

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

JOINT APPLICATION OF LOCKWOOD)	
ESTATES AND OLDHAM COUNTY)	
SANITATION DISTRICT FOR APPROVAL)	CASE NO. 2002-00423
OF THE TRANSFER OF WASTEWATER)	
TREATMENT FACILITIES PURSUANT TO)	
ASSET PURCHASE AGREEMENT)	
BETWEEN THE PARTIES)	

O R D E R

On November 25, 2002, Lockwood Estates Developing Corporation (Lockwood Estates) and Oldham County Sanitation District (OCSD) (collectively Joint Applicants) filed, pursuant to KRS 278.020(4) and (5), an application for Commission approval of OCSD s proposed acquisition of Lockwood Estates wastewater treatment facilities.

PROCEDURE

On December 23, 2002, the Commission granted the Attorney General s motion for full intervention in this proceeding. In the same Order, the Commission established a procedural schedule and directed the Joint Applicants to respond to Commission Staff s First Data Request. The Commission further ordered any party seeking a formal hearing to file a written request for hearing no later than January 6, 2003; however, no request was filed. After completion of discovery, the matter was submitted to the Commission on January 17, 2003.

PROPOSED TRANSACTION

Lockwood Estates, a Kentucky corporation principally located in Crestwood Kentucky, is a utility subject to Commission jurisdiction pursuant to KRS 278.010(3)(f). The company serves approximately 67 wastewater customers in Oldham County, Kentucky and maintains a permitted capacity of 112 units.

OCSD is a sanitation district located in Crestwood, Kentucky. OCSD serves approximately 2,792 residential and commercial customers in Oldham County.¹

On August 14, 2002, Lockwood Estates and OCSD entered into an Asset Purchase Agreement wherein OCSD agreed to purchase Lockwood Estates wastewater treatment assets and business.² The purchase agreement is subject to certain conditions, one of which is Commission approval of the proposed transfer.

STATUTORY PROVISIONS

KRS 278.020(4) provides that no person may acquire or transfer control or ownership of a utility without prior approval by the Commission. The Commission shall approve such a transfer if it determines that the acquirer has the financial, technical, and managerial abilities to provide reasonable service. The Commission must also determine that the acquisition is made in accordance with the law, for a proper purpose, and is consistent with the public interest. KRS 278.020(5) allows the Commission to grant any application in whole or in part upon terms and conditions it deems necessary or appropriate.

¹ Item 4, Joint Applicants Response to Commission Staff s First Data Request.

² Excluded from the proposed acquisition are cash and cash equivalents, accounts receivables as of the closing date, and assets not exclusively used in the sewer business. Joint Application at 3.

After careful consideration and deliberation, the Commission finds that OCSD will meet the standards set forth in KRS Chapter 278. OCSD has provided sufficient evidence to support its assertion that it has the financial, technical, and managerial ability to provide reasonable service to Kentucky consumers.

OCSD has asked this Commission to waive any requirement that OCSD submit a third-party beneficiary agreement guaranteeing continuity of service. In light of OCSD's financial assets and its status as a political subdivision of the Commonwealth, the Commission finds that OCSD has sufficient financial integrity to ensure the continuation of sewage service. Therefore, a copy of a valid third-party beneficiary agreement is not required.³

OCSD has demonstrated that it has the financial ability to provide reasonable service to the customers of Lockwood Estates following the proposed transfer. For the fiscal year ending June 30, 2002, OCSD reported total assets of \$7,112,927 and total liabilities of \$4,026,848. For the same period, total revenues were reported at \$1,209,044 and total expenses at \$983,947 for a change in net assets of \$225,097.

OCSD has also demonstrated the technical and managerial ability necessary to provide reasonable service to Lockwood Estates customers. John M. Bennett, Jr., OCSD's Chief Engineer, will oversee the operation and management of Lockwood Estates wastewater treatment plant and facilities. Mr. Bennett is a registered professional engineer with experience in the operation and design of wastewater

³ Case No. 1989-00338, The Application of DBS Development Corporation For a Certificate of Public Convenience and Necessity to Construct Facilities and Transfer to Boone County Water & Sewer District.

treatment plants.⁴ OCSD will also receive planning and management consultation from the Louisville and Jefferson County Metropolitan Sewer District.⁵ OCSD's management expertise, together with its financial and technical resources, ensures that Lockwood Estates customers will receive safe and reliable service.

