

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF LEDBETTER WATER)	
DISTRICT REQUESTING APPROVAL OF)	CASE NO. 2004-00406
FINANCING AND INITIAL RATES PURSUANT TO)	
KRS 278.300 AND KRS 278.160)	

ORDER

Ledbetter Water District No. 1 (“Ledbetter District”) has applied for authorization to issue certain evidences of indebtedness, a Certificate of Public Convenience and Necessity to commence providing sewage treatment services,¹ and approval of its proposed rates for those services.

Based upon our review of the record in this proceeding, the Commission finds that:

1. Ledbetter Sanitation District No. 1 (“Sanitation District”) is a sanitation district organized pursuant to KRS Chapter 220.
2. The Sanitation District owns a sewer collection and treatment system that provides sewer and collection treatment to approximately 814 customers in unincorporated areas of western Livingston County, Kentucky.²

¹ Ledbetter District has not expressly requested the issuance of a Certificate of Public Convenience and Necessity to provide sewage treatment service. When viewing the application in its totality, however, we find that the water district is seeking authority to provide sewer service and that the application should be considered, inter alia, as an application for a certificate to provide such service.

² Roger Recktenwald, Presentation to Meeting of the Board of the Kentucky Infrastructure Authority (“Recktenwald Presentation”) (Sept. 15, 2003) at 3.

3. The Sanitation District's sewage collection system consists of 83,000 linear feet of 8-inch gravity sewer line, 328 manholes, 14 submersible lift stations, and 30,600 linear feet of force main. The force mains vary in size from 2 to 8 inches.³

4. The Sanitation District's sewage treatment plant consists of a headworks structure that includes a comminutor and manual bypass screen, an aerated, membrane line lagoon, and an ultraviolet disinfection system. This plant is rated to treat an average daily flow of 300,000 gallons. It discharges into the Tennessee River.⁴

5. As of December 31, 2002, the Sanitation District had total assets of \$3,598,528 and total liabilities of \$3,377,350.⁵

6. For the calendar year ending December 31, 2002, the Sanitation District had total operating revenues of \$220,823 and total operating expenses of \$233,548.⁶

7. The Commissioner of Sanitation Districts declared the formation and establishment of the Sanitation District on November 23, 1992.⁷ On December 1, 1996, the Sanitation District's sewage collection and treatment systems became operational.⁸ Because of operational problems and the failure to obtain the projected number of

³ McGhee Engineering, Inc., Ledbetter Sanitation District Wastewater System Assessment (Aug. 12, 2004) at 2-1.

⁴ Id. at 2-4.

⁵ Howard & Chambers CPA, Financial Report for Ledbetter Sanitation District No. 1 for the Year Ended December 31, 2002 at 2.

⁶ Id. at 3; Ledbetter Sanitation District Wastewater System Assessment at 2-9.

⁷ Commissioner of Sanitation Districts, Order Declaring Formation of Sanitation District No. 1 of Ledbetter, Livingston County, Kentucky (Nov. 23, 1992).

⁸ Ledbetter Sanitation District Wastewater System Assessment at 1-1; Recktenwald Presentation at 1.

customers, the members of the Sanitation District's Board of Commissioners voted in March 1998 to merge the Sanitation District's operations with Ledbetter District. No merger occurred.⁹

8. On or before July 31, 1998, Livingston County Fiscal Court assumed responsibility for the Sanitation District and Ledbetter District agreed to manage the day-to-day operations of the Sanitation District's sewage collection and treatment systems.

9. A five-person staff currently operates the Sanitation District's sewage collection and treatment systems. Four of these persons perform duties for the Sanitation District and Ledbetter District. Ledbetter District provides billing and collection services for the Sanitation District.¹⁰

10. Ledbetter District is a water district organized pursuant to KRS Chapter 74.

11. Ledbetter District owns and operates facilities that are used to produce and distribute water to the public to portions of Livingston County, Kentucky.¹¹

12. As of December 31, 2003, Ledbetter District provided water service to 1,177 customers in unincorporated areas of western Livingston County, Kentucky.¹²

⁹ Financial Report for Ledbetter Sanitation District No. 1 for the Year Ended December 31, 2002 at 6.

¹⁰ Ledbetter Sanitation District Wastewater System Assessment at 2-7.

¹¹ Annual Report of Ledbetter Water District to Public Service Commission for the Year Ended December 31, 2003 at 5.

¹² Id. at 27.

