

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF WOODLAND ACRES)
UTILITIES, LLC FOR APPROVAL OF THE) CASE NO.
TRANSFER OF WASTEWATER TREATMENT) 2010-00191
PLANT TO WOODLAND ACRES UTILITIES,)
LLC)

O R D E R

On May 3, 2010, Woodland Acres Utilities, LLC ("Woodland Acres Utilities") filed an application for the transfer and acquisition of Woodland Acres Wastewater Treatment Plant and collection system ("WWTP") serving the Woodland Acres Subdivision in Shepherdsville, Bullitt County, Kentucky. KRS 278.020(6) requires the Commission to act upon the application within 60 days unless it is necessary to continue the application for good cause shown. On July 2, 2010, the Commission extended that statutory period for review of the application to 120 days.

In addition to this case, the WWTP is subject to a Commission investigation in Case No. 2009-00378, which relates to whether the facility has been abandoned.¹ On June 4, 2010, Commission Staff and Woodland Acres Utilities agreed that the record of Case No. 2009-00378 should be incorporated into the record of this transfer case.²

¹ Case No. 2009-00378, An Investigation into the Condition and Management of Big Valley Sanitation, Inc. and Woodland Acres Sanitation, Inc. Sewage Treatment Facilities, filed November 6, 2009.

² See Memorandum from J.R. Goff to Case File (June 7, 2010).

No person has sought intervention in this proceeding. Woodland Acres Utilities has not requested a hearing in this matter. The record is complete. The case stands ready for a decision.

Having considered the application and evidence of record, the Commission finds that:

1. Woodland Acres Sanitation, Inc. ("Woodland Acres Sanitation") was a Kentucky corporation organized pursuant to KRS Chapter 271B.³

2. Woodland Acres Sanitation was administratively dissolved on November 1, 2000 for failure to file its annual report with the Kentucky Secretary of State's office.⁴

3. Woodland Acres Sanitation owns the WWTP, which serves approximately 121 residential customers in Woodland Acres Subdivision of Bullitt County, Kentucky.

4. At the time of its dissolution, Woodland Acres Sanitation's sole shareholder and officer was John L. Ford.⁵

5. The WWTP is a package sewage treatment plant with a design treatment capacity of 25,000 gallons per day. It consists of a wet well, a pump, aeration tank,

³ Kentucky Secretary of State, Online Business Data Base, *available at* [http://apps.sos.ky.gov/business/obdb/\(S\(o25nna55e5jmqm3rccefrb55\)\)/showentity.aspx?id=0186513&ct=09&cs=99999](http://apps.sos.ky.gov/business/obdb/(S(o25nna55e5jmqm3rccefrb55))/showentity.aspx?id=0186513&ct=09&cs=99999) (last visited Aug. 24, 2010).

⁴ Kentucky Secretary of State, Certificate of Dissolution, *available at* [http://apps.sos.ky.gov/ImageWebViewer/\(S\(ozdqegj4qj12o245215ljovs\)\)/OBDBDisplayImage.aspx?id=1221383](http://apps.sos.ky.gov/ImageWebViewer/(S(ozdqegj4qj12o245215ljovs))/OBDBDisplayImage.aspx?id=1221383) (last visited Aug. 24, 2010).

⁵ Annual Report of Woodland Acres Sanitation, Inc. to the Kentucky Secretary of State, *available at* [http://apps.sos.ky.gov/ImageWebViewer/\(S\(5x1a4d55xo2xzi45er2slz55\)\)/OBDBDisplayImage.aspx?id=1420335](http://apps.sos.ky.gov/ImageWebViewer/(S(5x1a4d55xo2xzi45er2slz55))/OBDBDisplayImage.aspx?id=1420335) (last visited Aug. 24, 2010).

digesters, a sediment tank, and a manual chlorination system. It is operated with a three-phase electrical system.

6. Woodland Acres Sanitation holds a Kentucky Pollutant Discharge Elimination System Permit to discharge effluent from the sewage treatment plant into an unnamed tributary of Mud Run Creek. This permit expires February 28, 2013.

7. The last annual report filed with the Commission by Woodland Acres Sanitation was for the 1999 calendar year.

8. Woodland Acres Sanitation reported, as of December 31, 1999, utility plant in service of \$169,761 and accumulated depreciation of \$164,938, resulting in net utility plant of \$4,823.

9. Woodland Acres Sanitation recorded \$4,827 in accumulated plant depreciation for the 1999 calendar year.

10. The WWTP is located on Lot 57 on Hemlock Drive in Woodland Acres Subdivision.

11. Mr. Ford operated the WWTP until his death on October 9, 2008.

12. The Kentucky Division of Water ("DOW") issued two Notices of Violations related to the WWTP for violations of Kentucky regulations that were observed on June 6, 2005 and August 19, 2008, prior to Mr. Ford's death.

13. The DOW issued a Notice of Violations related to the WWTP for violations of Kentucky regulations that were observed on May 22 and June 10, 2009, after Mr. Ford's death.

