

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

JOINT PETITION OF PADUCAH WATER)
WORKS AND HENDRON WATER DISTRICT TO)
APPROVE THE TRANSFER OF OWNERSHIP) CASE NO. 2012-00156
AND CONTROL OF HENDRON WATER)
DISTRICT TO PADUCAH WATER WORKS)

ORDER

On April 26, 2012, Paducah Water Works (“PWW”) and Hendron Water District (“Hendron District”) jointly petitioned for Commission approval of PWW’s purchase and acquisition of Hendron District’s water distribution system. Having considered the application and the evidence of record, the Commission finds that:

1. The City of Paducah (“Paducah”) is a city of the second class.¹
2. Paducah owns a water treatment and distribution system that is known as PWW and that currently serves 23,400 customers, 14,300 customers of which are located within the corporate limits of Paducah.²
3. PWW also provides the total water requirements of Hendron District and West McCracken Water District.³

¹ KRS 81.010(2).

² Joint Petition, Ex. A at 14.

³ *Annual Report of Hendron Water District to the Public Service Commission for the Calendar Year Ended December 31, 2010 (“Hendron Annual Report”)* at 30-31; *Annual Report of West McCracken County Water District to the Public Service Commission for the Calendar Year Ended December 31, 2010* at 31. For the calendar year ending December 31, 2010, Paducah provided these water districts 337,218,000 gallons of water.

4. Paducah acquired PWW in 1930 and has operated it continuously since its acquisition.⁴

5. Paducah has created a commission known as “Commissioners of Waterworks” to control and manage PWW.⁵ Members of the commission must reside in the area that PWW serves via the waterworks and must be registered voters in McCracken County, Kentucky. A majority of the members must be residents of Paducah.⁶

6. For the fiscal year ended June 30, 2011, PWW reported total assets of \$48,485,585 and total liabilities of \$8,093,732.⁷

7. As of June 30, 2011, PWW had net utility plant in service of \$41,271,686.⁸

8. For the fiscal year ended June 30, 2011, PWW reported total operating revenues of \$8,803,131 and total operating expenses of \$5,772,230.⁹ It also reported net non-operating revenues of (\$1,779,188).¹⁰

9. PWW currently employs 45 full-time employees, one part-time employee, and three temporary employees to operate its water system. Ten employees are

⁴ Joint Petition, Ex. A at 14.

⁵ Paducah, Ky., Code, Sections 114-291 and 114-298 (1996), available at <http://library.municode.com/index.aspx?clientId=11392>.

⁶ *Id.* Section 114-292.

⁷ Joint Application, Ex. A at 11.

⁸ *Id.* at 7.

⁹ *Id.* at 8.

¹⁰ *Id.* Under the accounting system that PWW uses, depreciation expense, bond interest, and amortization expense are considered in determining non-operating revenues.

certified water treatment plant operators. Twenty-two employees are certified water distribution system operators.¹¹

10. Hendron District, a water district organized pursuant to KRS Chapter 74, owns and operates a water distribution system that serves approximately 2,704 customers in Graves and McCracken counties, Kentucky.¹²

11. As of December 31, 2010,¹³ Hendron District had total assets and debits of \$2,129,731 and total liabilities of \$323,254.¹⁴

12. As of December 31, 2010, Hendron District had net utility plant of \$1,815,483.¹⁵

13. For the calendar year ending December 31, 2010, Hendron District had operating revenues of \$846,923 and utility operating expenses of \$789,946, which results in utility operating income of \$56,977.¹⁶

14. For the calendar year ending December 31, 2010, Hendron District had net income of \$81,856.¹⁷

¹¹ E-mail from Melissa Yates, Counsel for Paducah Water Works, to Gerald Wuetcher, Commission Staff counsel (June 21, 2012, 16:14 PM EDT) (filed on June 22, 2012).

¹² *Hendron Annual Report* at 5 and 27.

¹³ Hendron District's most recent financial and statistical report on file with the Commission is for the calendar year ending December 31, 2010. It has yet to file its financial and statistical report for the calendar year ending December 31, 2011.

¹⁴ *Hendron Annual Report* at 7 and 9.

¹⁵ *Id.* at 7.

¹⁶ *Id.* at 11.

¹⁷ *Id.*

15. On April 16, 2012, PWW and Hendron District executed an Agreement¹⁸ that provides:

- a. Hendron District will transfer all of its assets to PWW.¹⁹
- b. PWW will assume all of Hendron District's debts, liabilities and obligations and will honor all of Hendron District's legally binding contractual agreements with Hendron District's customers and developers, including all pay back contracts.²⁰
- c. PWW will assess the same rates for water service to Hendron District's current customers as it charges to its own customers.²¹
- d. Any increases in water rates to Hendron District's customers will be based on the same percentage given to all customers of the same class uniformly across PWW's system.²²
- e. PWW will offer employment to the most senior office employee of Hendron District and to all remaining outside distribution employees. PWW may offer select Hendron District employees a severance agreement that will provide a lump sum cash payment of an amount equal to six months of the employee's base salary.²³

¹⁸ Joint Application, Ex. D.

¹⁹ *Id.* at Section 1.2.

²⁰ *Id.* at Section 1.4.

²¹ *Id.* at Section 8.2.

