

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

CENTER RIDGE WATER DISTRICT'S)
REQUEST FOR PERMISSION TO)
TAKE OVER L.H.M. WATER SUPPLY)
AND OPERATE AS CENTER RIDGE)
WATER DISTRICT NO. 4)

CASE NO. 2006-00042

O R D E R

Center Ridge Water District, Inc. ("Center Ridge") has applied for Commission approval of its proposed acquisition of the water assets of L.H.M. Property Owners, Inc. ("LHM"). Finding that Commission approval of the proposed acquisition is not required, we deny the application as moot.¹

Center Ridge, a Kentucky corporation organized pursuant to KRS Chapter 271B, owns and operates facilities that treat and distribute water to approximately 294 customers for compensation in Calloway County, Kentucky.² It is a utility subject to Commission jurisdiction. KRS 278.010(3)(d).

¹ Center Ridge submitted its application to the Commission on January 27, 2006. The Attorney General subsequently moved for leave to intervene in this proceeding. The Commission granted his motion on February 21, 2006. No other persons have moved for intervention in this proceeding. On March 1, 2006, Commission Staff counsel contacted William Duncan, Center Ridge's principal shareholder, and requested certain information about the proposed transaction. Commission Staff memorialized this conversation by letter, a copy of which is filed in the record. No party to this proceeding has requested a hearing or the opportunity to conduct discovery or to submit comment on the joint application.

² Annual Report of Center Ridge Water District, Inc. to the Public Service Commission for the Year Ended December 31, 2004 at 24.

LHM is a non-profit corporation organized pursuant to KRS Chapter 273, operating a water treatment and distribution system that serves only its members. Its membership is strictly limited to persons who own property in the Ledbetter Shores Subdivision of Calloway County, Kentucky.

Center Ridge and LHM have entered an agreement under which LHM would transfer its water assets to Center Ridge by general warranty deed in exchange for a payment of \$100. Center Ridge applied to the Commission for approval of the proposed transfer of ownership. We find, however, no statutory requirement for such approval. KRS 278.020(5)³ and KRS 278.020(6)⁴ require prior Commission approval of the transfer of control or ownership of any "utility." As LHM limits service to a distinct class, its members, it does not provide service to the public and is not included within

³ 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.

⁴ 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.

the statutory definition of “utility.” See KRS 278.010(3). Therefore, KRS 278.020 does not require Commission approval of the proposed transaction.⁵

We further find that KRS 278.300(1)⁶ is not applicable to the proposed acquisition. Center Ridge is not issuing any evidences of indebtedness to acquire LHM’s assets, nor is it assuming any of LHM’s obligations. As the general warranty deed makes no provision for the purchase amount to be paid over an extended period of time, it does not constitute an evidence of indebtedness. KRS 278.300(1) does not require prior Commission review or approval of the proposed transaction.

As no statutory requirement or authority for Commission approval of the transfer of ownership of LHM’s water assets to Center Ridge exists, we find that Center Ridge’s application for Commission authorization of the proposed transaction should be denied as moot.

IT IS THEREFORE ORDERED that:

1. The application for approval of the transfer of ownership of LHM’s water assets to Center Ridge is denied as moot.
2. Within 10 days of the completion of the transfer, Center Ridge shall advise the Commission in writing of the transfer’s completion.

⁵ See Ohio County Water District, Case No. 2004-00157 (Ky. P.S.C. July 12, 2004); 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.

⁶ No utility shall issue any securities or evidences of indebtedness, or assume any obligation or liability in respect to the securities or evidences of indebtedness of any other person until it has been authorized so to do by order of the commission.

3. Within 10 days of the completion of the transfer, Center Ridge shall file tariff sheets containing the rates and regulations that shall apply to customers currently served by LHM, and that are signed by an officer of Center Ridge authorized to issue tariffs.

4. Subject to the timely filing of a petition for rehearing pursuant to KRS 278.400, these proceedings are closed. The Executive Director shall place any future filings in the utility's general correspondence file or shall docket the filing as a new proceeding.

Done at Frankfort, Kentucky, this 30th day of March, 2006.

By the Commission

ATTEST:



Executive Director