

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF THE LOUISVILLE)	
WATER COMPANY FOR APPROVAL OF)	CASE NO.
MERGER AND ACQUISITION OF OWNERSHIP)	2000-306
OF KENTUCKY TURNPIKE WATER DISTRICT)	

O R D E R

On June 15, 2000, the Louisville Water Company filed its Verified Application (the "Application") for approval of its proposed acquisition of ownership of Kentucky Turnpike Water District, Divisions 1 and 2 ("Kentucky Turnpike") pursuant to KRS 278.020(4) and (5). KRS 278.020(4) states that no person shall acquire ownership or control of any utility under Commission jurisdiction without prior Commission approval. The Commission is to grant such approval if the acquirer has the financial, technical, and managerial abilities to provide reasonable service. KRS 278.020(5) requires prior Commission approval of the acquisition of any utility furnishing utility service in Kentucky, and provides that the Commission shall approve such acquisition when the same is to be made in accordance with law, for a proper purpose, and in accordance with the public interest. Kentucky Turnpike is a utility furnishing water service in Bullitt County, Kentucky, pursuant to KRS 278.010. Accordingly, the acquisition at issue may not take place without Commission approval.

Pursuant to KRS 278.020(5), a Commission decision is due within 60 days of the filing of an application to transfer ownership or control of a utility unless the acquirer agrees to a later date. This matter was extended an additional 30 days pursuant to

submission by the Louisville Water Company, on August 11, 2000, of its waiver of the 60-day deadline.

On August 14, 2000, the Louisville Water Company submitted its Motion for Leave to Amend Verified Petition, to which is attached a fully-executed copy of its Agreement regarding the transfer (the "Agreement"). The Agreement replaces the draft document submitted with the original application. Because the Agreement contains the terms to which the parties have actually agreed regarding the transaction at issue, the motion of the Louisville Water Company to amend its petition should be granted.

On July 13, 2000, the Commission granted the motion of the Attorney General to intervene. On August 17, 2000, Kentucky Turnpike also requested intervention, citing its interest in the matter and its support of the application. Kentucky Turnpike also requests an informal conference at an "appropriate time" to discuss the transfer. Kentucky Turnpike should contact the Executive Director of the Commission to set a time to meet with Staff in regard to issues regarding the transfer and this Order. To date, no party to this case has requested a hearing or has objected to the application. The record is complete and the matter is ripe for decision.

The Louisville Water Company, a municipally owned corporation governed by the Board of Water Works pursuant to KRS 96.230 through 96.310, has submitted with its application numerous documents attesting to its financial, technical, and managerial abilities to provide service. Those documents include its 1999 annual report and information regarding the qualifications of its corporate officers. Louisville Water Company also points out that it has, since 1968, operated Kentucky Turnpike Division 1. Pursuant to KRS 278.020(4), Louisville Water Company clearly possesses the financial,

technical, and managerial abilities to provide reasonable utility service, as this Commission previously has found. However, given the broader public interest standard of KRS 278.020(5), and given the unusual nature of some aspects of the transaction at issue, the Commission's inquiry may not end there. One aspect of the transaction requires additional consideration: issues related to the transfer of a jurisdictional utility to a nonjurisdictional one while Commission-ordered obligations to Kentucky Turnpike's customers remain outstanding.

Refund Obligations of Kentucky Turnpike

On June 23, 2000, in Case No. 99-237,¹ the Commission issued an Order adopting a Settlement Agreement entered into by Commission Staff, Kentucky Turnpike, and certain Kentucky Turnpike officers, thereby concluding certain judicial proceedings as well as Commission proceedings concerning allegedly unauthorized construction by Kentucky Turnpike and unauthorized collection of customer participation fees. The Settlement Agreement and Order require, inter alia, refund of at least \$39,270 to affected customers on a pro rata basis annually until the total of \$196,350 has been refunded. To date, Kentucky Turnpike has not begun to pay these refunds.