14. Mr. Ford was survived by his wife, Wanda Ford.

15. After Mr. Ford died, Charles V. Gribbons was appointed Executor of Mr. Ford's estate.

16. On July 2, 2010, Mr. Gribbons, as Executor of the estate, and Mrs. Ford entered into an agreement to transfer all their rights, titles, and interests in the WWTP to Joseph B. Murphy.⁶

17. Mr. Murphy is the proprietor of Murphy's Excavating Company.

18. In addition to transferring the estate's interest in the WWTP to Mr. Murphy, Mr. Gribbons assigned a check from the Louisville Water Company in the amount of \$2,806.63 to Mr. Murphy on the condition that Mr. Murphy pay a previously accrued electric bill for the WWTP.

19. On December 17, 2009, Big Star Land Company conveyed Lot 57 in Woodland Acres to Mr. Murphy and his wife, Mary Suzanne Murphy, by General Warranty Deed.

20. Mr. Murphy has managed the operations of the WWTP since July 9, 2010.

21. The DOW has not issued any Notices of Violations for the WWTP since Mr. Murphy began operating the plant.

22. Woodland Acres Utilities, a limited liability company, was organized pursuant to KRS Chapter 275 on May 3, 2010.

23. Mr. Murphy is the sole member of Woodland Acres Utilities.

24. Woodland Acres Utilities has retained the services of Lawrence Smither to operate the facility. Mr. Smither is certified by the Energy and Environment Cabinet as

⁶ The agreement references "a water treatment facility" in Woodland Acres subdivision. Based on the additional information provided in the agreement and in the record of this case, it is apparent that the facility is a wastewater treatment facility.

a Class II Wastewater Treatment Plant Operator. He has over 30 years of experience operating and managing wastewater treatment plants.

25. In its application, Woodland Acres Utilities states that it "is working to obtain an Irrevocable Standby Letter of Credit by Old National Bank."

26. Mr. Gibbons indicated that Mr. Ford's estate would no longer operate the WWTP, as it "has absolved themselves [sic] of all operations, of everything."⁷

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

1. Woodland Acres Utilities is a "person" for purposes of KRS Chapter 278.⁸

2. 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 Woodland Acres Utilities is a person and is acquiring ownership of Woodland Acres Sanitation's sewage treatment facilities, this statute is applicable to, and requires Commission approval of, the proposed transfer.

3. 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 Woodland Acres Utilities is acquiring control of Woodland Acres Sanitation's utility operations through the

⁷ VR: 6/4/10; 10:19:20.

⁸ KRS 278.010(2).

acquisition of the facilities that Woodland Acres Sanitation uses to provide utility service, this statute is applicable to, and requires Commission approval of, the proposed transfer.

4. KRS 278.020(6) further provides that “[a]ny acquisition of control without prior authorization [of the Commission] shall be void and of no effect.”

5. The agreement of July 2, 2009, involving Mr. Gribbons, Mrs. Ford, and Mr. Murphy and the deed to real property that was granted on December 19, 2009, could not convey ownership and control of Woodland Acres Sanitation’s facilities to Woodland Acres Utilities or any other person until the Commission has authorized such transfer.

6. Woodland Acres Utilities has the financial, technical, and managerial abilities to provide reasonable service to the present customers of Woodland Acres Sanitation’s WWTP.

7. The proposed transfer of control of Woodland Acres Sanitation’s WWTP to Woodland Acres Utilities will be consistent with the public interest upon the condition that:

a. Woodland Acres Utilities shall obtain an irrevocable letter of credit in the amount of \$10,000 with a minimum term of 10 years.

b. Within 30 days of the date of this Order, Woodland Acres Utilities shall file a copy of such letter of credit with the Commission.

8. The proposed transfer is being made in accordance with law and for a proper purpose.

9. Upon completion of the proposed transfer, Woodland Acres Utilities will be subject to Commission jurisdiction.

IT IS THEREFORE ORDERED that:

1. The record of Case No. 2009-00378 shall be incorporated into the record of Case No. 2010-00191.

2. The proposed transfer of the utility assets of Woodland Acres Sanitation, Inc., being the Woodland Acres Wastewater Treatment Plant and collection system, to Woodland Acres Utilities is approved subject to the conditions set forth below:

a. Woodland Acres Utilities shall obtain an irrevocable letter of credit in the amount of \$10,000 with a minimum term of 10 years.

b. Woodland Acres Utilities shall file with the Commission a copy of such letter of credit within 30 days of the date of this Order.

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

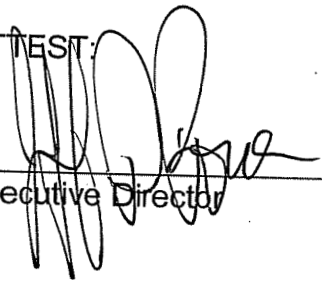
4. Within 10 days of the filing of its adoption notice, Woodland Acres Utilities shall issue and file a tariff with the Commission in its own name, or such other tariff as it proposes to put into effect in lieu thereof, in the form prescribed in 807 KAR 5:011, Sections 2 through 5, with proper identifying designation.

5. Within 30 days of the date of this Order, Woodland Acres Utilities 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.

By the Commission

ENTERED *M*
SEP - 1 2010
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:



Executive Director

Case No. 2010-00191

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