13. As of December 31, 2003, Ledbetter District had total net utility plant of \$985,259.¹³

14. As of December 31, 2003, Ledbetter District had total assets of \$1,122,469 and total liabilities of \$355,875.¹⁴

15. Ledbetter District does not currently own sewage collection or treatment facilities.

16. On August 10, 2004, the Sanitation District, Ledbetter District, and the Livingston County Fiscal Court executed an Interlocal Cooperation Agreement. This agreement provided, inter alia, that:

a. Livingston County Fiscal Court will secure a loan in the amount of \$3,300,000 from the Kentucky Association of Counties Leasing Trust (“KACoLT”) to retire the Sanitation District’s outstanding loan to the Kentucky Infrastructure Authority (“KIA”).

b. Upon Livingston County Fiscal Court obtaining sufficient loan funds, it shall provide these funds to the Sanitation District, which shall use them to retire its existing KIA loan. The Sanitation District will then transfer ownership of its sewage collection and sewage treatment systems to Ledbetter District and dissolve.

c. Upon its acquisition of the Sanitation District’s sewage collection and treatment systems, Ledbetter District will assess a minimum monthly bill of \$15.16 for the first 2,000 gallons of wastewater and \$7.74 for each 1,000 gallons of wastewater in excess of 2,000 gallons.

¹³ Id. at 7.

¹⁴ Id. at 9.

d. At the time of its acquisition of the Sanitation District's facilities, Ledbetter will borrow \$2,300,000 from KIA for a term of 20 years at no interest to retire a portion of the Livingston County Fiscal Court loan from KACoLT. Annual debt service payment on this loan will be approximately \$115,000.

e. Ledbetter District will further borrow \$1,000,000 from KACoLT at a variable rate of 2.92 percent and with a repayment term of 5 years to retire the remaining portion of the Livingston County Fiscal Court loan. The annual debt service payment for this loan will be approximately \$35,000.

f. In the fourth quarter of 2008, Ledbetter will increase by 10 percent its rates for sewer collection and treatment service. Ledbetter District will assess a minimum monthly bill of \$16.71 for the first 2,000 gallons of wastewater and \$8.53 for each 1,000 gallons of wastewater in excess of 2,000 gallons.

g. In the first quarter of 2009, Ledbetter District will borrow sufficient funds from KACoLT to retire the 5-year loan with KACoLT. The new loan agreement shall provide for a fixed interest rate, a repayment term of 20 years, and an annual debt service payment of approximately \$67,000.

17. Ledbetter District's proposed provision of wastewater collection and treatment services will not involve the immediate construction of new facilities.

18. Ledbetter District's proposed acquisition and provision of wastewater collection and treatment facilities will not result in the duplication of existing utility facilities or services.

19. The sewage collection and treatment facilities that Ledbetter District will acquire appear to be situated entirely within its territorial limits.

Based upon our review of the record in this proceeding, the Commission makes the following conclusions of law:

1. The Commission's jurisdiction extends "to all utilities in this state." KRS 278.040(2).

2. A utility is "any person except a city, who owns, controls, operates, or manages any facility used or to be used in connection with . . . [t]he distributing or furnishing of water to or for the public, for compensation." KRS 278.010(3)(d).

3. A water district is a public utility and is subject to Commission jurisdiction in the same manner and extent as any other utility. KRS 278.015.

4. Ledbetter District is a utility and is subject to Commission jurisdiction.

5. A utility is "any person except a city, who owns, controls, operates, or manages any facility used or to be used in connection with . . . [t]he collection, transmission, or treatment of sewage for the public, for compensation, if the facility is . . . a sewage collection, transmission, or treatment facility that is affixed to real property and . . . not . . . [a] sanitation district created pursuant to KRS Chapter 220." KRS 278.010(3)(f).

6. The Sanitation District is not a "utility" and is not subject to the Commission's jurisdiction.

7. KRS 278.020(4)¹⁵ and 278.020(5)¹⁶ require prior Commission approval of the transfer of control or ownership of any “utility.” As the Sanitation District is not within the statutory definition of “utility,” KRS 278.020 does not require Commission approval of Ledbetter’s proposed acquisition of the Sanitation District’s assets. See Ohio County Water District, Case No. 2004-00157 (Ky.P.S.C July 12, 2004) at 2; Northern Kentucky Water District, Case No. 2000-00357 (Ky.P.S.C July 20, 2000) at 2; Kenton County Water District No. 1, Case No. 89-211 (Ky.P.S.C. Nov. 1, 1989) at 3–4.

8. Upon its acquisition of the Sanitation District’s sewage collection and treatment system, Ledbetter District shall be a public sewer utility and its sewage treatment and collection operations shall be subject to Commission jurisdiction.

9. KRS 278.020(1) provides that “no person shall commence providing utility service to or for the public or begin the construction of any plant, equipment, property, or facility for furnishing to the public any of the services enumerated in KRS

¹⁵ No person shall acquire or transfer ownership of, or control, or the right to control, any utility under the jurisdiction of the commission by sale of assets, transfer of stock, or otherwise, or abandon the same, without prior approval by the commission. The commission shall grant its approval if the person acquiring the utility has the financial, technical, and managerial abilities to provide reasonable service.

¹⁶ No individual, group, syndicate, general or limited partnership, association, corporation, joint stock company, trust, or other entity (an "acquirer"), whether or not organized under the laws of this state, shall acquire control, either directly or indirectly, of any utility furnishing utility service in this state, without having first obtained the approval of the commission. Any acquisition of control without prior authorization shall be void and of no effect. As used in this subsection, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a utility, whether through the ownership of voting securities, by effecting a change in the composition of the board of directors, by contract or otherwise.

