

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF HARDIN COUNTY WATER)
DISTRICT NO. 1 REQUESTING A CERTIFICATE)
OF PUBLIC CONVENIENCE AND NECESSITY TO) CASE NO. 2004-00422
OWN AND OPERATE A SEWER UTILITY AND)
FOR APPROVAL OF INITIAL RATES)

ORDER

Hardin County Water District No. 1 (“Hardin District”) has applied for a declaratory ruling of its jurisdictional status upon its acquisition of certain wastewater treatment facilities, a Certificate of Public Convenience and Necessity to commence providing wastewater treatment and storm water services, and approval of the proposed rates for those services.

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

1. The United States Department of the Army (“DA”) owns and operates wastewater and storm water systems that serve the Fort Knox Military Installation.
2. The Fort Knox Military Installation is located in Bullitt, Hardin and Meade counties, Kentucky and covers approximately 109,000 acres. It has an on-post population of 21,495 persons.¹

¹ Kentucky Atlas & Gazetteer at <http://www.uky.edu/KentuckyAtlas/ky-fort-knox.html> (last visited Nov. 30, 2004).

3. The Fort Knox wastewater collection system consists of approximately 838,979 feet of sewer collection mains that range in size from 2 inches to 36 inches. It has approximately 1,745 manholes. The age of this system ranges from 1 to 70 years. The majority of the collection system was constructed prior to 1940.

4. The Fort Knox wastewater collection system also consists of 20 lift stations with 16 containing submersible pumps, 3 containing dry pit pumps, 4 containing grinder pumps and 1 containing a sewage ejector. The lift stations containing submersible pumps include pumps ranging in size from 2 to 40 horsepower ("hp"). The lift stations containing dry pit pumps include pumps ranging in size from 10 to 60 hp. The sewage ejector has a capacity of 50 gallons per minute. The age of the lift stations ranges from 1 to 58 years.

5. The Fort Knox wastewater treatment system consists of a wastewater treatment plant that is designed for an average wastewater flow of 6 million gallons per day ("MGD"), a maximum daily flow of 14 MGD and a peak wastewater flow of 18 MGD.

6. The Fort Knox wastewater treatment system currently handles waste flows from the Fort Knox Military Installation and the city of Muldraugh, Kentucky.²

7. The Fort Knox wastewater collection and treatment systems are located entirely within the Fort Knox Military Installation.

8. Between April 1999 and March 2000, the Fort Knox wastewater treatment plant received an average influent flow of 3.3 MGD and a maximum daily influent flow of 13.8 MGD.

² Muldraugh is a city of the fifth class. KRS 81.010(5). According to the 1990 U.S. Census, it has a population of 1,376. Kentucky Atlas & Gazetteer at <http://ukcc.uky.edu/%7Eatlas/kyatlas?name=muldraugh> (last visited Nov. 30, 2004).

9. DA currently has a contract with the city of Muldraugh, Kentucky to treat that city's wastewater.

10. The Fort Knox storm water system consists of approximately 373,209 linear feet of storm water pipe ranging in size from 2 to 72 inches in diameter, 33,721 linear feet of open concrete ditches, manholes, headwalls, catch basins, curb inlets, and metal and concrete culverts.

11. DA currently possesses a Kentucky Pollutant Discharge Elimination Permit to discharge treated wastewater into Mill Creek.

12. Pursuant to Defense Reform Initiative Directive No. 49, the Defense Energy Support Center ("DESC") on September 12, 2001 issued a solicitation for proposals to privatize³ the Fort Knox wastewater collection and treatment systems. It subsequently amended this solicitation to include the Fort Knox storm water system.⁴

13. Hardin District is a water district organized pursuant to KRS Chapter 74.

14. Hardin District owns and operates facilities that are used to produce and distribute water to the public in portions of Breckinridge, Hardin, and Meade counties, Kentucky.⁵ Its territory includes the incorporated area of Radcliff, Kentucky, but does not include the Fort Knox Military Installation.

³ The solicitation described privatization as "the total divestiture of a utility system through the transfer and conveyance of the installation's utility infrastructure assets in conjunction with and for the purpose of the conveyee providing utility distribution services on a long-term basis." DESC Solicitation No. SP0600-01-R-0121 at cover sheet.

⁴ DESC Solicitation No. SP0600-01-R-0121, Amendment 0005 (26 April 2002).

⁵ Annual Report of Hardin County Water District No. 1 to Public Service Commission for the Year Ended December 31, 2003 at 5.

15. As of December 31, 2003, Hardin District provided water service to 9,166 customers.⁶

16. Hardin District does not currently provide wastewater collection or treatment services or storm water services.

17. Hardin District submitted proposals in response to DESC's solicitation for proposals. On September 30, 2004, Hardin District and DESC executed an agreement for Hardin District's acquisition of the Fort Knox wastewater collection and treatment systems and storm water system and Hardin District's provision of wastewater and storm water services to the Fort Knox Military Installation.

