldham District had total revenues of \$624,218 and total expenditures of \$58,405. It had net income of \$565,813.

14. Oldham District does not currently operate any wastewater treatment facilities, but does operate a wastewater collection system, pump station and force main serving certain facilities in Buckner, Kentucky.

15. Oldham District has a Kentucky Pollution Discharge Elimination Permit System (“KPDES”) to operate the Buckner Wastewater Treatment Plant that is currently under construction.

16. Oldham District currently retains a registered professional engineer with extensive experience in wastewater treatment plant operation and design, and receives planning and management consultation from the Louisville and Jefferson County Metropolitan Sewer District (“MSD”).

17. Upon acquisition of the Covered Bridge facilities, Oldham District intends to secure services from MSD and private contractors to operate and maintain those facilities.

18. Upon acquisition of the Covered Bridge facilities, Oldham District intends to apply for transfer of ownership of the KDPES permit currently held by Covered Bridge.

19. Oldham District has the financial, technical, and managerial abilities to provide reasonable utility service to those persons that Covered Bridge currently serves.

20. The proposed transfer is in accordance with law, is for a proper purpose, and is consistent with the public interest.

21. The holding of Boone County Water and Sewer District v. Pub. Serv. Comm’n, Ky., 949 S.W.2d 588 (1997), does not exempt or remove Oldham District from the Commission’s jurisdiction. In Boone County Water and Sewer District, the Kentucky Supreme Court stated only that sanitation districts created pursuant to KRS Chapter 220 are not subject to Commission jurisdiction. Id. at 591. That Court did not address whether a special district, created pursuant to KRS Chapter 67 to deal with sewage treatment issues, is exempt from Commission jurisdiction.

22. The Commission’s prior statements on its jurisdiction over sanitation districts are not applicable in this case. In disclaiming jurisdiction over sanitation

districts created pursuant to KRS Chapter 220, the Commission placed great emphasis on the significant conflicts between KRS Chapter 220 and KRS Chapter 278 and the absence of any statutory provision which clearly stated that the provisions of KRS Chapter 278 would take precedence in the event of conflict. The Commission further noted that KRS Chapter 220 “sets forth a comprehensive scheme of regulation for sanitation districts and appears to grant management authority to the Board of Directors of the District, and regulatory authority to the Secretary of the Natural Resources and Environmental Protection Cabinet.” See Letter from Forest M. Skaggs, Executive Director, Public Service Commission, to Sanitation Districts (Apr. 5, 1988) at 3.<sup>3</sup> Oldham District is a special district created pursuant to KRS Chapters 65 and 67. Neither KRS Chapter 65 nor Chapter 67 establishes a comprehensive statutory scheme for the regulation of special districts.

23. KRS Chapter 220 confers the authority to establish a sanitation district upon the Commissioner of Sanitation Districts only. KRS 220.020. To the extent that Oldham Fiscal Court has created a special district and conferred upon it the same powers that a sanitation district may exercise, such action does not render Oldham District a “sanitation district” nor place it outside of the Commission’s jurisdiction.

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<sup>3</sup> After the issuance of this letter, the Commission formally adopted this position in several Orders. See Waterfern/Fern Creek Gardens Sewer Construction District, Case No. 90-336 (Ky.P.S.C. Nov. 9, 1990); Boone County Water and Sewer District, Case No. 90-216 ((Ky.P.S.C. Nov. 1, 1990); Americoal Corp. v. Boone County Water and Sewer District, Case No. 90-108 (Ky.P.S.C. Oct. 30, 1990).

24. Special districts are corporations. Calvert Investments, Inc. v. Louisville and Jefferson County Metropolitan Sewer District, Ky., 805 S.W.2d 133, 138 (1991).<sup>4</sup>

25. KRS 278.010(2) defines a “person” to include corporations.

26. KRS 278.010(3)(f) defines a utility as “any person except a city, who owns, controls, or operates or manages any facility used or to be used for or in connection with . . . [t]he treatment of sewage for the public, for compensation, if the facility is a subdivision treatment facility plant, located in a county containing a city of the first class or a sewage treatment facility located in any other county and is not subject to regulation by a metropolitan sewer district.”

27. Upon completion of the proposed transfer, Oldham District will meet the definition of “utility” and will be subject to Commission jurisdiction. See KRS 278.040(2).

IT IS THEREFORE ORDERED that:

1. The proposed transfer of assets from Covered Bridge to Oldham District is approved.
2. Within 10 days of completion of the proposed transfer of assets, Covered Bridge shall notify the Commission in writing of the completion of the transfer.
3. Within 10 days of completion of the transfer, Oldham District shall file with the Commission the journal entries used to record the purchase and identify the detailed plant accounts to which the assets are recorded.

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<sup>4</sup> See also Rash v. Louisville and Jefferson County Metropolitan Sewer District, 309 Ky. 442, 217 S.W.2d 232 (1949).

4. Within 10 days of completion of the transfer, Oldham District shall file with the Commission an adoption notice, conforming to the requirements of Administrative Regulation 807 KAR 5:011, Section 15(6). In this notice, Oldham District shall adopt and ratify as its own all of Covered Bridge's rates, rules, classifications, and administrative regulations on file with the Commission and effective at the time of the transfer.

5. Within 10 days after the filing of its adoption notice with the Commission, Oldham District shall issue and file in its own name Covered Bridge's tariff or such other tariff as it proposes to put into effect in lieu thereof, in the form prescribed in Administrative Regulation 807 KAR 5:011.

6. Covered Bridge shall be responsible for submitting to the Commission a financial and statistical report, as described in Administrative Regulation 807 KAR 5:006, Section 3, for the period in calendar year 2000 it owned and operated the transferred assets.

7. Oldham District shall be responsible for submitting to the Commission a financial and statistical report, as described in Administrative Regulation 807 KAR 5:006, Section 3, for the period in calendar year 2000 it owns and operates the transferred assets.

Done at Frankfort, Kentucky, this 13<sup>th</sup> day of March, 2000.

By the Commission

ATTEST:

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Executive Director