

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF THE	)	
LOUISVILLE AND JEFFERSON COUNTY	)	CASE NO.
METROPOLITAN SEWER DISTRICT FOR AN	)	2021-00328
ORDER APPROVING A TRANSFER OF	)	
OWNERSHIP AND CONTROL	)	

ORDER

On August 22, 2021, Louisville and Jefferson County Metropolitan Sewer District (MSD) filed an application, pursuant to KRS 278.020(6) and (7), requesting an order approving the acquisition and transfer of control of utility assets formerly operated by Big Valley Sanitation, Inc. (Big Valley) and utility assets formerly operated by Bullitt Utilities, Inc. (Bullitt Utilities) or, in the alternative, an order finding that such approval is not necessary. Having reviewed the record and being otherwise sufficiently advised, the Commission approves the proposed acquisitions and transfers pursuant to KRS 278.020(6) and (7) to the extent such approval is necessary.<sup>1</sup>

BACKGROUND

MSD is a public body corporate created and organized in 1946. MSD is a component unit of the Louisville/Jefferson County Metro Government, and its governing board and executive officers are appointed by the Louisville Metro mayor with the approval of the Louisville Metro Council. MSD has complete control, possession and

---

<sup>1</sup> The Commission observes that MSD requested an order with 30 days of filing the Application. This case involves complex issues and the Commission sought to issue an order as quickly as possible. While the Commission recognizes additional approvals were necessary, Commission approval in this matter should have been requested earlier given that the primary contract was signed in May 2021.

supervision of the sewer and drainage systems within the majority of Jefferson County, Kentucky and operates sewage systems in parts of Oldham County and Shelby County. KRS Chapter 76 authorizes MSD to construct additions, betterments, and extensions within its service area and to recover the cost of its services in accordance with rate schedules adopted by its Board.<sup>2</sup> In fiscal year 2020, MSD had total revenues of about \$319.6 million, total expenses of about \$316.3 million, and total capital assets net of depreciation of about \$3.3 billion.<sup>3</sup>

Bullitt County Sanitation District (BCSD) is a special district created and existing pursuant to KRS Chapter 220 and KRS 67.715(2).<sup>4</sup> BCSD owns, operates, and maintains a wastewater collection and treatment system serving areas of northern Bullitt County and southern Jefferson County, Kentucky.<sup>5</sup> Pursuant to KRS 278.021, the Franklin Circuit Court attached the utility assets of Big Valley and Bullitt Utilities at the request of the Commission, based on the Commission's finding that the utilities had been abandoned, and appointed BCSD as receiver in separate orders entered on April 30, 2013, and September 23, 2015, respectively.<sup>6</sup>

---

<sup>2</sup> Application, Exhibit D, MSD's Comprehensive Annual Financial Report (dated October 30, 2020) at i.

<sup>3</sup> *Id.* at 5, 8.

<sup>4</sup> Application, Exhibit B, Interlocal Cooperation Agreement by and between the County of Bullitt, Kentucky, the Bullitt County Sanitation District, and the Louisville and Jefferson County Metropolitan Sewer District for Wastewater Collection and Treatment Services at 1.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*; see also *Public Service Commission of Kentucky v. Big Valley Sanitation, Inc., et al.*, Civil Action No. 11-CI-1433, Order (Franklin Cir. Court, Apr. 30, 2013); *Public Service Commission of Kentucky v. Bullitt Utilities, Inc., et al.*, Civil Action No. 15-CI-946, Order (Franklin Cir. Court, Sept. 23, 2015).

When BCSD was appointed as receiver of their utility assets, Big Valley and Bullitt Utilities were utilities as defined by KRS 278.010 subject to the jurisdiction of the Commission.<sup>7</sup> Big Valley was responsible for operating sewage collection and treatment facilities located in Bullitt County, Kentucky, that serve approximately 54 households in the Big Valley Mobile Home Park.<sup>8</sup> Bullitt Utilities was responsible for operating the Hunters Hollow collection facilities and related facilities located in Bullitt County that serve about 689 residential customers.<sup>9</sup> BCSD continues to serve as receiver for Big Valley and Bullitt Utilities' systems with the authority to operate, control, and maintain the systems.