278.010 . . . until that person has obtained from the Public Service Commission a certificate that public convenience and necessity require the service or construction.”

10. KRS 278.020(1) requires that Ledbetter District obtain a Certificate of Public Convenience and Necessity prior to providing sewage collection, transmission and treatment services.

11. The public convenience and necessity require Ledbetter District’s proposed provision of sewage collection and treatment services.

12. KRS 74.407 authorizes water districts to “acquire, develop, maintain and operate sewage disposal systems within the confines of their respective districts.”

13. The sewage collection and treatment facilities that Ledbetter will acquire appear to be situated within its territorial limits.

14. KRS 278.300(1) requires that a utility obtain Commission approval prior to the issuance of any securities or evidences of indebtedness or the assumption of any obligation or liability with respect to the securities or indebtedness of others.

15. Ledbetter District’s proposed loan agreements to borrow \$2,300,000 from KIA for a term of 20 years at no interest and to borrow \$1,000,000 from KACoLT for a term of 5 years at a variable interest rate of approximately 2.92 percent are for a lawful object within Ledbetter District’s corporate purposes, are necessary or appropriate for and consistent with Ledbetter District’s proper performance of its service to the public and will not impair its ability to perform that service, and are reasonably necessary and appropriate for such purpose.

16. Ledbetter District’s proposed rates for its initial provision of sewage collection and treatment services are reasonable.

17. Commission action on Ledbetter District's proposed rate adjustment in the fourth quarter of 2008 is premature. Ledbetter District should apply for Commission approval of this proposed adjustment no earlier than January 1, 2008 and no later than 30 days before the effective date of the proposed adjustment. The Commission will review the proposed rates in light of Ledbetter District's existing financial condition and the actual financial and operating conditions of its sewage collection and treatment facilities to establish rates that will allow Ledbetter District to meet its existing and anticipated debt service requirements.

18. Commission action on Ledbetter District's proposed 20-year loan agreement with KACoLT is also premature. Commission authorization for any loan agreement must be based upon financial conditions existing at the time of the execution of the loan agreement. Accordingly, Ledbetter District should file any application for authority to enter into a 20-year loan agreement with KACoLT at least 60 days prior to the planned execution of the agreement.

IT IS THEREFORE ORDERED that:

1. Upon its acquisition of the Sanitation District's facilities, Ledbetter District shall be a public sewer utility.

2. Ledbetter District is granted a Certificate of Public Convenience and Necessity to provide sewage collection and treatment services within its territorial limits to include all areas that the Sanitation District's sewage collection and treatment facilities currently serve.

3. Ledbetter District is authorized to enter into the proposed loan agreements to borrow \$2,300,000 from KIA for a term of 20 years at no interest and to borrow

\$1,000,000 from KACoLT for a term of 5 years at a variable interest rate of approximately 2.92 percent.

4. Ledbetter District shall use the proceeds from the proposed loan agreements with KIA and KACoLT solely for the lawful purposes set forth in Ledbetter District's application.

5. Within 20 days of executing its proposed loan agreements with KIA and KACoLT, Ledbetter District shall advise the Commission in writing of the date, the actual interest rate, and actual principal amount of each loan agreement.

6. Ledbetter District's proposed initial rates for sewer collection and treatment services are approved for service rendered on and after the date of this Order.

7. Within 20 days of the date of this Order, Ledbetter District shall file with the Commission an executed copy of its tariff sheets that set forth the approved rates for sewage collection and treatment service.

8. Ledbetter District's proposed adjustment to its initial rates for sewer collection and treatment, which is scheduled to become effective in the fourth quarter of 2008, is denied as premature. Ledbetter District shall apply for Commission approval of this proposed adjustment no earlier than January 1, 2008 and no later than 30 days before the effective date of the proposed adjustment.

9. Ledbetter District's application for authorization to enter into a 20-year loan agreement with KACoLT in the first quarter of 2009 is denied as premature. Ledbetter District shall apply for Commission authorization of the proposed loan agreement no earlier than 60 days before the proposed execution of this loan agreement.

10. Within 20 days of this Order, Ledbetter District shall review its territorial boundaries and determine if any revisions are necessary to ensure that its territorial boundaries include all areas in which the Sanitation District's facilities are located or currently serve. After completing its review, Ledbetter District shall advise the Commission in writing of any need for revisions.

11. Ledbetter District shall maintain separate accounts for its water and wastewater operations.

12. Within 90 days of the date of this Order, Ledbetter District shall develop and file with the Commission procedures for the allocation of joint or common costs of its water and wastewater operations.

13. When submitting its annual financial and statistical report, as Administrative Regulation 807 KAR 5:006, Section 3, requires, Ledbetter District shall file separate reports for its water and wastewater operations.

Nothing contained herein shall be deemed a warranty of the Commonwealth of Kentucky, or any agency thereof, of the loan agreements authorized herein.

Done at Frankfort, Kentucky, this 21st day of December, 2004.

By the Commission

ATTEST:



Executive Director