

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

JOINT PETITION OF W & W SERVICE	)	
CORPORATION AND PADUCAH-MCCRACKEN	)	
COUNTY JOINT SEWER AGENCY TO	)	CASE NO.
APPROVE THE TRANSFER OF OPERATION	)	2014-00013
OF THE TERRE VERTE SUBDIVISION TO	)	
PADUCAH-MCCRACKEN COUNTY	)	
JOINT SEWER AGENCY	)	

ORDER

W & W Service Co.<sup>1</sup> ("W & W") and the Paducah-McCracken County Joint Sewer Agency ("JSA") jointly petitioned the Commission for approval to transfer control of the Terre Verte Subdivision sewage treatment and collection system to JSA. Having reviewed the application and being otherwise advised, the Commission finds that:

1. W & W is a non-profit Kentucky corporation that was organized pursuant to KRS Chapter 273 "to purchase, lease, build, lay, construct, alter, maintain and operate a sanitary sewage treatment plant, with a connecting collection system, to be located in McCracken County, Kentucky."<sup>2</sup>

2. W & W owns the sewage treatment and collection facilities that serve 61 customers in McCracken County, Kentucky.<sup>3</sup>

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<sup>1</sup> The joint application states W & W Service *Corporation*. The Articles of Incorporation attached as Ex. A to the joint application states W & W Service *Co*.

<sup>2</sup> Joint application, Ex. A.

<sup>3</sup> Annual Report of W & W Service Company to the Public Service Commission for the Calendar Year Ended December 31, 2012 ("Annual Report") at 8.

3. W & W began sewage treatment service in McCracken County in 1977.<sup>4</sup>

4. In 2007, the Commission approved a transfer of control of W & W from Kenneth C. Wise to Glenn Ridings.<sup>5</sup>

5. W & W sewage treatment and collection facilities consist of a 40,000-gallon-per-day aeration sewage treatment facility.<sup>6</sup>

6. As of December 31, 2012, W & W had total assets of \$42,774 and total liabilities of \$75,706.<sup>7</sup>

7. As of December 31, 2012, W & W had net utility plant of \$39,934.<sup>8</sup>

8. For the calendar year ended December 31, 2012, W & W had operating revenues of \$39,638 and utility operating expenses of \$46,149, which results in a utility operating loss of \$6,511.<sup>9</sup>

9. JSA is a joint sewer agency that the city of Paducah and McCracken County Fiscal Court created, pursuant to KRS 76.231, "to own, manage, control, and operate regional comprehensive wastewater facilities within McCracken County."<sup>10</sup>

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<sup>4</sup> *Id.* at 1.

<sup>5</sup> See Case No. 2006-00548, *Application of W & W Service Company for Transfer of Ownership* (Ky. PSC Mar. 6, 2007).

<sup>6</sup> Annual Report at 11.

<sup>7</sup> *Id.* at 2-3.

<sup>8</sup> *Id.* at 4.

<sup>9</sup> *Id.* at 8.

<sup>10</sup> City of Paducah, Ky. Ordinance No. 98-5-5927 § 1 (Aug. 25, 1998); McCracken County Fiscal Court Ordinance No. 93-3 § 1 (Sept. 14, 1998).

10. A seven-member board governs JSA. The Paducah City Commission and McCracken County Fiscal Court separately appoint three members each to this board. They jointly appoint the seventh member of this board.<sup>11</sup>

11. JSA owns and operates three sewage treatment plants with a combined wastewater treatment capacity of 10.91 million gallons per day.<sup>12</sup>

12. JSA owns and operates a sewage collection network that consists of 336.71 miles of sewer collection mains, 56.54 miles of sewer interceptor mains, 5,120 manholes, and 81 lift stations.<sup>13</sup>

13. JSA employs 28 persons.<sup>14</sup> The Kentucky Energy and Environmental Cabinet has certified four of these employees as wastewater treatment plant operators and two of these employees as wastewater collection system operators.<sup>15</sup>

14. For the fiscal year ended June 30, 2013, JSA reported total assets of \$77,610,943<sup>16</sup> and total liabilities of \$19,766,152.<sup>17</sup>

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<sup>11</sup> City of Paducah, Ky. Ordinance No. 98-5-5927 § 2; McCracken County Fiscal Court Ordinance No. 93-3 § 2.

<sup>12</sup> Kentucky Infrastructure Authority, *Kentucky Wastewater Management Plan* (Apr. 2013) 743-745, available at [http://kia.ky.gov/NR/rdonlyres/9a094655-E931-4A98-8F07-914CE0A50D2E/0/CW\\_ManagementPlan\\_State\\_062513.pdf](http://kia.ky.gov/NR/rdonlyres/9a094655-E931-4A98-8F07-914CE0A50D2E/0/CW_ManagementPlan_State_062513.pdf); Joint Applicants' Response to Commission Staff's First Request for Information, Item 13 (filed Feb. 19, 2014).

