

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF E.P.S.S., INC. TO)
TRANSFER THE OWNERSHIP OF THE COMPANY TO) CASE NO. 92-371
THE MADISON COUNTY SANITATION DISTRICT #2)

O R D E R

On August 26, 1992, E.P.S.S., Inc. ("E.P.S.S.") applied for Commission approval to transfer its sewage treatment system to Madison County Sanitation District No. 2 ("Madison District").

The Commission, having reviewed the evidence of record and being sufficiently advised, finds that:

1. E.P.S.S. is a Kentucky corporation which owns and operates the subdivision treatment facility plant providing sanitary sewer service for compensation to approximately 84 persons in the Executive Park Subdivision of Madison County, Kentucky.¹

2. E.P.S.S. is a utility subject to Commission jurisdiction. KRS 278.010(3)(f).

3. E.P.S.S.'s sewage treatment plant has a capacity of 30,000 gallons per day and uses an aeration treatment process. It

¹ Annual Report of E. P. Sanitation Company for the year ended December 31, 1989, at 12.

has one pumping station and approximately 3,500 feet of 8-inch clay mains.²

4. E.P.S.S. petitioned and was granted relief under Chapter 7 of the United States Bankruptcy Code.³

5. E.P.S.S. has had a poor record of maintaining and operating its sewage treatment facilities. It has failed to comply with Commission Regulation 807 KAR 5:071, Section 7, which requires a sewage utility to operate and maintain its plant in accordance with accepted good engineering practices.⁴

6. E.P.S.S. has failed to operate its sewage treatment facilities in accordance with the provisions of KRS Chapter 224. Its treatment facilities have discharged effluent of such characteristic that it constituted a hazard to human health and the environment.⁵

7. Because of the prior operating condition of the sewage treatment plant, Franklin Circuit Court on February 13, 1992, appointed Warner Broughman as special receiver of E.P.S.S.'s sewage treatment facilities.⁶

² Id. at 11-12.

³ In Re E.P.S.S., Inc., No. 92-01454 (Bankr. E.D. Ky.).

⁴ E.P.S.S., Inc., Case No. 92-017 (Ky. P.S.C. May 29, 1992) at 5.

⁵ Natural Resources and Environmental Protection Cabinet v. E.P.S.S., No.92-CI-00214 (Franklin Cir. Ct. Feb. 13, 1992) (order appointing receiver).

⁶ Id.

8. On August 20, 1992, Franklin Circuit Court ordered the transfer of E.P.S.S.'s sewage treatment facilities to Madison District.⁷

9. Madison District, as a sanitation district organized under the provisions of KRS Chapter 220, is a political subdivision of the Commonwealth. KRS 220.110.

10. In view of its status as a political subdivision of the Commonwealth, Madison District has sufficient financial integrity to ensure the continuity of sewage service. It need not present a copy of a valid third-party beneficiary agreement guaranteeing the continued operation of the sewage treatment facility to be transferred. 807 KAR 5:071, Section 3(1)(a).

11. Madison District has employed a certified wastewater treatment operator to operate and maintain the sewage treatment plant serving the Executive Park Subdivision.

12. Madison District has the financial, technical, and managerial abilities to provide reasonable utility service to the residents of the Executive Park Subdivision.

13. Sanitation districts are not utilities within the meaning of KRS 278.010(3)(f) nor subject to Commission jurisdiction.⁸

⁷ Natural Resources and Environmental Protection Cabinet v. E.P.S.S., No. 92-CI-00214 (Franklin Cir. Ct. Aug. 20, 1992).

⁸ Letter from Forest M. Skaggs, Executive Director of Ky. Pub. Serv. Comm'n, to all Sanitation Districts under Commission jurisdiction (April 5, 1988).

IT IS THEREFORE ORDERED that:

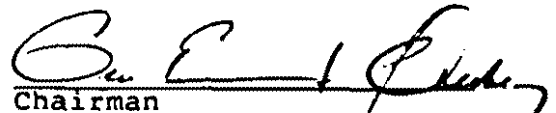
1. The proposed transfer of sewage treatment facilities from E.P.S.S. to Madison District is approved.

2. Within 10 days of the date of completion of transfer, Madison District shall advise the Commission in writing of the transfer's completion.

3. Upon completion of the transfer, Madison District will not be subject to Commission jurisdiction.

Done at Frankfort, Kentucky, this 2nd day of October, 1992.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director