

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE JOINT APPLICATION OF GOSHEN UTILITIES,)
INC. AND OLDHAM COUNTY SANITATION DISTRICT)
FOR APPROVAL OF THE TRANSFER OF) CASE NO. 2001-403
WASTEWATER TREATMENT FACILITIES)
PURSUANT TO ASSET PURCHASE AGREEMENT)
BETWEEN THE PARTIES)

ORDER

Goshen Utilities, Inc. (Goshen) and Oldham County Sanitation District (Oldham District) have jointly applied for Commission approval of the proposed transfer of Goshen s wastewater collection and treatment assets and operations to Oldham District.¹

Having considered the application and being otherwise sufficiently advised, the Commission finds that:

1. Goshen, a Kentucky corporation, owns and operates sewage collection and treatment facilities in Oldham County, Kentucky that serve approximately 1272 customers for compensation in and around the cities of Goshen and Prospect, Kentucky.²

2. AquaSource Utility, Inc., a Texas corporation, owns all of Goshen s issued and outstanding stock. See AquaSource Utility, Case No. 99-303 (Ky. P.S.C Nov. 5, 1999).

¹ The Attorney General has intervned in this matter. He has voiced no objection to the proposed transfer or requested a hearing in this matter.

² Annual Report of Goshen Utilities, Inc. to the Public Service Commission of Kentucky for the Year Ended December 31, 2000 at 1 and 8.

3. Goshen's sewage collection and treatment facilities include two sewage treatment plants with a total maximum daily treatment capacity of 450,000 gallons, 7 pumping stations, and 108,391 linear feet of sewage mains.³

4. Goshen is not subject to regulation by a metropolitan sewer district.

5. On November 14, 2001, Goshen and Oldham District executed an Agreement for Purchase and Sale of Wastewater Assets (the Agreement). The Agreement provides for the transfer to Oldham District of most of Goshen wastewater collection and treatment assets, including all collection and treatment facilities, licenses and certificates, easements, customer records, engineering plans and drawings, and customer deposits that are subject to refund. It further provides that Goshen retained all outstanding liabilities related to the wastewater facilities except the obligation to provide utility service, any obligations associated with transferred licenses, certificates, and permits, any obligations related to Goshen Lake and Dam, and any obligations related to transfers of customer deposits. The Agreement further provides that Oldham District will pay \$910,000 at the close of the transaction.

6. Oldham District is a special district⁴ created pursuant to KRS 67.715(2)⁵ to provide for the collection and disposal of sewage and other liquid wastes in Oldham

³ Id. at 12.

⁴ KRS 65.005(1)(a) defines a special district as any agency, authority, or political subdivision of the state which exercises less than statewide jurisdiction and which is organized for the purpose of performing governmental or other prescribed functions within limited boundaries. It includes all political subdivisions of the state except a city, a county, or a school district.

⁵ The county judge/executive or county judges/executive of multi-county districts may, with approval of the fiscal court or fiscal courts, create any special district or abolish or combine any special district, provided the district was created solely by the county judge/executive or county judges/executive or solely by one or more such fiscal courts.

County, Kentucky. Oldham County, Ky. Fiscal Court Ordinance No. 96-830-26 (Dec. 3, 1996) at 1.

7. Oldham District's territory includes all areas of Oldham County, Kentucky, exclusive of the cities of LaGrange and Crestwood. Id. at 1.

8. A board of commissioners whose members are appointed by the Oldham County Judge/Executive and reside within Oldham District's territory control and manage Oldham District's affairs.

9. As of June 30, 2001, Oldham District had total utility plant, including construction work in progress, of \$316,897.

10. As of June 30, 2001, Oldham District reported total assets of \$4,849,248 and total liabilities of \$1,915,000.

11. For the year ended June 30, 2001, Oldham District reported revenues of \$2,071,906 and expenses of \$472,164, resulting in net income of \$1,599,742. Included in Oldham District's reported revenues is a payment of \$741,953 from Oldham County Fiscal Court and a Department of Local Government draw of \$1,041,974.

12. Oldham District currently operates directly or through arrangements with the Louisville-Jefferson County Metropolitan Sewer District (MSD) and private contractors 7 wastewater treatment facilities in Oldham County, Kentucky and has a Kentucky Pollution Discharge Elimination Permit System (KPDES) for each of these facilities.

13. Upon completion of the proposed transaction, Goshen will transfer, with the approval the Kentucky Natural Resources and Environment Protection Cabinet, to Oldham District its KDPEs permit for the sewage collection and treatment facilities.

14. Oldham District currently retains a registered professional engineer with extensive experience in wastewater treatment plant operation and design, and receives planning and management consultation from MSD.

15. The proposed purchase price appears to be in excess of the net book value of the purchased assets.

Based upon these findings, the Commission makes the following conclusions of law:

1. KRS 278.010(3)(f) defines a utility as any person except . . . a city, who owns, controls, or operates or manages any facility used or to be used for or in connection with . . . [t]he collection, transmission, or treatment of sewage for the public, for compensation, if the facility is a subdivision collection, transmission, or treatment facility plant that is affixed to real property and is located in a county containing a city of the first class or is a sewage collection, transmission, or treatment facility that is affixed to real property, that is located in any other county and that is not subject to regulation by a metropolitan sewer district or any sanitation district created pursuant to KRS Chapter 220.

2. Goshen is a utility that is subject to Commission jurisdiction. KRS 278.010(3)(f).

3. Oldham District is a utility that is subject to Commission jurisdiction. KRS 278.010(3)(f). See Oldham County Sanitation District v. Kentucky Public Service Commission, No. 00-CI-00480 (Ky. Franklin Cir. Ct. June 20, 2001); Covered Bridge Utilities, Inc., Case No. 99-496 (Ky. P.S.C. Mar. 13, 2000).

4. KRS 278.020(4) provides:

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.

5. KRS 278.020(5) provides:

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.

6. Oldham District has the financial, technical, and managerial abilities to provide reasonable utility service to those persons that Goshen currently serves.

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

8. When the purchase of utility plant results in a purchase price in excess of the original cost less accumulated depreciation (net book value), the difference between the purchase price and the net book value is accounted for as a plant acquisition adjustment.

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

IT IS THEREFORE ORDERED that:

1. The proposed transfer of assets from Goshen to Oldham District is approved.
2. Within 10 days of completion of the proposed transfer of assets, Goshen and Oldham District shall notify the Commission in writing of the completion of the transfer.
3. Within 10 days of completion of the transfer, Oldham District 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. Any accounting entry reflecting a plant acquisition adjustment shall require prior Commission approval.
4. Within 10 days of completion of the transfer, Oldham District 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, Oldham District shall adopt and ratify as its own all of Goshen's rates, rules, classifications, and administrative regulations on file with the Commission and effective at the time of the transfer.
5. Within 10 days after the filing of its adoption notice with the Commission, Oldham District shall issue and file in its own name Goshen'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.
6. Goshen 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 calendar year 2001 and the period in calendar year 2002 it owned and operated the transferred assets.

7. Oldham District 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 2002 during which it owns and operates the transferred assets.

8. Commission approval of the proposed transfer shall not be considered as approval of any accounting or rate-making treatment for any acquisition adjustment arising from the proposed transfer.

Done at Frankfort, Kentucky, this 14th day of January, 2002.

By the Commission

ATTEST:


Executive Director