

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

JOINT APPLICATION OF)
CLASSIC CONSTRUCTION, INC. AND)
COOLBROOK UTILITIES, LLC) CASE NO. 2008-00257
FOR APPROVAL OF THE TRANSFER OF)
WASTEWATER TREATMENT PLANT TO)
COOLBROOK UTILITIES, LLC)

O R D E R

On July 3, 2008, Classic Construction, Inc. ("Seller") and Coolbrook Utilities, LLC ("Buyer") (collectively, "Joint Applicants") applied for Commission approval of the proposed transfer of Seller's wastewater treatment plant and collection system in the Coolbrook Subdivision in Franklin County, Kentucky to Buyer.¹ The record does not reflect any intervenors in this proceeding.

Having considered the evidence of record and being otherwise sufficiently advised, the Commission finds that:

¹ On July 3, 2008, the Applicants tendered their application to the Commission, and it was accepted for filing. On August 19, 2008, the Commission established a procedural schedule in this matter and Commission Staff issued a data request to the Joint Applicants. Seller submitted its response to these requests on September 5, 2008 and Buyer did so on September 8, 2008. Because of the limited time in which to review the responses to these requests, the Commission, pursuant to KRS 278.020(6), extended the period for its review of the application to 120 days.

On September 10, 2008, Buyer, by counsel, requested an informal conference, which was held on October 1, 2008. No party requested a hearing. As KRS 278.020(6) does not require a hearing on an application for transfer of control or ownership of a utility, and as a substantial record has been developed through the discovery process, we find that a hearing on the application is not required.

1. Seller is a Kentucky corporation organized in 1999, pursuant to KRS Chapter 271B,² which owns and operates two wastewater treatment plants and collection systems in Franklin County, Kentucky.³ Russell Givens is the sole owner/operator of Seller and constitutes the full membership of the Board of Directors of Seller.⁴

2. Seller is subject to Commission jurisdiction.⁵

3. Although Seller owns and operates Ridgewood Sewer Plant ("Ridgewood"), which began operations in 1980,⁶ and Coolbrook Wastewater Treatment Plant ("Coolbrook"), which began operations in 1971,⁷ the proposed transfer is only for Coolbrook.⁸

4. Coolbrook is an above-grade package sewage treatment plant which serves approximately 437 single-family residences and four dual-family residences

² Joint Application of Classic Construction, Inc. and Coolbrook Utilities, LLC for Approval of the Transfer of Wastewater Treatment Plant to Coolbrook Utilities, LLC, Exhibit B at 3.

³ Seller's Response to First Data Request, Item 2(c).

⁴ See Application, Exhibit C.

⁵ KRS 278.010(3)(f).

⁶ Annual Report of Seller to the Kentucky Public Service Commission for the Year Ended December 31, 2006 for Ridgewood at 1. No Annual Report was filed for Ridgewood for 2007.

⁷ Annual Report of Seller to the Kentucky Public Service Commission for the Year Ended December 31, 2007 for Coolbrook ("Annual Report 2007") at 1.

⁸ See Application at 2.

(duplexes). There is one commercial connection to Coolbrook, which is the office of the Farmdale Water District.⁹

5. The design treatment capacity of Coolbrook is 170,000 gallons per day. The plant is an extended aeration activated sludge plant and services a collection system composed of sanitary sewer lines, force main, and pump stations. The treated effluent is discharged into an unnamed tributary of South Benson Creek¹⁰ under a permit from the Kentucky Environmental and Public Protection Cabinet (“EPPC”)¹¹ which authorizes Seller to discharge from Coolbrook under the Kentucky Pollutant Discharge Elimination System.¹²

6. In addition to the wastewater treatment plant and collection system, associated sanitary sewer lines, force mains, and pump stations, Coolbrook will transfer certain equipment, buildings, sewer easements, and the site upon which the wastewater treatment plant is located.¹³

⁹ Id.

¹⁰ Id. at 3.

¹¹ Note EPPC became the Energy and Environment Cabinet (“EEC”) on July 1, 2008.

¹² See Application, Exhibit E.

¹³ See Application, Exhibit A at 1, ¶ 1.1(a).

7. As of December 31, 2007, Seller reported net utility plant of \$340,082,¹⁴ current and accrued assets of \$25,568,¹⁵ and outstanding liabilities of \$19,351 for Coolbrook.¹⁶

8. Buyer, a Kentucky Limited Liability Company formed on July 1, 2008, is a private utility.¹⁷ Martin G. Cogan and Lawrence W. Smither are the sole shareholders, officers, and directors.¹⁸

9. Mr. Cogan has a Masters of Environmental Engineering from the University of Louisville's Speed Scientific School and has over 34 years of experience in the operation, management, and construction of wastewater treatment facilities. He is a former certified Waste Water Treatment Plant ("WWTP") operator in the State of Kentucky.¹⁹

10. Mr. Smither is currently certified by the State of Kentucky as a Class II WWTP operator and has over 36 years of experience in the operation, management, and construction of wastewater treatment facilities. He is currently overseeing the operation of over 15 facilities within the State of Kentucky.²⁰

¹⁴ See Annual Report 2007 at 2.

