

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION FOR TRANSFER OF OWNERSHIP OF)
HILLVIEW SEWERAGE SYSTEM PLANT #1, INC.,)
HILLVIEW SEWER PLANT #2, INC. AND HILLVIEW) CASE NO. 2001-143
SEWER PLANT #3, INC. TO BULLITT COUNTY)
SANITATION DISTRICT)

ORDER

On May 21, 2001, Hillview Sewerage System Plant #1, Inc., Hillview Sewer Plant #2, Inc. and Hillview Sewer Plant #3, Inc. ("Hillview") and Bullitt County Sanitation District ("BCSD") (or "Joint Applicants") applied for Commission approval of the transfer of Hillview's shares and assets to BCSD. The Attorney General is the only intervenor in this case.

On June 21, 2001, Commission Staff propounded interrogatories and requests for documents to the Joint Applicants. On July 3, 2001, BCSD filed a waiver of statutory time period to allow it additional time to respond to data requests. By Order dated July 13, 2001, the Commission extended the statutory time period in accordance with BCSD's agreement. On July 3, 2001, the Attorney General stated that he would not offer testimony at the hearing of this matter and that he did not specifically request a hearing.

Having considered the evidence of record and being otherwise sufficiently advised, the Commission finds that:

1. Hillview is a Kentucky corporation that owns and operates sewage treatment facilities in Bullitt County, Kentucky. Its principal office is located at 386 Smith Lane, Louisville, Kentucky. James F. Wethington is the president of the 3 corporations.¹ Hillview Plant #1 serves 533 residential and 16 commercial customers.² Hillview Plant #2 serves 811 residential customers and 1 commercial customer.³ Hillview Plant #3 serves 420 residential customers.⁴

2. Hillview's plants 1, 2 and 3 sewage treatment facilities consist of sewage treatment plants with a maximum daily treatment capacity of 225,000, 317,000 and 148,000 gallons per day, respectively.

3. Hillview is not subject to regulation by a metropolitan sewer district.

4. Hillview is a utility that is subject to Commission jurisdiction. KRS 278.010(3)(f).

5. As of December 31, 2000, the Hillview plants had net book values including the original cost of plant assets, accumulated depreciation and contributions in aid of construction, but excluding previously recorded acquisition adjustments, of: Plant #1 - \$9,759; Plant #2 - \$12,356; and Plant #3 – (\$6,091).⁵

¹ Petition, para. 1; Annual Reports of Hillview Sewerage Plant #1, Inc., Hillview Sewer Plant #2, Inc. and Hillview Sewer Plant #3, Inc. Hereinafter "Annual Reports" shall refer collectively to the annual reports of the 3 Hillview corporations, unless stated otherwise.

² Hillview Plant #1 Annual Report.

³ Hillview Plant #2 Annual Report.

⁴ Hillview Plant #3 Annual Report.

⁵ Annual Reports.

6. As of December 3, 2000, Hillview had the following plant acquisition adjustments recorded on its books: Plant #1 - \$160,224; Plant #2 - \$93,766; and Plant #3 - \$105,891.⁶

7. As of December 31, 2000, Hillview had the following long-term debt: Plant #1 - \$144,264; Plant #2 - \$113,044; and Plant #3 - \$70,908.⁷

8. For the year ended December 31, 2000, Hillview reported the following net operating losses: Plant #1 - \$22,940; Plant #2 - \$58,007; and Plant #3 - \$9,921.⁸

9. BCSD is a sanitation district established by Ordinance 97-11 of the Bullitt County Fiscal Court⁹ created pursuant to KRS 67.715 and 67.083.¹⁰ BCSD does not operate any sewage treatment systems at this time.¹¹

10. BCSD's territory includes all areas of Bullitt County, Kentucky, exclusive of the cities of Shepherdsville, Lebanon Junction, Pioneer Village, Fox Chase, Mt. Washington, Hebron Estates and the Fort Knox Military Reservation.¹²

11. Ordinance 97-11 authorizes BCSD to exercise the powers set forth in KRS Chapter 220 and for the purposes set forth in KRS 220.030, "which include providing for the collection of sewage and other liquid wastes produced within the district; and

⁶ Annual Reports.

⁷ Annual Reports, p. 3.

⁸ Annual Reports, p. 8.

⁹ Petition, para. 2.

