

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF CLASSIC CONSTRUCTION,)
INC. FOR APPROVAL OF TRANSFER OF)
OWNERSHIP OF COOLBROOK SEWAGE) CASE NO. 2003-00495
TREATMENT PLANT IN FRANKLIN COUNTY,)
KENTUCKY FROM AQUASOURCE UTILITY, INC.)

O R D E R

On January 9, 2004, Classic Construction, Inc. (“Classic Construction”) filed an application for approval of the transfer of the Coolbrook Sewage Treatment Plant (“Coolbrook”) to Classic Construction from AquaSource Utility, Inc. (“AquaSource”). In its Order of March 15, 2004, the Commission made AquaSource a joint applicant and party to this proceeding and found that the correct corporate name of AquaSource as listed with the Kentucky Secretary of State is AquaSource Utility, Inc.¹

Classic Construction is a Kentucky corporation and its president is Russell Givens. Coolbrook serves approximately 430 customers of the Coolbrook Subdivision in Franklin County, Kentucky. AquaSource and Classic Construction have entered into an agreement wherein Classic Construction will purchase from AquaSource the collection and treatment facilities of Coolbrook for the purchase price of \$10,000. According to the 2003 annual report of AquaSource, the net utility plant value of

¹ In the supplemental pleading of AquaSource, it is stated that the correct name of the utility is “AquaSource Utilities, Inc.” [a Texas corporation], although that name is not listed with the Kentucky Secretary of State.

Coolbrook is \$636,033. Classic Construction has filed a notice that it will adopt the rates of AquaSource for Coolbrook.

STATUTORY PROVISIONS

KRS 278.020(4) provides that no person may acquire or transfer control or ownership of a utility without prior approval by the Commission. The Commission will approve such a transfer if it determines that the acquirer has the financial, technical, and managerial abilities to provide reasonable service. The Commission must also determine that the acquisition is made in accordance with the law, for a proper purpose, and is consistent with the public interest. KRS 278.020(5). The Commission may grant an application upon terms and conditions it deems necessary to protect the public interest.

We find that Classic Construction has the financial, technical, and managerial ability to provide reasonable service to Coolbrook customers. However, based upon our review of the evidence, we find that the public interest requires the imposition of conditions to our approval of the transfer.

Classic Construction has provided an irrevocable letter of credit up to an aggregate amount of \$15,000 from Farmers Bank & Capital Trust Company with an expiration date of December 17, 2004, in support of its financial ability to operate the Coolbrook system. In addition, Mr. Givens states that he has the income from his construction business and personal assets, which include \$60,000 in retirement funds. Mr. Givens has committed to use these funds to cover any unexpected expenses associated with his ownership of the plant.

807 KAR 5:071, Section 3(1)(a), requires provision of a third-party beneficiary agreement or other evidence of financial integrity that will ensure the continuity of sewage service. While an irrevocable letter of credit is an acceptable evidence of financial integrity, the expiration date of December 17, 2004 is not acceptable. A 10-year term is the minimum that would be acceptable to provide time for this utility to establish operational stability. Therefore, approval of this transfer will be conditioned upon Classic Construction providing an irrevocable letter of credit in the amount of \$15,000 with at least a 10-year term.

Classic Construction has demonstrated the technical ability necessary to operate the system. Classic construction currently operates a wastewater system at Ridgewood Subdivision. Classic Construction plans to employ the same certified operator that provides service at Ridgewood Subdivision to provide service at Coolbrook.

With regard to managerial ability, Mr. Givens has experience as a contractor. He states that he has effectively managed multiple projects and is experienced in dealing with accounts receivable and accounts payable. He reports that he has hired a certified public accountant to provide assistance with financial reporting and taxes.

OTHER ISSUES

On April 8, 2004, AquaSource filed a supplemental response requesting a Certificate of Public Convenience and Necessity ("CPCN") for the wet well pump capacity improvement project and tertiary treatment lagoon closure or, in the alternative, a finding that such construction is in the ordinary course of business that does not require a CPCN.

In Case No. 2003-00175,² AquaSource requested that the Commission issue a CPCN for a wet well pump capacity improvement project and tertiary treatment lagoon closure. KRS 278.020(1) requires that, before any person shall commence providing utility service to or for the public or begin the construction of any plant, equipment, or property, it shall obtain from the Public Service Commission a certificate that public convenience and necessity require the service or construction, unless such construction is an extension of existing systems in the usual course of business.³ In that case, we found that we could not rule upon the wet well pump capacity improvement project and tertiary treatment lagoon closure request because Aquasource did not provide the necessary permits from the Division of Water.

The Commission will not issue a CPCN for construction that has been completed prior to a request for a CPCN. Such construction of facilities without first obtaining a CPCN can result in exclusion of the cost of that facility from rate base consideration.

However, after reviewing the record, we find that the pump items are replacement parts for the system and that all construction on the lagoon has been substantially completed. We find that, based upon the copies of permits filed by AquaSource, the absence of a material effect upon the existing financial condition of the utility involved, or increased charges to its customers, the wet well pump capacity improvement project and tertiary treatment lagoon closure did not require a CPCN. 807 KAR 5:001.

² Case No. 2003-00175, Application for Certificate of Public Convenience and Necessity For Improvements at Coolbrook.

³ 807 KAR 5:001, Section 9(3), Extensions in the Ordinary Course of Business.

IT IS THEREFORE ORDERED that:

1. The transfer of Coolbrook from AquaSource to Classic Construction is approved upon the condition that Classic Construction provide an irrevocable letter of credit in the amount of \$15,000 with a minimum term of 10 years. The proposed transfer shall not proceed unless such a revised letter of credit is timely filed with the Commission.

2. Within 5 days of the consummation of the proposed transfer, Classic Construction and AquaSource shall file a written notice setting forth the date of the transfer.

3. AquaSource shall file an annual report for 2004 for the period of time it operated the system up to and including the date of transfer.

4. Within 10 days of completion of the transfer, Classic Construction shall issue and file in its own name such tariff as it proposes to put into effect in the form prescribed in 807 KAR 5:011.

5. Within 10 days of the completion of the transfer, Classic Construction shall file the journal entry it proposes to record the acquisition of Coolbrook. The acquisition shall be recorded in accordance with the Uniform System of Accounts for Sewer Utilities.

Done at Frankfort, Kentucky, this 10th day of May, 2004.

By the Commission

ATTEST:



Executive Director