

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

JOINT APPLICATION OF SOUTHERN MASON)
WATER DISTRICT AND THE CITY OF)
MAYSVILLE FOR AN ORDER AUTHORIZING) CASE NO. 2004-00384
THE TRANSFER OF UTILITY ASSETS)
PURSUANT TO KRS 278.020(4) AND (5))

ORDER

On November 5, 2004, Southern Mason Water District (“Southern Mason”) and the city of Maysville (“Maysville”) (collectively “Joint Applicants”) jointly applied for Commission approval of Maysville’s purchase and acquisition of Southern Mason’s water distribution system.¹ Having considered the application and the evidence of record,² the Commission finds that:

1. Maysville is a city of the third class and is located in Mason County, Kentucky. KRS 81.010(3).
2. Maysville is organized and governed under the city manager plan.³ See KRS 83A.150.

¹ The Joint Applicants tendered their application on November 5, 2004. Because of deficiencies in the application, the Commission did not accept the application for filing until these deficiencies were cured on November 29, 2004.

² The Joint Applicants are the only parties in this proceeding. Although Joint Applicants published notice of this proceeding in a newspaper of general circulation three times before the filing of their application, no person or entity sought intervention. The record of this proceeding consists of the Joint Application and Joint Applicants’ Response to Commission Staff’s Interrogatories and Requests for Production of Documents.

³ Joint Application at ¶4.

3. Maysville, through the Maysville Utility Commission (“Utility Commission”), operates a water treatment and distribution system that currently serves 6,686 customers within and outside the corporate limits of Maysville.⁴ Maysville has operated this system since 1963.

4. The Utility Commission provides wholesale water service to the city of Flemingsburg, Southern Mason, Western Lewis-Rectorville Water District, and Buffalo Trail Water Association.

5. The Utility Commission also operates a wastewater collection and treatment system that serves approximately 3,000 customers.⁵

6. For the fiscal year ended June 30, 2003, Maysville reported total assets of \$29,649,137 and total liabilities of \$18,254,528.⁶ For the same period, total revenues were reported at \$13,792,957 and total expenses at \$10,847,109 for a change in net assets of \$2,945,848.⁷

7. For the fiscal year ended June 30, 2003, the Utility Commission reported total assets of \$22,401,551 and total liabilities of \$14,054,875. It reported total water and sewer net utility plant in service of \$17,199,276. It separately reported total water utility plant in service (before accumulated depreciation) of \$9,153,415.⁸ For the same

⁴ Id. at 5. See also Governor’s Water Resource Development Commission, Water Resource Development: A Strategic Plan, App. B-Buffalo Trace Area Development District at 18.

⁵ Kentucky Rural Water Association, Kentucky Water and Wastewater Directory 2004-2005 at 35.

⁶ Joint Application at Exhibit M-2.

⁷ Id. at Exhibit M-2 and M-3.

⁸ Id. at Exhibit M-54.

period, the Utility Commission reported total revenues of \$3,351,353 and total expenses of \$2,832,129 for a change in net assets of \$519,224.⁹

8. The Utility Commission currently employs approximately 30 persons to operate its water and wastewater systems. Six of these employees hold Class IV-A Water Plant Operator Licenses. Three employees hold Class IV-A Water Distribution System Operator Licenses and two other employees are scheduled to attend the requisite training for such license in 2005. Seven employees are certified as Class III Wastewater Treatment Operators.¹⁰

9. The Utility Commission has extended an offer of employment to Southern Mason's full time employee upon completion of the proposed transfer of assets.¹¹

10. Southern Mason, a water district organized pursuant to KRS Chapter 74, owns and operates a water distribution system that serves approximately 562 customers in the southern portions of Mason County, Kentucky.¹²

11. As of December 31, 2003, Southern Mason had utility plant of \$1,316,188 and accumulated depreciation of \$530,020, or a net utility plant of \$786,168.¹³

⁹ Id. at Exhibit M-10.

¹⁰ Id. at ¶17 and Exhibit O.

¹¹ Id. at ¶17.

¹² Annual Report of Southern Mason Water District to the Kentucky Public Service Commission for the Year Ending December 31, 2003 at 21.

¹³ Id. at 7.

12. As of December 31, 2003, Southern Mason reported total liabilities of \$490,269.¹⁴ Its principal liability is \$472,000 of outstanding Water System Revenue Bonds, Series 1992, which Rural Development holds.¹⁵

13. For the calendar year ending December 31, 2003, Southern Mason had utility operating income of \$246,877 and utility operating expenses of \$246,408, which results in total utility operating income of \$469.¹⁶

14. For the calendar year ending December 31, 2003, Southern Mason had net loss of \$23,572.¹⁷

15. On September 10, 2004, the Joint Applicants executed an "Asset Purchase Agreement" which provides:

a. The Utility Commission shall acquire all assets of Southern Mason's distribution system in consideration of assuming all liabilities of Southern Mason.

b. Upon transfer of the assets, the Utility Commission shall integrate Southern Mason's distribution system into its system and provide retail water service to Southern Mason's customers on parity with present Utility Commission customers.

c. For 5 years from the date of the acquisition, the Utility Commission shall provide service to customers served through the Southern Mason distribution system at the rates that Southern Mason presently assesses.