¹⁰ Response to Interrogatory No. 7.

¹¹ Response to Interrogatory No. 6.

¹² Ordinance 97-11.

incident to such purposes and to enable their accomplishment, to construct, with all appurtenances thereto, laterals, trunk sewers, intercepting sewers, siphons, pumping stations, treatment and disposal works, to maintain, operate and repair same, and do all other things necessary for the fulfillment of the purposes of KRS 220.010 to 220.540.” Bullitt County, Ky. Fiscal Court Ordinance No. 97-11, Section 2 (April 1, 1997).

12. As of March 31, 2001, BCSD had \$2,243.04 in its checking account and \$10,356.98 in its money market investment. BCSD also attached to its petition financial records of Bullitt County government stating that as of March 31, 2001, the county had cash on hand in the amount of \$2,478,506.19.¹³

13. BCSD will file an application to amend Hillview’s KPDES permits.¹⁴

14. BCSD currently contracts with Derrick Engineering, Inc. for its engineering services, and will maintain this relationship. BCSD is currently searching for a supervisor for this system.¹⁵ During the interim it will employ James F. Wethington, President of Hillview, as a consultant until it hires a supervisor.¹⁶ BCSD will contract with Vernon Clements for operation services until a permanent certified operator is employed.¹⁷

¹³ See Exhibits to Petition.

¹⁴ Response to Interrogatory No. 11(b).

¹⁵ Petition, para. 3.

¹⁶ Id. BCSD will pay James F. Wethington \$500 per week.

¹⁷ Id. See Response to Interrogatory No. 10.

15. On April 27, 2001, the Joint Applicants entered into a stock purchase agreement whereby BCSD would purchase all of the stock of the 3 Hillview corporations and a fourth corporation, F&W Operation, Inc.¹⁸

16. BCSD will pay \$992,838 for the stock of these four companies.¹⁹ The price is allocated as follows: Plant #1 - \$354,815; Plant #2 - \$406,604; Plant #3 – \$221,419; and F&W Operation, Inc. - \$10,000.²⁰

17. Negotiations between the parties began in 1999 and involved several offers. James F. Wethington negotiated for Hillview; Kenny Stout, Chairman of BCSD and David Derrick, Engineer, negotiated on behalf of BCSD.²¹

18. BCSD will fund the purchase price through grants from the Kentucky General Assembly in House Bill 502.²² The Kentuckiana Regional Planning and Development Agency (“KIPDA”) assisted BCSD through the appropriation process. KIPDA has requested the funds be released and the State Clearinghouse is processing the grant.²³

¹⁸ Stock Purchase Agreement.

¹⁹ Id., para. 2. This price may increase or decrease by the corresponding amount the accounts receivable are greater or lesser than \$42,000. Id.

²⁰ Id.

²¹ Response to Interrogatory No. 3.

²² Petition, para. 3. House Bill 502 is known generally as the “Budget Bill.” BCSD is the beneficiary of two grants in House Bill 502. The first is designated Project 70 – Bullitt County Water and Sewer Line expansion and is in the amount of \$2,000,000. The second is designated Project 71 – Brooks Sewer Plants and is in the amount of \$300,000.

²³ Response to Interrogatory No. 5.

19. The Finance and Administration Cabinet, acting through the Kentucky Infrastructure Authority (“KIA”), will administer the grant. There are no provisions in either of the memoranda of understanding requiring BCSD to repay this grant.²⁴

20. BCSD will charge the current rates set forth in Hillview’s tariffs.²⁵

21. James F. Wethington, the president of Hillview, stated that a fair estimate of the depreciated current cost to build similar treatment and collection plants would be \$8 per gallon per day for treatment capacity and \$25 per foot for sewer lines.²⁶ Based upon Mr. Wethington’s estimates, the total value of the plants would be \$5,480,000²⁷ and the sewer lines would be \$1,920,625.²⁸ Therefore, Mr. Wethington estimates the depreciated replacement cost of the 3 systems to be \$7,400,625.²⁹ BCSD notes that the sale price is 12.85 percent of this depreciated replacement cost.³⁰ Neither Hillview nor BCSD offered any documentation in support of this estimate.

²⁴ See Memorandum of Understanding, July 10, 2001 (Project 70) and Memorandum of Understanding, July 10, 2001 (Project 71).

²⁵ Response to Interrogatory No. 12.

