

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

JOINT APPLICATION OF ASH AVENUE )  
SANITARY SEWER COMPANY AND )  
OLDHAM COUNTY SANITATION DISTRICT )  
FOR APPROVAL OF THE TRANSFER OF ) CASE NO. 2003-00262  
WASTEWATER TREATMENT FACILITIES )  
PURSUANT TO STOCK PURCHASE )  
AGREEMENT BETWEEN THE PARTIES )

O R D E R

On July 7, 2003, Ash Avenue Sanitary Sewer Company ( Ash Avenue ) and Oldham County Sanitation District ( Oldham Sanitation ) (collectively the Joint Applicants ) applied for Commission approval of Oldham Sanitation s purchase of Ash Avenue s wastewater treatment and collection system pursuant to a Stock Purchase Agreement dated July 14, 2003.

On August 8, 2003, Commission Staff propounded interrogatories and requests for production of documents to the Joint Applicants. The Joint Applicants responded to those requests on August 22, 2003. The Commission granted the Attorney General s ( AG ) motion for intervention on July 29, 2003. The AG did not submit any data requests to the Joint Applicants or request a hearing in this matter.

There is pending litigation between Oldham Sanitation and this Commission regarding the Commission s jurisdiction over Oldham Sanitation. In a June 20, 2001 decision, the Franklin Circuit Court ruled that Oldham Sanitation is subject to this Commission s jurisdiction. However, on appeal to the Kentucky Court of Appeals,

Oldham Sanitation was found to be non-jurisdictional to the Commission. The case is now before the Supreme Court of Kentucky on a motion for discretionary review.<sup>1</sup>

Therefore, having considered the application and the evidence of record, the Commission finds that:

1. Oldham Sanitation is a sanitation district created pursuant to an Ordinance of the Oldham County Fiscal Court. Its offices are located at 7311 Highway 329, Suite 542, Crestwood, Kentucky.<sup>2</sup>

2. Oldham Sanitation has purchased several sewage treatment systems in the past, the transfer of which has been approved by the Commission.<sup>3</sup>

3. John Bennett, a licensed engineer in the state of Kentucky, is Oldham Sanitation's chief engineer. His resume states that he has extensive experience in wastewater treatment.<sup>4</sup> Oldham Sanitation's technical and professional employees are unchanged since the Commission issued its decision in Case No. 2002-00423. Oldham Sanitation has obtained all necessary wastewater permits to operate its facilities and will

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<sup>1</sup> See Oldham Co. Sanitation Dist. v. Public Service Commission, Civil Action No. 00-CI-480 (Div. I, June 20, 2001), Court of Appeals 2001-CA-001482-MR, (July 12, 2002).

<sup>2</sup> Application, para. 2; Exhibit D.

<sup>3</sup> Case No. 2001-00403, The Application of Goshen Utilities, Inc. and Oldham County Sanitation District (Order dated January 14, 2002); Case No. 2001-00187, The Application of Mockingbird Valley Sanitation, Inc. and Oldham County Sanitation District (Order dated August 15, 2001); Case No. 2002-00423, Joint Application of Lockwood Estates Developing Corporation and Oldham County Sanitation District (Order dated January 23, 2003).

<sup>4</sup> Application, para. 5, Exhibit H.

obtain all necessary permits for the operation of Ash Avenue's facilities on or before closing.<sup>5</sup>

4. Ash Avenue, a Kentucky corporation, is a private sewer company subject to this Commission's jurisdiction. F.G. Osborne is the president and sole shareholder of Ash Avenue.<sup>6</sup> Ash Avenue is an aboveground package sewage treatment plant built in 1974.

5. Ash Avenue provides wastewater treatment and collection services to 852 customers located in Village Green, Confederate Acres, and Ashbrooke subdivisions in Oldham County, Kentucky and in Fairfield, Woodmont, and Fox Run subdivisions in Jefferson County, Kentucky.<sup>7</sup>

6. Ash Avenue has no employees. Upon transfer Oldham Sanitation's staff will perform all operations of the system.<sup>8</sup>

7. As of December 31, 2002, Ash Avenue reported utility plant of \$344,994 and accumulated depreciation of \$278,696, resulting in net utility plant of \$66,298.<sup>9</sup> In addition, the only liability Ash Avenue reported is a loan of \$95,142 owed to PNC Bank.<sup>10</sup>

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<sup>5</sup> Id., para. 6.

<sup>6</sup> Id., para. 1.

<sup>7</sup> Id., para. 1 and 4.

<sup>8</sup> Id., para. 3.

<sup>9</sup> Ash Avenue 2002 Annual Report at 4.

<sup>10</sup> Id. at 6.

8. For the calendar year ending December 31, 2002, Ash Avenue recorded operating revenues of \$153,345 and utility operating expenses of \$135,238, resulting in net operating income of \$18,107.

9. The Joint Applicants executed an Agreement for Purchase and Sale of Corporate Stock ( Agreement ) on July 14, 2003.<sup>11</sup>

10. Under the terms of the Agreement, Oldham Sanitation will acquire all of Ash Avenue s interest in the company including the wastewater treatment plant, the wastewater collection system, and the pump stations.

11. The Agreement further states that all Ash Avenue debts or liabilities will be paid from proceeds at closing and that Oldham Sanitation will assume none of Ash Avenue s liabilities except as stated in the Agreement.