On December 18, 2015, Veolia Water Technologies, Inc. (Veolia) and Perdue Environmental Contracting Company, Inc. (PECCO) filed an involuntary petition for relief under Chapter 7 of Title 11 of the United States Code to initiate a bankruptcy case against Bullitt Utilities and the case is currently proceeding as Case No. 15-34000-jal in the United States Bankruptcy Court for the Western District of Kentucky. On December 1, 2017, the bankruptcy trustee filed a complaint against BCSD initiating an adversary proceeding, *Keats v. BCSD*, Adversary No. 17-03072-jal. On April 30, 2019, the bankruptcy court entered a judgement against BCSD and in favor of the bankruptcy estate of Bullitt Utilities in the amount of about \$2.7 million. Although BCSD has appealed the judgement of the

---

<sup>7</sup> See Case No. 2009-00378, *An Investigation into the Condition and Management of Big Valley Sanitation, Inc. and Woodland Acres Sanitation, Inc. Sewage Treatment Facilities* (Ky. PSC July 18, 2011), Order at 5; Case No. 2015-00290, *Bullitt Utilities, Inc.'s Notice of Surrender and Abandonment of Utility Property* (Ky. PSC Aug. 24, 2015), Order at 1.

<sup>8</sup> Case No. 2009-00378, *An Investigation into the Condition and Management of Big Valley Sanitation, Inc. and Woodland Acres Sanitation, Inc. Sewage Treatment Facilities*, Order at 2-3 (Ky. PSC Jul. 18, 2011).

<sup>9</sup> Case No. 2015-00290, *Bullitt Utilities, Inc.'s Notice of Surrender and Abandonment of Utility Property* (Ky. PSC Oct. 16, 2015), Order at 2.

bankruptcy court, BCSD faces the potential of becoming insolvent due to the judgement which, in turn, threatens its ability to continue providing service.<sup>10</sup>

MSD and BCSD entered into an Interlocal Cooperation Agreement (ICA) on May 6, 2021 as part of MSD and BCSD's effort to develop a long-range regional wastewater solution for the residents of Bullitt County that they contend will be cost-effective, improve water quality, add capacity, and will provide mutual benefit to MSD, BCSD, and Bullitt County.<sup>11</sup> In the ICA, BCSD agreed to transfer its system and Big Valley Sanitation's system to MSD, subject to certain conditions contained therein, including approval by the Franklin Circuit Court of the transfer of Big Valley's system and execution and delivery of a mutual settlement and release of claims asserted in *Keats v. BCSD*, Adversary No. 17-03072-jal, satisfactory in form and substance to MSD and BCSD.<sup>12</sup> The recitals of the ICA further indicate that MSD and BCSD desire to resolve the pending judgement against BCSD through settlement, subject to the review and approval of the bankruptcy court, bankruptcy trustee and other interested parties, that will include a separately negotiated purchase and sale of Bullitt Utilities' wastewater facilities by MSD for an amount not to exceed \$2 million, and which shall be a condition precedent to the purchase and sale of the BCSD and Big Valley systems.<sup>13</sup>

---

<sup>10</sup> Application at Exhibit B, Interlocal Cooperation Agreement by and between the County of Bullitt, Kentucky, the Bullitt County Sanitation District, and the Louisville and Jefferson County Metropolitan Sewer District for Wastewater Collection and Treatment Services, at 1.

<sup>11</sup> *Id.* at 2.

<sup>12</sup> *Id.* at 4, 8-13

<sup>13</sup> *Id.* at 2, 10.

