

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

JOINT APPLICATION OF BIG SANDY WATER	)	
DISTRICT AND OVERLAND DEVELOPMENT	)	
INC. FOR APPROVAL OF TRANSFER OF THE	)	CASE NO.
OVERLAND WATER SYSTEM INCLUDING	)	2015-00351
WATER LINES AND MAINS TO BIG SANDY	)	
WATER DISTRICT	)	

ORDER

On October 26, 2015, the Commission received a joint application submitted by the Big Sandy Water District (“Big Sandy District”) and Overland Development Inc. (“Overland”) requesting approval of a proposed transfer of ownership and control of the Overland water system to Big Sandy District. The Commission determined that the joint application met the minimum filing requirements and accepted it for filing on October 26, 2015. No person has sought to intervene in this proceeding.

Big Sandy District

Big Sandy District is a water district organized pursuant to KRS Chapter 74, and it owns and operates facilities that distribute water to approximately 4,634 customers in Boyd, Carter, Johnson, and Lawrence counties, Kentucky.<sup>1</sup> Pursuant to KRS 278.015, Big Sandy District is subject to the jurisdiction of the Commission in the same manner as any other utility defined in KRS Chapter 278.

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<sup>1</sup> *Annual Report of Big Sandy Water District to the Public Service Commission for the Calendar Year Ended December 31, 2014* (“Big Sandy District 2014 Annual Report”) at 12 and 53.

A five-member board of commissioners manages and controls Big Sandy District.<sup>2</sup> On December 31, 2014, Big Sandy District had total assets of \$13,858,943 and net utility plant of \$12,802,828.<sup>3</sup> On December 31, 2014, Big Sandy District had total long-term debt of \$4,322,762 and total current and accrued liabilities of \$449,188.<sup>4</sup> Big Sandy District purchases the water that it distributes, and, on December 31, 2014, had eight full-time employees and one part-time employee.<sup>5</sup>

### Overland

Overland is a Kentucky for-profit corporation consisting of two divisions: one division is for development and sales of real estate, and a second division is for providing water service to approximately 114 customers in a subdivision in Boyd County, Kentucky, known as Lockwood Estates.<sup>6</sup> Overland owns, controls, operates or manages facilities used for or in connection with the diverting, developing, pumping, impounding, distributing or furnishing of water to or for the public for compensation; therefore, pursuant to KRS 278.010(3)(d), Overland is a utility and is subject to the Commission's jurisdiction.

James C. Taylor owns 100 percent of the voting securities of Overland.<sup>7</sup> On December 31, 2014, Overland had total assets of \$33,735 and net utility plant of

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<sup>2</sup> *Id.* at 16.

<sup>3</sup> *Id.* at 20 and 21.

<sup>4</sup> *Id.* at 22.

<sup>5</sup> *Id.* at 13, 56, and 58.

<sup>6</sup> *Annual Report of Overland Development, Inc., to the Public Service Commission for the Calendar Year Ended December 31, 2014* ("Overland 2014 Annual Report") at 10, 11, and 44.

<sup>7</sup> *Id.* at 14.

\$25,194.<sup>8</sup> On December 31, 2014, Overland had no long-term debt and total current and accrued liabilities of \$27,266.<sup>9</sup> Overland purchases all of the water that it distributes from Big Sandy District, and, on December 31, 2014, Overland had one full-time employee.<sup>10</sup>

#### Summary of the Proposed Transaction

Overland proposes to sell its water operation assets that serve Lockwood Estates, which includes water lines and approximately 116 meters, to Big Sandy District for \$100,000.<sup>11</sup> Per the Memorandum of Agreement filed with the joint application, Big Sandy District will make an initial payment of \$50,000 within seven business days of the Commission's approval of the joint application.<sup>12</sup> Big Sandy District also agrees to pay Overland an additional \$50,000 payable at the rate of \$833.33 per month for 60 consecutive months.<sup>13</sup> Per the Memorandum of Agreement, these monthly payments are for consulting services by Overland to Big Sandy District, and the services are to be provided during the 60-month period in which the payments are being made.<sup>14</sup>

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<sup>8</sup> *Id.* at 15.

<sup>9</sup> *Id.* at 16.

<sup>10</sup> *Id.* at 12 and 48.

<sup>11</sup> Joint Application at Exhibit A – Memorandum of Agreement.

<sup>12</sup> *Id.* The Memorandum of Agreement also identifies December 31, 2015, and January 1, 2016, as possible dates by which the payment could take place; however, because of the passage of time since the execution of the Agreement, these dates are no longer applicable in determining when the payment will take place.

<sup>13</sup> *Id.* The Memorandum of Agreement states that Big Sandy District will pay Overland \$853.33 per month for 60 months. During an informal conference, Commission Staff identified this amount as a typographical error. See Informal Conference Memorandum (Ky. PSC filed Dec. 17, 2015) at 2. This Order utilizes the amount that corresponds to 60 monthly payments totaling \$50,000.

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

### Relevant Legal Requirements

KRS 278.020(5) states:

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(6) states in pertinent part:

No 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.

...

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.

### Discussion

The Commission finds that Big Sandy District and Overland are each subject to the Commission's jurisdiction and that, pursuant to KRS 278.020(5) and (6), the proposed transaction requires the Commission's prior approval. Per KRS 278.020(5), the joint applicants must demonstrate that Big Sandy District has the financial, technical, and managerial abilities to provide reasonable service. Per KRS 278.020(6), the joint applicants must demonstrate that the proposed transaction is in accordance with law, for a proper purpose, and is consistent with the public interest.

