

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF SOUTH SHORE WATER)
WORKS COMPANY FOR AN ORDER) CASE NO. 2012-00476
APPROVING A TRANSFER OF OWNERSHIP)
AND CONTROL)

ORDER

On October 25, 2012, South Shore Water Works Company ("South Shore") applied for Commission approval of South Shore's sale and transfer of control of its water treatment and water distribution system to the city of South Shore, Kentucky ("City").¹ Having considered the application and the evidence of record,² the Commission finds that:

1. South Shore, a Kentucky corporation organized pursuant to KRS Chapter 271B, owns and operates a water treatment facility and water distribution system that serves approximately 2,882 customers in Greenup and Lewis counties, Kentucky.³

¹ The City was not a signatory to the application and did not intervene in this matter. While no statute expressly requires that the City be a joint applicant or participate in this matter, we have previously noted that the "better practice is for all corporate entities [acquiring control or ownership of a utility] to jointly apply for Commission approval." Case No. 2002-00018, *Application for Approval of the Transfer of Control of Kentucky-American Water Company to RWE Aktiengesellschaft and Thames Water Aqua Holdings GmbH* (Ky. PSC May 29, 2002) at 11. The City has advised the Commission that it "joins in and supports the application" of South Shore and offered to "intervene in this matter to resolve any questions the Commission may have about whether the proposed acquisition is in accordance with law, for a proper purpose, and consistent with the public interest." Affidavit of Cheryl Moore, Mayor, City of Shore Shore ("Moore Affidavit") (Dec. 3, 2012) at ¶¶ 3 and 6.

² South Shore is the only party in this proceeding. The Commission has not received any requests for a hearing in this matter. On December 17, 2012, the Commission found that additional time was required to review the application and, pursuant to KRS 278.020(6), extended the review period to 120 days.

³ *Annual Report of South Shore Water Works Company to the Kentucky Public Service Commission for the Year Ending December 31, 2011* ("Annual Report") at 5 and 21. Approximately 1,650 of South Shore's customers reside outside the City's corporate limits. South Shore's Response to Commission Staff's First Request for Information, Item 12b. For a detailed description of the facilities, see *Annual Report* at 36.

2. As of December 31, 2011, South Shore had utility plant of \$2,472,426 and accumulated depreciation of \$1,488,920, or a net utility plant of \$983,506.⁴

3. As of December 31, 2011, South Shore reported total liabilities of \$426,461.⁵

4. For the calendar year ending December 31, 2011, South Shore had utility operating income of \$681,775 and utility operating expenses of \$689,819, which results in total utility operating income of (\$8,044).⁶

5. For the calendar year ending December 31, 2011, South Shore had net income of \$13,200.⁷

6. As of December 31, 2011, South Shore employed five full-time employees and four part-time employees.⁸

7. South Shore's water treatment and distribution facilities are classified as a Class IIIB system.⁹

8. The City is a city of the fifth class and is located in Greenup County, Kentucky.¹⁰

9. The City operates under the Mayor-Commission form of government.¹¹

⁴ *Id.* at 7.

⁵ *Id.* at 8.

⁶ *Id.* at 11.

⁷ *Id.* This net income level resulted from interest income and non-utility income sources.

⁸ *Id.* at 5.

⁹ South Shore's Response to Commission Staff's First Request for Information, Item 17.

¹⁰ KRS 81.010(5).

¹¹ *City of South Shore Regular Audit for the Fiscal Year Ended June 30, 2011 ("Regular Audit")* (Oct. 4, 2012) at 19. See also KRS 83A.140.

10. For the fiscal year ended June 30, 2011, the City reported total assets of \$3,384,444 and total liabilities of \$352,946.¹²

11. The City operates wastewater collection and treatment facilities that serve approximately 776 customers, 315 of whom reside outside the City's corporate boundaries.¹³

12. For the period ending June 30, 2011, the City's wastewater operations had total revenues of \$427,017 and total expenses of \$472,554.¹⁴

13. On May 15, 2012, the City's Board of Commissioners authorized the purchase of South Shore's assets for \$1,400,000.¹⁵

14. On July 2, 2012, the City and South Shore executed an "Asset Purchase Agreement" that provides that the City shall acquire all assets of South Shore's water treatment and distribution system for \$1,400,000.¹⁶

15. The Kentucky Infrastructure Authority has agreed to lend to the City an amount not to exceed \$1.6 million to fund the City's acquisition of South Shore's assets.¹⁷

16. The City has not made final decisions regarding the staffing of South Shore's facilities after the transfer of ownership and control. It is considering retaining South Shore's current operator and also employing its wastewater treatment plant

¹² *Regular Audit* at 11.

¹³ Moore Affidavit ¶ 8.

¹⁴ *Uniform Financial Information Report (Fiscal Year 2010-2011)* at 5 and 7.

¹⁵ South Shore's Response to Commission Staff's First Request for Information, Item 5.

¹⁶ App. Ex. 1.

¹⁷ Letter from Sandy Williams, Financial Analyst, Kentucky Infrastructure Authority, to Cheryl Moore, Mayor, City of South Shores (Aug. 7, 2012).

operator to oversee the facilities.¹⁸ Each employee holds a certification that permits that employee to lawfully operate a Class IIIB water treatment and distribution system.