Upon transfer of BCSD's assets and the occurrence of stated conditions, the ICA provides that MSD shall have the authority and responsibility to control, operate, manage, maintain, modify, and repair BCSD's system to meet or achieve current KPDES permit requirements.<sup>14</sup> The ICA also requires MSD to assume and perform BCSD's obligations pursuant to Agreed Orders with the Kentucky Energy and Environment Cabinet (EEC), though the ICA indicates that MSD may negotiate the modification or termination of those Agreed Orders and requires BCSD to assist in obtaining such modifications and terminations.<sup>15</sup> MSD's performance of such obligations in the ICA is contingent upon, among other things:

(1) The execution and delivery to MSD of a letter prior to closing from the EEC's Division of Water acknowledging its support of the transfer of the BCSD system to MSD and affirming that the transfer is consistent with KRS Chapters 65 and 76; and

(2) Receipt by MSD of opinions of counsel that consummation of the agreement will not result in a violation by MSD of any existing law, regulation, administrative or court order or decree to which MSD is subject.<sup>16</sup>

The ICA also requires that MSD maintain existing wastewater charges until December 31, 2021, and existing capacity charges until December 31, 2024, for customers on BCSD's system. Beginning January 1, 2022, MSD will increase wastewater charges in the former BCSD service area by 12 percent each year. Beginning January 1, 2027, MSD will increase wastewater charges by no more than 3 percent until

---

<sup>14</sup> *Id.* at 12.

<sup>15</sup> *Id.* at 6–7.

<sup>16</sup> *Id.* at 9–10.

charges equalize with charges of MSD's Jefferson County customers. For customers currently served by Big Valley and Bullitt Utilities' systems, the ICA requires rates to be brought in line with other customers served by BCSD on January 1, 2022, and then requires their rates to be increased each year along with other BCSD customers until the rates are equal to those of MSD's Jefferson County customers. BCSD customers will be subject to the terms and conditions regarding billing and collections applicable to the MSD's Jefferson County customers immediately after closing.<sup>17</sup>

### DISCUSSION

KRS 278.020(6) provides that:

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.

KRS 278.020(7) similarly provides that no entity "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." That statute further provides that the Commission "shall approve any proposed acquisition when it finds that the same is to be made in accordance with law, for a proper purpose and is consistent with the public interest."<sup>18</sup>

MSD argues that the transfers of the Big Valley and Bullitt Utilities systems contemplated by the ICA are not subject to Commission approval pursuant to KRS 278.020(6) and (7), because MSD is not subject to the jurisdiction of the

---

<sup>17</sup> *Id.* at 14.

<sup>18</sup> KRS 278.020(7).

Commission. The Commission agrees that neither MSD nor BCSD is a utility as that term is defined in KRS 278.010<sup>19</sup> and, therefore, they are not generally subject to the Commission's jurisdiction pursuant to KRS Chapter 278.<sup>20</sup> However, Big Valley and Bullitt Utilities were utilities subject to the jurisdiction of the Commission at the time their utility assets were attached by the Franklin Circuit Court and BCSD was appointed as receiver. BCSD stands in the place of Big Valley and Bullitt Utilities in its capacity as receiver of those systems and, therefore, BCSD, as a receiver appointed pursuant to KRS 278.021, is subject to the jurisdiction of the Commission with respect to its operation of Big Valley and Bullitt Utilities' systems.<sup>21</sup>

There is a question regarding whether additional Commission approval is necessary pursuant to KRS 278.020(6) and (7) for the transfer of Big Valley and Bullitt Utilities' systems due to the previous finding of abandonment. Specifically, KRS 278.021 establishes a mechanism by which the Commission can initiate the transfer of utility assets by conducting a hearing and finding that a utility has been abandoned by its current owner and then filing an action in Franklin Circuit Court, which occurred here, requesting that the court attach the utility's assets and appoint a receiver "to preserve [the utility's] assets, to restore or maintain a reasonable level of service, and to serve the best interests of its customers."<sup>22</sup> Pursuant to KRS 278.021(7), "[t]he receiver shall control and manage

---

<sup>19</sup> See KRS 278.010(3)(f) (indicating that a city, a metropolitan sewer district, and a sanitation district created pursuant to KRS Chapter 220 are not utilities as that term is used in KRS Chapter 278).