¹⁴ Id. at 8.

¹⁵ Id. at 17; Application at ¶2.

¹⁶ Annual Report at 9.

¹⁷ Id.

16. Southern Mason has agreed to refund all accrued interest on customer deposits prior to the closing date of the transfer.¹⁸

17. The area in which Southern Mason presently provides water service and in which its distribution facilities are located is contiguous to Maysville and to the area that the Utility Commission serves.

18. The proposed transaction will likely eliminate wasteful duplication of costs, result in greater economies, less cost, and a higher degree of service to the general public.

CONCLUSIONS OF LAW

Based upon the findings set forth above, the Commission makes the following conclusions of law:

1. Southern Mason is a utility subject to Commission jurisdiction. KRS 278.010(3)(d); KRS 278.015.

2. Maysville is a municipal corporation.

3. Maysville is not a utility and is not subject to Commission jurisdiction except in those instances in which it provides utility services to public utilities. KRS 278.010(3); KRS 278.200; Simpson County Water District v. City of Franklin, Ky., 872 S.W.2d 460 (1994); McClellan v. Louisville Water Co., Ky., 351 S.W.2d 197 (1961).

4. Maysville is a “corporation” and a “person” for purposes of KRS Chapter 278. KRS 278.010(1) and (2).

5. KRS 278.020(4) provides that “[n]o person shall acquire or transfer ownership of, or control, or the right to control, any utility under the jurisdiction of the

¹⁸ Joint Applicants’ Response to Commission Staff’s Interrogatories and Requests for Production of Documents, Item 2(c).

commission . . . without prior approval by the commission.” As Maysville is a person and is acquiring ownership of Southern Mason’s water distribution facilities, this statute is applicable to and requires Commission approval of the proposed transfer.

6. KRS 278.020(5) provides that “[n]o 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.” As Maysville is a corporation and is acquiring control of Southern Mason’s utility operations through the acquisition of the facilities that Southern Mason uses to provide utility service, this statute is applicable to and requires Commission approval of the proposed transfer.

7. In view of its financial assets and its status as a municipal corporation, Maysville has sufficient financial integrity to ensure the continuity of utility service.

8. Maysville has the financial, technical, and managerial abilities to provide reasonable service to the present customers of Southern Mason.

9. The consolidation of Southern Mason’s distribution system into Maysville’s distribution system is consistent with the Commonwealth’s policy of promoting the consolidation of water distribution systems and the creation of regionalized water suppliers. KRS 74.361(1); KRS 224A.300(1).

10. KRS 96.150(1) permits a municipal utility to extend its water supply system into any territory contiguous to the city. As the area in which Southern Mason presently serves and in which its distribution facilities are located is contiguous to Maysville and to the area that the Utility Commission serves, the Utility Commission has legal authority to provide water service to that area after the proposed transfer occurs.

11. The proposed transfer is in accordance with law and for a proper purpose.

12. Provided that the transfer is conditioned upon the conditions set forth in Ordering Paragraphs 2 and 3 of this Order, the proposed transfer is consistent with the public interest.

13. Upon completion of the proposed transfer and except to the extent that they are used to provide water service to a public utility, Southern Mason's facilities will no longer be subject to Commission jurisdiction.

IT IS THEREFORE ORDERED that:

1. Subject to the conditions set forth in Ordering Paragraphs 2 and 3 of this Order, the Utility Commission's proposed acquisition of the assets and liabilities of Southern Mason is approved.

2. For a period of 5 years from the date of its acquisition of Southern Mason's assets, neither Maysville nor the Utility Commission shall provide water service to customers of Southern Mason's water distribution system at rates that exceed those currently set forth in Southern Mason's filed tariff.

3. Beginning 5 years after the date of its acquisition of Southern Mason's assets, neither Maysville nor the Utility Commission shall provide water service to customers of Southern Mason's water distribution system at rates that exceed those rates charged to its customers residing within Maysville's corporate limits.

4. Southern Mason 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 calendar year 2004 and for that period in 2005 in which it owns and operates its water distribution system.

5. Southern Mason, Maysville, and the Utility Commission shall notify the Commission in writing of the transfer of assets within 10 days of the transfer's occurrence.

6. At the time that Southern Mason is legally dissolved, it shall provide written notice to the Commission of such dissolution.

7. Southern Mason is responsible for the payment of accrued interest on its customer deposits up to the date of the transfer in accordance with KRS 278.460 and will refund all accrued interest prior to the closing date of the transfer.

Done at Frankfort, Kentucky, this 28th day of January, 2005.

By the Commission

ATTEST:



Executive Director