<sup>13</sup> *Kentucky Wastewater Management Plan* at 743–745.

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

<sup>15</sup> Joint Applicants' Response to Commission Staff's First Request for Information, Item 15 (filed Feb. 19, 2014).

<sup>16</sup> Application, Ex. E at 13.

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

15. As of June 30, 2013, JSA had net utility plant capital assets of \$62,654,717.<sup>18</sup>

16. For the fiscal year ended June 30, 2013, JSA reported total operating revenues of \$6,971,035 and total operating expenses of \$6,488,699.<sup>19</sup>

17. JSA has entered into a Consent Decree with the Kentucky Environmental and Public Protection Cabinet that will require JSA to bring combined and sanitary sewer overflows into compliance with Federal and State guidelines. JSA anticipates incurring significant costs to bring its sewer and storm water collection systems into compliance.<sup>20</sup>

18. As of February 19, 2014, with the exception of the litigation noted in Finding 17, JSA had no outstanding legal or administrative actions in which it is a party and which involve the manner in which it operates its sewage treatment and collection facilities.<sup>21</sup>

19. Since 2008, the Kentucky Department for Environmental Protection (“KDEP”) has issued two notices of violation against JSA related to its sewer operations. JSA resolved the issues arising out of these violations, and the KDEP has either

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<sup>18</sup> *Id.* at 21.

<sup>19</sup> *Id.* at 14.

<sup>20</sup> *Environmental and Public Protection Cabinet v. Paducah McCracken County Joint Sewer Agency*, No. 07-CI-1252 (Franklin Cir. Ct. Ky. Aug. 16, 2007); Joint Applicants’ Response to Commission Staff’s First Request for Information, Item 1 (filed Feb. 19, 2014).

<sup>21</sup> Joint Applicants’ Response to Commission Staff’s First Request for Information, Item 1 (filed Feb. 19, 2014). JSA is a defendant in an action regarding the extension of service to certain real estate developments.

rescinded the notice of violation or determined that no formal enforcement action should be taken.<sup>22</sup>

20. Since January 1, 2008, KDEP has issued seven notices of violation against W & W. On November 8, 2013, KDEP Division of Enforcement, issued a demand letter requiring that fines be paid based on six violations issued between November 8, 2008, and February 1, 2013. A notice of violation issued December 27, 2013, has not been resolved.<sup>23</sup>

21. On December 12, 2013, W & W and JSA executed an agreement for the transfer of ownership and control of certain facilities that W & W owns.<sup>24</sup> This agreement provides:

a. W & W will transfer to JSA and JSA will assume responsibility for operating the sewage collection and treatment facilities that presently serve the Terre Verte Subdivision.<sup>25</sup>

b. The proposed transfer includes all sewage collection and treatment facilities and equipment, all easement rights, and all contract rights that are used to provide sewer service to Terra Verte Subdivision, but does not involve transfer of ownership of the sewage treatment plant serving Terra Verte Subdivision.<sup>26</sup>

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<sup>22</sup> *Id.*, Item 2.

<sup>23</sup> Joint Applicants' Response to Commission Staff's First Request for Information, Item 3 (filed Feb. 19, 2014).

<sup>24</sup> Joint Application, Ex. B.

<sup>25</sup> Agreement ¶ 1.1

<sup>26</sup> *Id.*

c. Upon completion of the proposed transfer, JSA will assume full control of the operations of the facilities and have full responsibility for providing quality and adequate sewage treatment services.<sup>27</sup>

d. Upon the transfer of control, JSA will have full responsibility to repair, replace, and otherwise maintain the facilities and will operate and maintain the facilities in accordance with its general practices and standards which JSA uses for its other customers.<sup>28</sup>

e. Any increases in the rates for sewer service to present W & W customers will be based on the same percentage of increase made to the rates of all other JSA customers.<sup>29</sup>

f. W & W will retain ownership of the sewage treatment plant that presently serves Terra Verte Subdivision and will be responsible for decommissioning that plant.<sup>30</sup>

22. JSA's existing sewer collection mains are within approximately 170 feet of existing W & W sewer mains that serve Terre Verte Subdivision.

23. Upon the transfer of control, JSA intends to survey, design, and construct a collector sewer from current infrastructure to W & W. The estimated cost of this extension will exceed \$50,000.<sup>31</sup>

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<sup>27</sup> Agreement ¶ 8.1

<sup>28</sup> *Id.*

<sup>29</sup> Agreement ¶ 8.2.

<sup>30</sup> Agreement ¶ 1.1

<sup>31</sup> Joint Applicants' Response to Commission Staff's First Request for Information, Item 6 (filed Feb. 19, 2014).