²² *Id.* at Section 8.3.

²³ *Id.* at Section 8.9.

f. PWW will assume full responsibility for Hendron District's customers located in Graves County and treat them in all respects the same as the rest of PWW's customers.²⁴

16. PWW's current rates for water service are lower than those that Hendron District currently charges.²⁵ A Hendron District customer who is served through a 5/8-inch meter's customers and uses 5,000 gallons of water per month presently pays a monthly bill of \$22.01. As a PWW customer, he or she will pay a monthly bill of \$21.09.²⁶

17. PWW does not require a customer deposit for general water service customers, but requires a deposit for fire hydrant meters.²⁷

18. Hendron District requires an applicant for service to make a cash deposit to assure payment for service.²⁸ As of December 31, 2010, it held customer deposits totaling \$9,595.²⁹

19. At the close of the proposed transaction, Hendron District intends to transfer customer deposits to PWW, which intends to refund those deposits.³⁰

²⁴ *Id.* at Section 8.11.

²⁵ For PWW's monthly fees, see <http://www.pwwky.com/LiteratureRetrieve.aspx?ID=94425>. For Hendron District's rates, see <http://www.psc.state.ky.us/tariffs/Water/Districts,%20Associations,%20&%20Privately%20Owned/Hendron%20Water%20District/Tariff.pdf>.

²⁶ This calculation includes a Capital Replacement and Expansion Fee of \$3.00.

²⁷ See http://www.pwwky.com/customer_service.html# (last visited June 21, 2012); E-mail from Melissa Yates to Gerald Wuetcher (June 21, 2012, 16:14 PM EDT).

²⁸ Tariff of Hendron Water District, P.S.C. Ky. No. 4, Original Sheet No. 5 (effective Aug. 8, 1992).

²⁹ *Hendron Annual Report* at 9.

³⁰ E-mail from Melissa Yates to Gerald Wuetcher (June 21, 2012, 16:14 PM EDT).

20. The area in which Hendron District presently provides water service and in which its distribution facilities are located is contiguous to Paducah and to the area that PWW serves.

21. 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.

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

1. Hendron District is a utility subject to Commission jurisdiction.³¹
2. As a city, Paducah is not a utility and is not subject to Commission jurisdiction except in those instances in which it provides utility services to public utilities.³²
3. Paducah is a “corporation”³³ and a “person”³⁴ for purposes of KRS Chapter 278.
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 Paducah is a person and is acquiring ownership of Hendron District’s water distribution facilities, this statute is applicable to and requires Commission approval of the proposed transfer.

³¹ KRS 278.010(3)(d); KRS 278.015.

³² KRS 278.010(3); KRS 278.200; *Simpson County Water District v. City of Franklin*, 872 S.W.2d 460 (Ky.1994); *McClellan v. Louisville Water Co.*, 351 S.W.2d 197 (Ky.1961).

³³ KRS 278.010(1).

³⁴ KRS 278.010(2).

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 control, either directly or indirectly, of any utility furnishing utility service in this state, without having first obtained the approval of the commission.” As Paducah is a corporation and is acquiring control of Hendron District’s utility operations through the acquisition of the facilities that Hendron District uses to provide utility service, this statute is applicable to and requires Commission approval of the proposed transfer.

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

7. The consolidation of Hendron District’s distribution system into PWW’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.³⁵

8. 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 Hendron District presently serves and in which its distribution facilities are located is contiguous to Paducah and to the area that PWW serves, PWW has legal authority to provide water service to that area after the proposed transfer occurs.

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

10. Provided that the transfer is conditioned upon the conditions set forth in ordering paragraphs 2 through 6 of this Order, the proposed transfer is consistent with the public interest.

³⁵ KRS 74.361(1); KRS 224A.300(1).

11. Upon completion of the proposed transfer, Hendron District'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 through 6 of this Order, PWW's proposed acquisition of Hendron District's assets is approved.

2. Hendron District shall submit to the Commission a financial and statistical report as required by 807 KAR 5:006, Section 3, for calendar year 2011 and for that period in 2012 in which it owns and operates its water distribution system.

3. On or before July 31, 2012, Hendron District or PWW shall make payment to the State Treasury of the assessment for the maintenance of the Commission that the Department of Revenue issued to Hendron District on or about June 10, 2012.

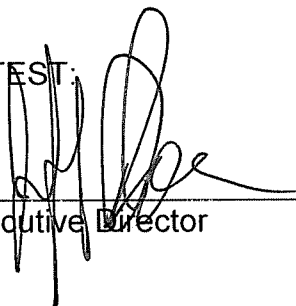
4. PWW and Hendron District shall notify the Commission in writing of the transfer of assets within 10 days of the transfer's occurrence.

5. At the time that Hendron District is discontinued or dissolved, it shall provide written notice to the Commission of such discontinuance and shall forward a copy of the order of the McCracken County Judge/Executive in which the discontinuance is directed.

6. Within 30 days of the closing of the proposed transfer, PWW shall refund, with accrued interest, all customer deposits that Hendron District transfers upon closing. Accrued interest on the customer deposits shall be determined in accordance with KRS 278.460(2).

By the Commission

ENTERED *WA*
JUL 02 2012
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:


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