The Settlement Agreement also provides procedures to be followed in the event of a transfer of Kentucky Turnpike's facilities and assets to an entity whose retail utility operations are not subject to the Commission's jurisdiction:

In the event that KTWD [Kentucky Turnpike Water District] transfers its facilities and assets to an entity whose retail utility operations are not subject to Public Service Commission's jurisdiction, the remaining amount

¹ Case No. 99-237, Application of Kentucky Turnpike Water District for a Certificate of Public Convenience and Necessity to Construct a Water Main Extension to the Nichols Area of Bullitt County, Kentucky, Final Order dated June 23, 2000.

of unrefunded fees shall be refunded no later than 30 days prior to the proposed effective date of such transfer unless KTWD provides adequate assurance to the Public Service Commission that the unrefunded fees will be distributed in accordance with the terms of this Settlement Agreement.

The retail operations of the Louisville Water Company are not, pursuant to KRS 278.010, subject to the Commission's jurisdiction. Accordingly, the provisions of the Settlement Agreement providing for this contingency have become operative, and approval of the transfer should be conditioned upon compliance with these provisions.

Terms of the Transfer

In its initial application, the Louisville Water Company submitted a Statement of Intent dated February 17, 2000 ("Statement of Intent"),² and a draft Merger Agreement proposed to Kentucky Turnpike on May 31, 2000.³ The terms of the Statement of Intent include representations by the Louisville Water Company that it will install system improvements in Bullitt County, including an I-65 transmission main system, distribution system improvements in both Kentucky Turnpike Division 1 and Division 2, and distribution mains in areas that are currently unserved.⁴ These representations also appear in the parties' Agreement filed August 14. In addition, the Agreement provides for an advisory board, to be comprised initially of current Kentucky Turnpike water commissioners, that will advise the Louisville Water Company Board of Water Works on issues related to Kentucky Turnpike service areas until the system improvements

² Application, Exhibit E.

³ Application, Exhibit F.

⁴ Statement of Intent, 3-6 and accompanying exhibits.

outlined in the Statement of Intent have been completed.⁵ These and other terms of the Agreement and Statement of Intent, which include the treatment of rates for Kentucky Turnpike Divisions 1 and 2, are in the public interest and do not appear to violate any regulatory principle.

The Commission notes that the Statement of Intent provides that, if the parties have not executed a final agreement by July 1, 2000, the Statement of Intent is void unless the date is extended in writing by both Kentucky Turnpike and the Louisville Water Company. Such extensions were, in fact, entered into by the parties.

The Commission having reviewed the record and having been sufficiently advised, IT IS THEREFORE ORDERED that:

1. The motion of the Louisville Water Company to amend its application is granted.
2. The motion of Kentucky Turnpike to intervene is granted.
3. The transfer of the assets of Kentucky Turnpike Water District, Divisions 1 and 2, to the Louisville Water Company, pursuant to the terms of the Agreement filed August 14, 2000, is hereby approved, subject to the following:
 - a. Within 30 days of the effective date of the proposed transfer, Kentucky Turnpike shall refund \$196,350 in accordance with the Commission's Order of June 23, 2000, in Case No. 99-237; or
 - b. The Louisville Water Company shall post with the Commission a bond in the amount of \$196,350 guaranteeing payment of Kentucky Turnpike's obligations as set forth in the Commission's Order of June 23, 2000.

⁵ Agreement at 19.

4. Within 10 days of the consummation of the transfer approved herein, Louisville Water Company shall so notify the Commission.

5. Until the transfer of ownership occurs, the Commission shall retain jurisdiction over Kentucky Turnpike's operations and Kentucky Turnpike shall continue to comply with all Commission Orders and regulations.

6. Kentucky Turnpike shall file an annual report for the year 2000 which reflects its operations until the transfer of its assets to the Louisville Water Company.

Done at Frankfort, Kentucky, this 6th day of September, 2000.

By the Commission

ATTEST:


Executive Director