24. Upon the transfer of control, JSA will charge the residents of Terre Verte Subdivision the same rates that it assesses for all other JSA customers.<sup>32</sup>

25. Upon the proposed transfer, W & W customers who reside within the Terre Verte Subdivision and have a monthly water usage of 5,000 gallons per month will see an increase in their rates for sewer service. W & W customers currently pay a flat monthly rate of \$16.74. After the transfer, W & W customers will be billed based on water usage. The monthly bill of a customer that uses 5,000 gallons per month will be \$21.75.<sup>33</sup>

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

1. W & W is a utility subject to Commission jurisdiction.<sup>34</sup>
2. JSA is a “corporation”<sup>35</sup> and a “person”<sup>36</sup> for purposes of KRS Chapter 278.<sup>37</sup>

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<sup>32</sup> Agreement ¶ 8.2

<sup>33</sup> Joint Applicants' Response to Commission Staff's First Request for Information, Item 7 (filed Feb. 19, 2014).

<sup>34</sup> KRS 278.010(3)(f).

<sup>35</sup> See KRS 278.010(1) (providing that a corporation “includes private, quasipublic, and public corporations, and all boards, agencies, and instrumentalities thereof, associations, joint-stock companies, and business trusts”). Joint sewer agencies are an alternative to a metropolitan sewer district and may possess all the powers granted to a metropolitan sewer district. KRS 76.231. Metropolitan sewer districts are considered public corporations. See *Calvert Investments v. Louisville & Jefferson County Metropolitan Sewer District*, 805 S.W.2d 133 (Ky. 1991), *Fawbush v. Louisville & Jefferson County Metropolitan Sewer Dist.*, 240 S.W.2d 622, 623 (Ky. 1951). As they have the same form and powers as metropolitan sewer districts, joint sewer agencies are public corporations.

<sup>36</sup> See KRS 278.010(2) (providing that a person includes “natural persons, partnerships, corporations, and two (2) or more persons having a joint or common interest”).

<sup>37</sup> *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).

3. 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 JSA is a person and is acquiring ownership of W & W’s sewage collection facilities, this statute is applicable to and requires Commission approval of the proposed transfer.

4. 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 JSA is a corporation and is acquiring control of W & W’s utility operations through the acquisition of its sewer collection facilities, this statute is applicable to and requires prior Commission approval of the transfer of those facilities.

5. In view of its financial assets and its status as a political subdivision, JSA has sufficient financial integrity to ensure the continuity of utility service.

6. The consolidation of the Terra Verte Subdivision sewer treatment and collection facilities into JSA’s sewage collection and treatment facilities is consistent with the Commonwealth’s policy of promoting the consolidation of wastewater systems and the creation of regionalized wastewater treatment facilities.<sup>38</sup>

7. The proposed transfer is in accordance with law, for a proper purpose, and consistent with the public interest.

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<sup>38</sup> KRS 224A.300(1).



8. JSA has the financial, technical, and managerial abilities to provide reasonable service to those persons that W & W's Terra Verte Subdivision facilities currently serve.

9. Provided that the transfer is conditioned upon the conditions set forth in ordering paragraphs 2 through 5 of this Order, the proposed transfer is consistent with the public interest.

10. Upon completion of the proposed transfer, the Terra Verte Subdivision sewage treatment and collection 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 5 of this Order, the proposed transfer of control of Terre Verte Subdivision sewage treatment and collection system facilities to JSA is approved.

2. W & W and JSA shall notify the Commission in writing of the transfer of assets within ten days of the transfer's occurrence.

3. If W & W and JSA fail to execute and implement the proposed transfer of control by June 30, 2014, this Order shall be deemed void and without legal effect.

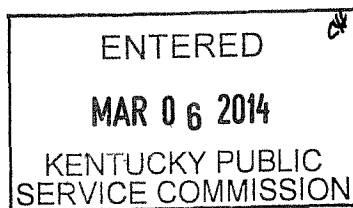
4. No later than March 31, 2014, W & W shall submit to the Commission using the Commission's electronic filing system a financial and statistical report as required by 807 KAR 5:006, Section 4, for its operations for the calendar year ending December 31, 2013.

5. Within 120 days of the date of this Order, W & W shall file with the Commission a financial and statistical report for its operations for the period from January 1, 2014, until the date of transfer of ownership.

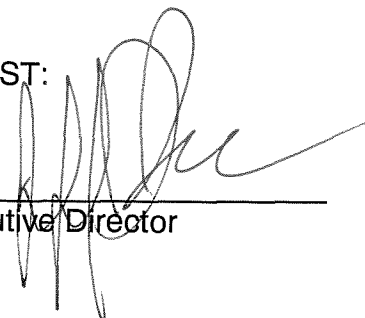
6. Any documents filed pursuant to ordering paragraphs 2 and 5 shall reference this case number and shall be retained in the utility's general correspondence file.

7. 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.

By the Commission



ATTEST:

  
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Executive Director

Case No. 2014-00013

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