18. Under the terms of the proposed contract, Hardin District acquires ownership and control of the Fort Knox wastewater collection and treatment systems and storm water system. It also assumes responsibility for the operation, maintenance, repair, upgrade and improvement of these systems. Hardin District is required to pay through a one-time billing credit a purchase price of one dollar for each system.

19. The proposed contract requires Hardin District to make an initial capital expenditure of approximately \$1,415,876 to upgrade the Fort Knox wastewater systems.

20. The proposed contract provides that DA will pay a fixed monthly charge of \$213,659 for wastewater service, a monthly surcharge of \$58,995 for a period of 24 months to cover the cost of initial capital improvements to the wastewater system, and a monthly surcharge of \$19,170 for a period of 24 months to cover the cost of an

⁶ Id. at 27.

ultraviolet light disinfection system. The proposed contract further requires that the fixed monthly charges remain in effect for at least 36 months.

21. The proposed contract provides that DA will pay a fixed monthly charge of \$33,811 for storm water service for a period not less than 36 months.

22. The proposed contract further provides that:

a. DA will provide the natural gas, electricity and water required to operate the Fort Knox wastewater system.

b. Hardin District may use the Fort Knox wastewater system to serve or benefit areas outside the Fort Knox Military Installation only with DA's consent. Such use requires compensation to DA.

c. DA will transfer all existing environmental permits and licenses to Hardin District. Hardin District will be responsible for obtaining any new or revised permits needed to operate the Fort Knox systems.

d. DA reserves all excess capacity in the Fort Knox wastewater treatment plant for use during a mobilization event. Hardin District must maintain the full capacity of that treatment plant to meet mobilization requirements.

e. DA's current contract with the city of Muldraugh, Kentucky, to provide wastewater treatment service will remain in effect for one year following the transfer of ownership of the Fort Knox wastewater system. Any charges related to the provision of service to Muldraugh during this period are reflected in the monthly service rate that Hardin District assesses to DA. One year following the transfer of ownership, Hardin District will negotiate a separate contract with Muldraugh and will separately assess it for wastewater treatment services based upon its percentage of the total

wastewater flow into the Fort Knox wastewater system. Upon the assessment of a separate rate to Muldraugh, the monthly rate assessed to DA for wastewater service will be reduced by an amount equal to the rate assessed to Muldraugh.

f. DA acknowledges that the rates for wastewater service are subject to Commission jurisdiction and agrees to pay for such services at the rates that the Commission establishes.

23. To operate the wastewater and storm water facilities, Hardin District has contracted with Veolia Water North American Operating Services, LLC; Metroplex Industries, Inc., and Weston Solutions, Inc. to provide management and support services. Each of these entities has significant experience in the operation and management of wastewater facilities.

24. Upon acquisition of the Fort Knox wastewater system, Hardin District intends to provide wastewater collection and treatment services to all persons within its boundaries that request such service and are currently not receiving such services.

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

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

27. Hardin District will not issue any securities or evidences of indebtedness or assume any financial obligation or liability as part of the proposed acquisition.

28. Hardin District's proposed rate for wastewater service is based upon its estimates of the cost of operations for the first three years in which it operates the Fort Knox wastewater system.

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. Hardin 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" KRS 278.010(3)(f).

6. As the Fort Knox wastewater system does not currently provide sewage collection, transmission or treatment services to the public, DA is not a "utility" and is not subject to the Commission's jurisdiction.

7. The Commonwealth of Kentucky has ceded "all rights and jurisdiction" over the Fort Knox Military Installation as long as the installation remains the property of the United States. KRS 3.030. Assuming arguendo that the Fort Knox wastewater

system provides utility service to the public, the Commission lacks jurisdiction over facilities within the Fort Knox Military Installation's boundaries unless the United States consented to such jurisdiction.

8. KRS 278.010(3) does not define a utility to include any person who owns or operates facilities used for or in connection with the provision of storm water or drainage services.

9. Facilities used to provide storm water or drainage services are not facilities used in the collection, transmission, or treatment of sewage and are not utility facilities as defined in KRS 278.010(3)(f).

10. KRS 278.020(4)⁷ and 278.020(5)⁸ require prior Commission approval of the transfer of control or ownership of any "utility." As its ownership of the Fort Knox wastewater and storm water systems does not place DA within the statutory definition of

⁷ 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.

⁸ 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.

“utility,” KRS 278.020 does not require Commission approval of Hardin District’s proposed acquisitions. 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.

11. 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. As Hardin District will not issue any securities or evidences of indebtedness or the assumption of any obligation or liability of others as part of its proposed acquisition, KRS 278.300 does not require Commission approval of the proposed acquisition.