We find that Big Sandy District provides water service to approximately 4,634 customers in Boyd, Carter, Johnson, and Lawrence counties, Kentucky.<sup>15</sup> On December 31, 2014, Big Sandy District had total assets of \$13,858,943 and net utility plant of \$12,802,828.<sup>16</sup> On December 31, 2014, Big Sandy District had total long-term debt of \$4,322,762 and total current and accrued liabilities of \$449,188.<sup>17</sup> We find that Big Sandy District purchases the water that it distributes and, on December 31, 2014, had eight full-time employees and one part-time employee.<sup>18</sup> We further find that Big Sandy District currently provides Overland with the water that the latter distributes to its customers in the Lockwood Estates subdivision.<sup>19</sup> We conclude that Big Sandy District has the financial, technical, and managerial abilities to provide reasonable service to the Overland system, and that the proposed transaction satisfies KRS 278.020(5).

We find that the transaction proposed by Big Sandy District and Overland is permissible pursuant to KRS 74.100 and that the joint applicants have complied with the requirements of KRS 278.020. We conclude that the proposed transaction is in accordance with law. We find that the General Assembly has determined the following:

[R]eduction of the number of operating water districts in the Commonwealth will be in the public interest, in that mergers of such districts will tend to eliminate wasteful duplication of costs and efforts, result in a sounder and more businesslike degree of management, and ultimately result in greater economies, less cost, and a higher degree of service to the

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<sup>15</sup> *Big Sandy District 2014 Annual Report* at 12 and 53.

<sup>16</sup> *Id.* at 20 and 21.

<sup>17</sup> *Id.* at 22.

<sup>18</sup> *Id.* at 13, 56, and 58.

<sup>19</sup> *Overland 2014 Annual Report* at 48.

general public; and that public policy favors the merger of water districts wherever feasible.<sup>20</sup>

We find that while the proposed transaction is not a merger of water districts, it will nonetheless eliminate the wasteful duplication of costs and efforts, result in a sounder and more businesslike degree of management, will result in greater economies and less cost, and will result in a higher degree of service to the general public. Therefore, we conclude that the transaction is for a proper purpose and is consistent with the public interest in satisfaction of KRS 278.020(6).

807 KAR 5:011, Section 11(1)(a), requires a utility to file an adoption notice if a change of ownership or control of a utility occurs. We find that the proposed transaction is a change of ownership and control and conclude that Big Sandy District should file an adoption notice in accordance with 807 KAR 5:011, Section 11, adopting, ratifying, and making as its own the rates, rules, classifications, and administrative regulations of Overland to be applicable to the former Overland customers. In furtherance of this requirement, we find that Big Sandy District should establish two divisions, with Division 1 containing the customers of Big Sandy District prior to this approval and Division 2 containing the former customers of Overland.

While we approve the transaction, we find that it is necessary to further discuss the \$50,000 purchase price and \$50,000 payment for consulting fees. Following the accounting requirements of the Uniform System of Accounts ("USoA"), Big Sandy District will record the acquired assets at their net book costs on the date of the transfer. Per the Memorandum of Agreement, the initial payment of \$50,000 corresponds to the purchase price for the acquired assets. Overland had net utility plant of \$25,194 as of

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<sup>20</sup> KRS 74.361(1).

December 31, 2014.<sup>21</sup> Big Sandy District will, therefore, record an acquisition adjustment for the difference between the assets' net book costs on the date of the transfer and their purchase price. Based upon the assets' net book cost on December 31, 2014, the acquisition adjustment would be \$24,806. A ruling on the reasonableness of the adjustment for ratemaking purposes will be deferred to Big Sandy District's next application for a rate adjustment.

A ruling for ratemaking purposes on the reasonableness of Big Sandy District's payment of \$833.33 per month for 60 months for consulting fees will also be deferred to Big Sandy District's next application for a rate adjustment. We remind Big Sandy District that in order to recover this cost through rates, it will have to demonstrate the relationship between the payments and the delivery of utility service as well as the reasonableness of the amount of the payments.

IT IS HEREBY ORDERED that:

1. The proposed acquisition of the water operation assets of Overland by Big Sandy District is approved, subject to the conditions set forth in ordering paragraphs 2 through 8, as of the date of this Order.
2. Big Sandy District shall notify the Commission of the purchase of Overland's water operations assets within ten days of the completion thereof.
3. Big Sandy District shall establish two divisions. Division 1 shall contain the customers of Big Sandy District prior to this approval. Division 2 shall contain the former customers of Overland.

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<sup>21</sup> *Overland 2014 Annual Report* at 15.

4. Within 30 days of the date of this Order, Big Sandy District shall file an adoption notice in accordance with 807 KAR 5:011, Section 11, adopting, ratifying, and making its own the rates, rules, classifications, and administrative regulations of Overland at the time of the acquisition. The rates, rules, classifications, and administrative regulations of Overland adopted by Big Sandy District shall apply to the new Division 2.

5. Within 30 days of the date of this Order, Big Sandy District shall file with the Commission the journal entries that will be used to record the proposed acquisition.

6. The recording of the acquisition adjustment and its amortization are approved for accounting purposes only. The ratemaking treatment of the adjustment and any associated costs shall be deferred until Big Sandy District's next rate case proceeding.

7. The recording of the consulting payments is approved for accounting purposes only. The ratemaking treatment of the consulting payments shall be deferred until Big Sandy District's next rate case.

8. If there is a material revision to the proposed acquisition, Big Sandy District and Overland shall apply for Commission approval for the revision and no material revision will be effective without prior Commission approval.

9. Any documents filed in the future pursuant to ordering paragraphs 2, 4, and 5 of this Order shall reference the case number and shall be retained in the utility's general correspondence file.

By the Commission

ENTERED  
FEB 10 2016  
KENTUCKY PUBLIC  
SERVICE COMMISSION

ATTEST:

  
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Executive Director

Case No. 2015-00351

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