¹⁵ Id.

¹⁶ Id. at 3.

¹⁷ See Application at 2.

¹⁸ Buyer Response to First Data Request ("Buyer Response"), Item 12. See Application, Exhibit D at 1.

¹⁹ Id., Buyer Response.

²⁰ Id.

11. Mr. Cogan and Mr. Smither own Airview Estates, LLC and Brocklyn Utilities, LLC. They own and operate Airview Estates WWTP and Brocklyn Subdivision WWTP.²¹

12. Mr. Cogan and Mr. Smither have assisted with the management of other wastewater treatment plants including Countryside, Willow Creek, Orchard Grass, Hunter's Hollow, Bullitt Hills, Brentwood and Farmdale.²²

Based upon these findings, the Commission makes the following conclusions of law:

1. Seller is a utility that is subject to Commission jurisdiction. KRS 278.010(3)(f).

2. Buyer is not a utility and is therefore currently not subject to Commission regulation. KRS 278.010(3)(f).

3. Buyer is a "person" for purposes of KRS Chapter 278.010(2).

4. KRS 278.020(5) 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 commission . . . without prior approval by the commission." As Buyer is a person and is acquiring ownership of Coolbrook, this statute is applicable to and requires Commission approval of the proposed transfer.

5. KRS 278.020(6) 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

²¹ Application at 3-4, Item 6.

²² Id.

control, either directly or indirectly, of any utility furnishing utility service in this state, without having first obtained the approval of the commission.” As Buyer is acquiring control of Coolbrook through the acquisition of the facilities that Seller uses to provide utility service, this statute is applicable to and requires Commission approval of the proposed transfer.

6. Buyer has the financial, technical, and managerial abilities to provide reasonable service to the present customers of Seller.

7. The proposed transfer is in accordance with law and for a proper purpose, but will be consistent with the public interest only if the conditions set forth in Ordering Paragraph 1 of this Order are met.

8. Upon completion of the proposed transfer, Coolbrook will continue to be subject to Commission jurisdiction.

IT IS THEREFORE ORDERED that:

1. The proposed transfer of the utility assets of Seller to Buyer is approved subject to the conditions set forth below:

a. Within 30 days of the date of this Order, Buyer obtains an irrevocable letter of credit in the amount of \$20,000 with a minimum term of 10 years and payable to any receiver appointed by a court of competent jurisdiction to operate Coolbrook upon Buyer's or any successor's failure to properly operate that system or abandonment of that system. Buyer will also secure a \$15,000 line of credit to be used for business operations of Coolbrook.

b. Buyer files with the Commission a copy of such letter of credit for \$20,000 and line of credit of \$15,000 within 30 days of the date of this Order.

c. Buyer obtains all necessary permits for the operation of Coolbrook, including a Kentucky Pollutant Discharge Elimination System Permit, before the transfer occurs.

d. The proposed transfer occurs within 90 days of the date of this Order.

2. Within 10 days of the date of this Order, Buyer and its principals shall file with the Commission written acknowledgements that each accepts and agrees to the conditions set forth in Ordering Paragraph 1 of this Order.

3. Within 10 days of completion of the proposed transfer, Seller and Buyer shall notify the Commission in writing of the completion of the transfer of assets.

4. Upon its acquisition of Seller's Coolbrook Wastewater System, Buyer will assess the same rates and charges as Seller presently assesses.

5. Within 10 days of the completion of the proposed transfer, Buyer shall file with the Commission a signed and dated adoption notice in accordance with Administrative Regulation 807 KAR 5:011, Section 11.

6. Within 10 days of the filing of its adoption notice, Buyer shall issue and file Coolbrook's tariff with the Commission, in its own name, or such other tariff as it proposes to put into effect in lieu thereof, in the form prescribed in Administrative Regulation 807 KAR 5:011, Sections 2 through 5, with proper identifying designation.

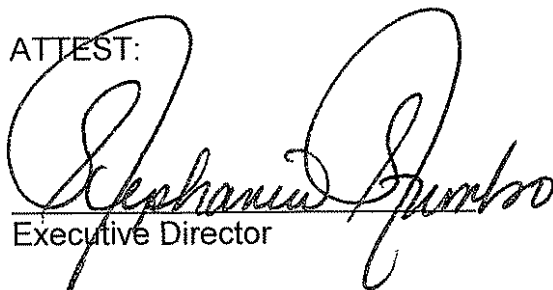
7. Seller shall be responsible for submitting to the Commission a financial and statistical report, as described in Administrative Regulation 807 KAR 5:006, Section 3, for the period in calendar year 2008 that it owned and operated Coolbrook.

8. Within 10 days of the completion of the proposed transfer, Buyer shall file with the Commission the journal entry that it proposes to record the asset acquisition. The acquisition shall be recorded in accordance with the Uniform System of Accounts for Sewer Utilities.

Done at Frankfort, Kentucky, this 21st day of October, 2008.

By the Commission

ATTEST:


Executive Director