12. 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 278.010 . . . until that person has obtained from the Public Service Commission a certificate that public convenience and necessity require the service or construction.”

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

14. The public convenience and necessity require Hardin District’s proposed provision of wastewater collection and treatment services.

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

[emphasis added].” As the Fort Knox Military Installation, and hence the Fort Knox wastewater system, appears to lie outside Hardin District’s territorial boundaries, Hardin District must enlarge its territorial limits to include the Fort Knox Military Installation if its proposed acquisition is to be lawful.

16. Pursuant to the terms of the proposed contract, DA has consented to the Commission’s jurisdiction over the Fort Knox wastewater system. To the extent that DA has granted its consent to such jurisdiction within the Fort Knox Military Installation, the Commission may authorize and regulate the provision of utility service within that geographical area. See *Brandenburg Telephone Company v. South Central Bell Telephone Co.*, Ky., 506 S.W.2d 513 (1974).

17. Upon its acquisition of the Fort Knox wastewater system, Hardin District shall be a public sewer utility and its sewage treatment and collection operations shall be subject to Commission jurisdiction.

18. The Commission has no jurisdiction over the provision of storm water services. Our approval of the proposed storm water service rate is not required.⁹

19. Hardin District’s proposed rates for wastewater service to DA are reasonable.

⁹ Our review of KRS Chapter 74 raises concerns about Hardin District’s legal authority to provide storm water services. Unlike KRS Chapters 76 and 220 that expressly provide for metropolitan sewer districts and sanitation districts to provide storm water and drainage services, KRS Chapter 74 is silent. Hardin District should carefully review its legal authority to provide such service and, if necessary, petition the General Assembly for revisions to KRS Chapter 74.

20. Notwithstanding the proposed contract's provisions to the contrary, the Commission retains the authority to adjust or modify the proposed rates for sewer collection and treatment services during the first three years of the proposed contract if those rates are found to be "unjust, unreasonable, insufficient, unjustly discriminatory or otherwise in violation of [KRS Chapter 278]." KRS 278.260; KRS 278.270.

21. "The primary duty of a public utility is to serve on reasonable terms all those who desire the service it renders." 64 Am. Jur. Public Utilities §21 (2d ed. 2004). Hardin District must provide wastewater service to all persons who request such service and meet the requirements for such service as set forth in its filed rate schedules. DA's refusal to agree to Hardin District's provision of such service is not an appropriate basis for refusal of service.

22. As a public sewer utility Hardin District must maintain sufficient sewage treatment capacity to meet the reasonable demands of its customers. KRS 278.030(2). In light of its agreement to reserve the excess capacity of the Fort Knox wastewater treatment to DA for possible mobilization events, Hardin District must take all reasonable actions to ensure sufficient sewage treatment capacity when adding additional customers.

IT IS THEREFORE ORDERED that:

1. Upon its acquisition of the Fort Knox wastewater system, Hardin District shall be a public sewer utility.

2. Hardin District is granted a Certificate of Public Convenience and Necessity to provide sewage collection and treatment services on the condition that it extends its territorial limits to include the Fort Knox Military Installation prior to the

completion of its proposed acquisition of and assumption of control of the Fort Knox wastewater system.

3. Hardin District shall advise the Commission in writing within 45 days of this Order of its efforts to extend its territorial limits to include the Fort Knox Military Installation or, in the alternative, provide documentary evidence that the Fort Knox Military Installation is presently within Hardin District's territorial limits.

4. If Hardin District must obtain revisions to its territorial limits, Hardin District shall file with the Commission within 5 days of the entry of all Orders from the appropriate county judges/executive revising those territorial limits, a copy of such Order(s). These Orders shall be filed in the record of this proceeding.

5. Hardin District's proposed fixed monthly charge of \$213,659 for wastewater service, monthly surcharge of \$58,995 for a period of 24 months to cover the cost of initial capital improvements to the wastewater system, and monthly surcharge of \$19,170 for a period of 24 months to cover the cost of an ultraviolet light disinfection system are approved for service rendered to DA on and after Hardin District's acquisition of the Fort Knox wastewater system.

6. Hardin District shall maintain separate accounts for its water, wastewater and storm water operations.

7. Hardin District shall not enter into any arrangements for financing its wastewater or storm water operations that would permit a creditor upon default to have recourse to the assets of its water operations.

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

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

10. When submitting its annual financial and statistical report for its wastewater operations to the Commission, Hardin District shall also include a report on the present available treatment capacity at its wastewater treatment facilities and its plans for acquiring additional capacity to meet anticipated customer demand.

11. Within 20 days of the date of this Order, Hardin District shall file with the Commission an executed copy of its proposed tariff sheets.

Done at Frankfort, Kentucky, this 1st day of December, 2004.

By the Commission

ATTEST:



Executive Director

Case No. 2004-00422