12. In April of 2000 an independent appraiser hired by Oldham Sanitation performed a property and market investigation and analysis of Ash Avenue s system to determine its value in-use to Oldham Sanitation. This analysis assigned a value of \$680,000 to the system although the appraisal did not include all the real property owned by Ash Avenue being transferred to Oldham Sanitation. Oldham Sanitation states that it used this analysis along with its own internal analysis of Ash Avenue s income and expenses to enter into an arm s length negotiations, which determined the purchase price of \$616,000.<sup>12</sup>

13. Oldham Sanitation is paying \$549,702 above the December 31, 2002 net book value (excluding consideration of Contributions In Aid of Construction of

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<sup>11</sup> See Agreement , Exhibit A.

<sup>12</sup> Response to Interrogatory No. 1, 3 and Agreement.

\$916,574)<sup>13</sup> for Ash Avenue's assets. Oldham Sanitation justified the purchase price stating the acquisition is consistent with its purpose of providing service to Oldham County citizens by acquiring privately owned sewage treatment plants; to improve operations and accountability, and provide for regionalization of sewer services. Oldham Sanitation also referred to the analyses and negotiations in support of the purchase price.<sup>14</sup>

14. When the sale of a utility results in a purchase price greater than 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 in accordance with the Uniform System of Accounts for Sewer Utilities. The proposed journal entry filed by Oldham Sanitation to effect the transfer did not follow this procedure, but instead records plant at the purchase price. The journal entry filed to record the purchase should be prepared in accordance with Utility Plant Instruction Number 4 of the Uniform System of Accounts for Sewer Utilities. Since any acquisition adjustment recorded relates to the utility plant investment, it 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 any future rate proceeding.

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<sup>13</sup> Ash Avenue 2002 Annual Report at 3.

<sup>14</sup> Response to Interrogatory No. 4.

15. In Case No. 9059,<sup>15</sup> the Commission determined that the burden of proof is upon the utility to justify its investment at the price in excess of the net original cost based on economic and quality of service criteria. To meet this burden of proof, the Commission established criteria that a utility must meet to recover any investment in excess of the net original cost (plant acquisition adjustment). To enable recovery through rates, Oldham Sanitation must present evidence to show that the purchase price of Ash Avenue meets the following criteria:

- a. The purchase price was established upon arms length negotiation.
- b. The initial investment, plus the cost of restoring the facilities to required standards, will not adversely impact the overall costs and rates of the existing and new customers.
- c. Operational economies can be achieved through the acquisition.
- d. The purchase price of utility and non-utility property can be clearly identified.
- e. The purchase price will result in overall benefits in the financial and service aspects of the utility s operations.

16. Oldham Sanitation asserts that it is not subject to the jurisdiction of the Commission, but agrees to file the following notices and information with the Commission:

- a. Notice of the completion of the transfer.
- b. Journal entries used to record the purchase of Ash Avenue s assets.

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<sup>15</sup> Case No. 9059, An Adjustment of Rates of Delta Natural Gas Company, Inc., (Ky. P.S.C. Sept. 11, 1985).

c. An Adoption Notice pursuant to 807 KAR 5:011, Section 15(6), adopting Ash Avenue s rates, rules, classification, and regulations for sewer service.<sup>16</sup>

17. Oldham Sanitation states that it will continue to utilize the Louisville Water Company for billing and customer service.<sup>17</sup>

18. Oldham Sanitation states that it intends to develop a system-wide rate for all its sewer customers within 2 years. Oldham Sanitation does not anticipate a rate adjustment within that time.

19. In view of its financial assets and its status as a political subdivision of the Commonwealth, Oldham Sanitation 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.<sup>18</sup>

#### CONCLUSIONS OF LAW

KRS 278.020(4) provides:

No person shall acquire . . . ownership of, or control . . . any utility under the jurisdiction of the commission . . . 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.

KRS 278.020(5) provides:

The commission shall approve any proposed acquisition when it finds that the same is to be made

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<sup>16</sup> Application, para. 7(a)(b)(c).

<sup>17</sup> Application, para. 7(d).

<sup>18</sup> See 807 KAR 5:071, Section 3(1)(a).

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

The Commission has ruled previously that Oldham Sanitation has the financial, managerial, and technical ability to operate acquired sewer systems.<sup>19</sup> Oldham Sanitation has the financial, managerial, and technical abilities to provide reasonable service to Ash Avenue s customers.

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

IT IS THEREFORE ORDERED that:

1. The transfer as proposed by the Joint Applicants is approved as of the date of this Order.
2. Within 30 days of the date of the transfer, Oldham Sanitation shall file its journal entry to record the transfer.
3. Ash Avenue shall be responsible for submitting to the Commission a financial and statistical report, as described in 807 KAR 5:006, Section 3, for the period in calendar year 2003 that it owned and operated the transferred assets.
4. Oldham Sanitation shall immediately notify this Commission of the date the corporation is dissolved.
5. Within 10 days of the date of this Order, Oldham Sanitation shall file an adoption notice in accordance with 807 KAR 5:011.

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<sup>19</sup> See Mockingbird Valley and Lockwood Estates, *supra*.



Done at Frankfort, Kentucky, this 3<sup>rd</sup> day of September, 2003.

By the Commission

ATTEST:

  
Executive Director

Case No. 2003-00262