Although OCSD has demonstrated that it has the requisite ability to provide reasonable service to Kentucky customers, the Commission wants to ensure that the transaction will be reflected in accordance with the Uniform System of Accounts for Sewer Utilities. The purchase price for the transfer is \$1.00 plus additional consideration described in the Agreement as the provision of sewer service access to Lockwood Estates for lots in addition to the current number up to a maximum of 112 single-family houses. There are 47 lots yet to be developed in Lockwood Estates Subdivision. OCSD will waive capacity charges of \$66,505 (47 lots x \$1,415 capacity charge) for future connection of each of these lots. Therefore, the total purchase price is \$66,506.⁶

Using December 31, 2002 account balances, OCSD's journal entry to reflect the purchase of Lockwood Estates system would be as follows:

Utility Plant in Service	\$109,412	
Plant Acquisition Adjustment	49,082	
Accumulated Depreciation		\$91,988
Other Deferred Credits		66,505
Cash		1

⁴ Exhibit H, Joint Application.

⁵ Joint Application at 3.

⁶ Item 1(a) of the Joint Applicants' Response to Commission Staff's Second Data Request.

When recording the journal entry, OCSD should update the account balances as of the date of the transfer. The amount recorded in Other Deferred Credits represents future capacity charges that will be waived by OCSD in the Lockwood Estates Subdivision. As each connection is made to OCSD's system, Other Deferred Credits should be debited and Capacity Charge Revenue should be credited for the amount of capacity charges waived. The plant acquisition adjustment should be amortized over the remaining life of the assets. The amortization may be recorded in account 406, Amortization of Utility Plant Acquisition Adjustments. However, the Commission finds that the amortization of the acquisition adjustment should be approved in this proceeding for accounting purposes only, with the decision on rate-making treatment deferred to the next rate proceeding.

Because OCSD has acquired numerous treatment facilities in Oldham County, it has multiple effective rates, which differ from the rates currently being charged by Lockwood Estates. Although OCSD asserts that it is not subject to the jurisdiction of the Commission,⁷ it intends to file a notice to adopt the rates, rules, classifications, and administrative regulations of Lockwood Estates effective as of the date of the transfer.⁸ It is OCSD's intention to develop a uniform, county-wide rate for all customers receiving

⁷ There is currently a proceeding pending regarding the Commission's jurisdiction of OCSD. 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. 1999-00496 (Ky. P.S.C. March 13, 2000).

⁸ Application at Paragraphs 7 and 7(c).

service from its facilities and OCSD does not anticipate changing Lockwood Estates rates in the interim.⁹

CONCLUSION

OCSD has provided sufficient evidence to prove that it has the financial, technical, and managerial ability to provide reasonable service to Kentucky customers. The proposed acquisition is made in accordance with law, does not violate any statutory prohibition, and is executed for a proper purpose. The Commission finds that the proposed acquisition is consistent with the public interest and that it will maintain both the level and quality of services currently received by Lockwood Estates customers.

The Commission, having reviewed the evidence of record and having been otherwise sufficiently advised, HEREBY ORDERS that:

1. The application for the approval of OCSD's acquisition of Lockwood Estates is approved.
2. Within 30 days of the date of transfer, the Joint Applicants shall notify the Commission in writing of the completion of the transfer.
3. Within 30 days of the date of the transfer, OCSD shall file a copy of the journal entry recording the transfer.
4. Lockwood Estates shall be responsible for submitting to the Commission a financial and statistical report, as described in 807 KAR 5:006, Section 3, for the calendar year 2002 and the period in calendar year 2003 that it owned and operated the transferred assets.

⁹ Item 7 of the Joint Applicants Response to Commission Staff's First Data Request.

5. Within 30 days of the date of the transfer, OCSD shall file with the Commission an adoption notice, conforming to the requirements of 807 KAR 5:011, Section 15(6).

Done at Frankfort, Kentucky, this 23rd day of January, 2003.

By the Commission

ATTEST:


Executive Director