²⁶ Response to Interrogatory No. 3. These are depreciated amounts. Mr. Wethington stated that the cost to build a plant would be \$32 per capacity gallon per day for treatment and \$50 per foot for sewer lines.

²⁷ Id. The estimates for each plant are: Plant #1 - \$1,752,000; Plant #2 - \$2,544,000; and Plant #3 - \$1,184,000.

²⁸ Id. The estimates for the sewer lines for each plant are: Plant #1 - \$825,000; Plant #2 - \$710,625; and Plant #3 - \$385,000.

²⁹ Id.

³⁰ Id.

22. David Derrick, BCSD's engineering consultant, estimates that BCSD would pay \$10,000 per customer to replace the plants and lines at current prices. BCSD notes that the sales price equates to \$500 per customer.³¹ Neither Hillview nor BCSD offered documentation in support of this estimate.

23. On July 25, 2001, the Division of Water, Natural Resources and Environmental Protection Cabinet ("DOW"), filed a letter in support of the acquisition. DOW stated that it was "familiar with [BCSD's] activities and have encouraged [it] to achieve ownership of privately owned treatment facilities wherever possible."³²

24. The Commission is concerned with the disparity between the sales price and the book value despite Wethington's and Derrick's valuations. However, BCSD is purchasing the system with a grant from the Kentucky General Assembly, which will not be repaid and will not be passed on to BCSD's customers. KIA, KIPDA, the Bullitt County Fiscal Court and the State Clearinghouse have been involved in this transaction. Had this transaction been funded by any method that required repayment, and possible recovery through rates, this Commission might have taken a different position. Therefore, no utility shall rely upon this Order as precedent supporting unreasonably large acquisition adjustments that are recovered through rates. This acquisition is unlike any other this Commission has approved.

25. BCSD has the financial, technical, and managerial abilities to provide reasonable utility service to Hillview's current customers.

³¹ Id.

³² July 25, 2001 letter from Jack A. Wilson, Director, DOW to Thomas Dorman.

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

27. The decision of the Franklin County Circuit Court in Oldham Co. Sanitation Dist. v. Public Service Commission, Civil Action No. 00-CI-480 (Div. I, June 20, 2001) provides that a sanitation district is subject to this Commission's jurisdiction so long as it is not created pursuant to KRS Chapter 220. As stated previously, BCSD was created pursuant to KRS Chapter 67, and therefore, is not excluded from this Commission's jurisdiction. KRS Chapter 220 confers the authority to establish a sanitation district upon the Commissioner of Sanitation Districts only. KRS 220.020. Therefore, BCSD is subject to this Commission's jurisdiction.

IT IS THEREFORE ORDERED that:

1. The proposed acquisition of Hillview by BCSD is approved.
2. Within 10 days of completion of the transfer, BCSD shall file with the Commission the journal entries used to record the purchase and identify the detailed plant accounts to which the assets are recorded. The plant assets must be recorded at original cost as required by the Uniform System of Accounts.
3. Within 10 days of completion of the transfer, BCSD shall file with the Commission an adoption notice, conforming to the requirements of Administrative Regulation 807 KAR 5:011, Section 15(6). In this notice, BCSD shall adopt and ratify as its own all of Hillview's rates, rules, classifications, and administrative regulations on file with the Commission and effective at the time of the transfer.
4. Within 10 days after the filing of its adoption notice with the Commission, BCSD shall issue and file in its own name Hillview's tariff or such other tariff as it

proposes to put into effect in lieu thereof, in the form prescribed in Administrative Regulation 807 KAR 5:011.

5. Hillview shall be responsible for submitting to the Commission a financial and statistical report, as described in Administrative Regulation 807 KAR 5:006, Section 3, for the period in calendar year 2001 it owned and operated the transferred assets.

6. BCSD shall be responsible for submitting to the Commission a financial and statistical report, as described in Administrative Regulation 807 KAR 5:006, Section 3, for the period in calendar year 2001 it owns and operates the transferred assets. This report must be based on accounts set up in conformity with the Uniform System of Accounts. Commission Staff is available to meet with or assist BCSD regarding this accounting system.

7. BCSD shall not be allowed to recover the purchase price or any acquisition adjustment through any rate procedure in the future.

Done at Frankfort, Kentucky, this 2nd day of August, 2001.

By the Commission

ATTEST:


Executive Director