17. The City intends to continue applying the rates and charges set forth in South Shore's tariff and anticipates any changes to those rates and charges only after it has operated the facilities and determined the cost of operation.¹⁹

18. South Shore's rates do not distinguish between customers who are located within the City's corporate boundaries or who are located outside of the City's corporate boundaries.

19. South Shore has agreed to refund all accrued interest on customer deposits prior to the closing date of the transfer.²⁰

20. The area that the South Shore facilities presently serve includes areas that are contiguous to the City.

CONCLUSIONS OF LAW

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

1. South Shore is a utility subject to Commission jurisdiction.²¹
2. The City is a municipal corporation.

¹⁸ Moore Affidavit ¶ 9. For the South Shore employee's qualifications, see South Shore's Response to Commission Staff's First Request for Information, Item 16 and https://dep.gateway.ky.gov/eSearch/Search_License_Detail.aspx?AgencyID=31924. For the City employee's qualifications, see https://dep.gateway.ky.gov/eSearch/Search_License_Detail.aspx?AgencyID=29498.

¹⁹ Moore Affidavit ¶ 12.

²⁰ South Shore's Response to Commission Staff's First Request for Information, Item 10b.

²¹ KRS 278.010(3)(d); KRS 278.015.

3. The City is not a utility and is not subject to Commission jurisdiction except in those instances in which it provides utility services to public utilities.²²

4. The City is a “corporation” and a “person” for purposes of KRS Chapter 278.²³

5. 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 the City is a person and is acquiring ownership of South Shore’s water distribution facilities, this statute is applicable to and requires Commission approval of the proposed transfer.

6. 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 the City is a corporation and is acquiring control of South Shore’s utility operations through the acquisition of the facilities that South Shore uses to provide utility service, this statute is applicable to and requires Commission approval of the proposed transfer.

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

8. Assuming that the City has retained a person or persons who are certified to lawfully operate a Class IIIB water treatment and distribution system, the City has the

²² KRS 278.010(3); KRS 278.200; *Simpson County Water District v. City of Franklin, Ky.*, 872 S.W.2d 460 (1994); *McClellan v. Louisville Water Co., Ky.*, 351 S.W.2d 197 (1961).

²³ KRS 278.010(1) and (2).

financial, technical, and managerial abilities to provide reasonable service to South Shore's present customers.

9. KRS 96.150(1) permits a city to extend its water supply system into any territory contiguous to its corporate area. As portions of the area that the South Shore facilities presently serve are contiguous to the City, the City has legal authority to provide water service to that area after the proposed transfer occurs.

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

11. Provided that the transfer is conditioned upon the City's compliance with ordering paragraphs 3 through 5 of this Order, the proposed transfer is consistent with the public interest.

12. Upon completion of the proposed transfer and satisfaction of the conditions set forth in ordering paragraphs 3 through 5 of this Order, South Shore's facilities will no longer be subject to Commission jurisdiction except to the extent that they are used to provide water service to a public utility.

IT IS THEREFORE ORDERED that:

1. Subject to the conditions set forth in ordering paragraphs 3 through 5 of this Order, South Shore's proposed transfer of control of its facilities to the City and the City's acquisition of control of those facilities from South Shore are approved.

2. Failure of either party to comply with provisions of ordering paragraphs 3 through 5 shall vacate the Commission's approval of the proposed transfer of control and shall render the transfer void.

3. For a period of three years from the date of its acquisition of South Shore's assets, the City shall not provide water service to South Shore's present

customers who reside outside the City's corporate limits at rates that exceed the rates that are assessed to customers who reside within the City's corporate limits.

4. Within 60 days of the date of this Order, the City shall contract with a certified water treatment and distribution system operator, or a firm that employs such person or persons, to operate the South Shore facilities for a period beginning on the transfer of control date and ending not earlier than one year from the transfer of control.

5. No later than 75 days from the date of this Order, the City shall file a copy of its contract with the firm or persons who are considered the certified water treatment and distribution system operators of the South Shore facilities.

6. South Shore shall refund all customer deposits prior to the closing date of the transfer. Such refunds shall include all interest accrued on the deposits pursuant to KRS 278.460 and 807 KAR 5:006.

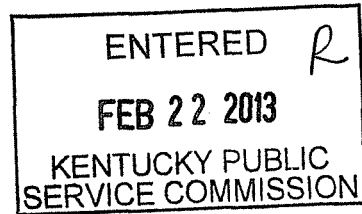
7. The City shall within seven days of the date of this Order file a written acknowledgement by its chief executive officer that the City accepts and agrees with the conditions set forth in ordering paragraphs 3 through 5.

8. South Shore shall submit to the Commission a financial and statistical report, as described in 807 KAR 5:006, Section 4, for calendar year 2012 and for that period in 2013 in which it owns and operates its water distribution system.

9. If the proposed transfer does not occur prior to June 1, 2013, South Shore shall be responsible for paying the assessment for the Commission's maintenance for Fiscal Year 2013-2014.

10. Any documents filed in the future pursuant to ordering paragraphs 5 and 7 shall reference this case number and shall be retained in the Commission's general correspondence file.

By the Commission



ATTEST:


Executive Director

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