<sup>20</sup> KRS 278.040 (indicating that the Commission's general jurisdiction is over utilities).

<sup>21</sup> See *Bullitt Utilities, Inc., by Robert W. Keats v. Kentucky Public Service Commission*, No. 2018-CA-000559-MR, 2019 WL 2157926 at \*11-\*12 (Ky. App. May 17, 2019) (unpublished opinion) (favorably discussing a previous Commission decision).

<sup>22</sup> KRS 278.021(5).

the assets and operations of the utility until the Franklin Circuit Court, after reasonable notice and hearing, orders the receiver to return control of those assets to the utility or to liquidate those assets as provided by law.”<sup>23</sup> Thus, while the Franklin Circuit Court could defer to the Commission’s decision providing or denying regulatory approval of subsequent transfers pursuant to KRS 278.020(6) and (7), the court arguably has the jurisdiction to authorize the transfer of utility assets in the cases filed pursuant to KRS 278.021 without additional action by the Commission pursuant to KRS 278.020—particularly when the transfer is to a metropolitan sewer district that is not a utility subject to the jurisdiction of the Commission.

However, it is not necessary to resolve the interplay between KRS 278.020(6) and (7), and KRS 278.021 in this matter, because the Commission finds that approval should be granted pursuant to KRS 278.020(6) and (7) to the extent it is necessary. Specifically, the Commission finds that MSD, which operates the largest sewer system in the Commonwealth under the indirect supervision of elected officials, has the financial, technical, and managerial abilities, and the financial integrity to provide reasonable service to customers of Big Valley and Bullitt Utilities’ systems. The Commission further finds that the proposed transfers are in accordance with law, for a proper purpose, and consistent with the public interest, especially given BCSD’s current financial condition and the limited number of operators who could operate the systems and have a desire to do so. Thus, the Commission will approve the proposed transfers pursuant to KRS 278.020(6) and (7) to the extent such approvals are necessary.

---

<sup>23</sup> KRS 278.021(7).



In approving the transfers pursuant to KRS 278.020(6) and (7), the Commission recognizes that the ultimate transfer of the assets is subject to an order by the Franklin Circuit Court, and, in the case of Bullitt Utilities, the bankruptcy court. The Commission is not attempting to exercise authority within the jurisdiction of those courts in granting the approval herein, but rather, is simply seeking to provide the regulatory approval, if any, necessary for the proposed transfers to move forward subject to the approval of the Franklin Circuit Court or bankruptcy court. However, the Commission notes that as long as Big Valley and Bullitt Utilities' systems are being operated pursuant to the receivership established pursuant to KRS 278.021 that the operation of those systems is subject to the jurisdiction of the Commission pursuant KRS Chapter 278.

IT IS THEREFORE ORDERED that:

1. The transfer of the assets of Big Valley and Bullitt Utilities to MSD is approved pursuant to KRS 278.020(6) and (7) as of the date of entry of this Order.
2. MSD shall notify the Commission in writing of the closing of each transaction within ten days of the closing.
3. Any documents filed pursuant to ordering paragraph 2 shall reference this case number and shall be retained in the post case correspondence of this matter.
4. The Executive Director is delegated authority to grant reasonable extensions of time for the filing of any documents required by this Order upon a showing of good cause for such extension.
5. This case is closed and removed from the Commission's docket.

By the Commission

ENTERED  
OCT 05 2021 rcs  
KENTUCKY PUBLIC  
SERVICE COMMISSION

ATTEST:

  
Executive Director

Case No. 2021-00328

\*Bullitt Utilities, Inc. dba Hunters Hollow Sewer  
P. O. Box 818  
Hillview, KY 40129

\*Big Valley Sanitation, Inc. c/o Bullitt County  
376 Norwood Way  
Louisville, KY 40229

\*Jacquelyn Quarles  
Louisville and Jefferson County Metropolitan  
700 West Liberty Street  
Louisville, KENTUCKY 40203