

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF LAKE FOREST DISPOSAL)
SYSTEMS, LLC FOR AN ORDER APPROVING A) CASE NO. 2004-00094
TRANSFER OF CONTROL AND OWNERSHIP)

ORDER

Lake Forest Disposal Systems, LLC (“Lake Forest”) has applied¹ for Commission approval of its proposed transfer of its assets to the Louisville and Jefferson County Metropolitan Sewer District (“MSD”).²

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

1. Lake Forest, a Kentucky limited liability company, owns and operates a subdivision sewage treatment facility in Jefferson County, Kentucky that serves

¹ MSD was not a signatory to the application and did not participate in this matter. While no statute expressly requires that MSD be a joint applicant or participate in this matter, we have previously noted that the “better practice is for all corporate entities [acquiring control or ownership of a utility] to jointly apply for Commission approval.” Kentucky-American Water Company, Case No. 2002-00018 (May 29, 2002) at 11.

² The only party in this proceeding, besides the Applicant, is the Attorney General. On April 27, 2004, he advised the Commission that he did not intend to request a hearing in this matter and has no objection to the proposed transfer. Beckley Wood Residents Association, a non-profit Kentucky corporation composed of the residents of the Beckley Woods Subdivision of Jefferson County, Kentucky, moved for intervention in this proceeding, but subsequently withdrew its motion.

approximately 1,916 customers in the Beckley Woods and Lake Forest Subdivisions of Jefferson County, Kentucky.³

2. Lake Forest is not subject to the regulation of any metropolitan sewer district.

3. Lake Forest's sewage treatment facilities include a sewage treatment plant with a maximum daily wastewater treatment capacity of 470,000 gallons, 6 lift stations, and 112,322 linear feet of sewer mains of various diameters.⁴ These facilities have been in operation since 1975.

4. As of December 31, 2002, Lake Forest had net utility plant of \$372,495.⁵

5. As of December 31, 2002, Lake Forest had total assets of \$401,207 and total current and accrued liabilities of \$204,203.⁶

6. MSD is a metropolitan sewer district created pursuant to KRS Chapter 76.

7. MSD provides sanitary sewer service and drainage services to approximately 211,589 customers within the Louisville-Jefferson County, Kentucky area.⁷

³ Annual Report of Lake Forest Disposal Systems, LLC to the Public Service Commission for the Year Ended December 31, 2002 at 1 and 12.

⁴ Id. at 11 -12.

⁵ Id. at 2.

⁶ Id. at 3.

⁷ Louisville and Jefferson County Metropolitan Sewer District Comprehensive Annual Financial Report for the Fiscal Year Ended June 30, 2003 at 55.

8. MSD operates 7 large wastewater treatment facilities with a combined designed daily treatment capacity of 153.7 million gallons.⁸

9. MSD also operates 22 small wastewater treatment plants similar in size and design to Lake Forest's wastewater treatment plant.⁹

10. As of June 30, 2003, MSD had net plant of \$1.533 billion, total assets of \$1.772 billion, and total liabilities of \$1.226 billion.¹⁰

11. For the year ending June 30, 2003, MSD had total revenues of \$137.8 million and total operating expenses of \$52.04 million.

12. MSD has been in existence since 1946.

13. An eight-member board of commissioners, each of whom is appointed by the mayor of Louisville Metro government and approved by the Louisville Metro Council, governs MSD.

14. Lake Forest proposes to transfer to MSD, and MSD proposes to acquire, all utility assets and liabilities of Lake Forest pursuant to an agreement between these entities. This agreement provides, *inter alia*, that:

a. On January 1, 2005, Lake Forest will convey all facilities, easements, rights-of-way, improvements and appurtenances to MSD in exchange for a

⁸ Id.

⁹ Id.

¹⁰ Id. at 18.

series of monthly payments beginning on February 10, 2005 and continuing until July 10, 2018.¹¹

b. MSD's monthly payment shall be the product of \$10 multiplied by the number of single family equivalents in Lake Forest's service area. Assuming no change in the number of single family equivalents as of December 31, 2002, MSD will make a total payment of \$3,140,046 to Lake Forest.¹²

c. Lake Forest will pay MSD \$228,000 to use for any de-sludging of the Lake Forest Wastewater Treatment Plant lagoon that occurs after January 1, 2005.

d. MSD will retain the current plant operator as a consultant for one year following the transfer and Lake Forest will pay one-half of that operator's salary for that period.

d. Lake Forest has the right to repurchase for one dollar the property on which Lake Forest's wastewater treatment plant is currently located if MSD terminates the operation of the plant.

¹¹ In addition to the financial arrangements discussed in this paragraph, documents referenced in the "Lake Forest Disposal Systems, LLC Wastewater Treatment Plant and System Agreement" require MSD to pay consideration to Floyd's Fork Investment Company for a sanitary sewer and drainage easement and a parcel of property upon which MSD intends to locate a pump station. The Agreement also requires Lake Forest to construct at its own expense a road and bridge to the pump station site.

¹² MSD and Lake Forest currently estimate the number of single family equivalents as of December 31, 2002 to be 1,938.3. (1,938.3 x \$10/month x 162 months = \$3,140,046.)

15. MSD currently employs 20 certified wastewater treatment plant operators who are able to operate wastewater treatment plants such as Lake Forest's wastewater treatment plant.¹³

16. Upon its acquisition of the Lake Forest wastewater treatment plant, MSD intends to continue to operate the plant on a standalone basis in the short-term and eventually to divert the sewage flows entering the plant to MSD sewer collection mains and larger wastewater treatment facilities.

17. Based upon MSD's present rates, most Lake Forest customers will experience a reduction in their monthly rate for sewer service when MSD assumes ownership of the wastewater treatment facilities.¹⁴

18. MSD has the authority to issue revenue bonds to finance any necessary improvements or facilities. KRS 76.150.

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

1. Lake Forest is a utility that is subject to Commission jurisdiction. KRS 278.010(3)(f).

¹³ Memorandum from Gerald Wuetcher, Assistant General Counsel, Public Service Commission of Kentucky to Case File No. 2004-00094 (June 2, 2004).

¹⁴ See <http://www.msdlouky.org/insidemsd/pdfs/msdrates.pdf> for a schedule of MSD's rates. Assuming an average customer water usage of 5,000 gallons per month, MSD will assess the average Lake Forest single-family residential customer a monthly rate of \$19.16. Lake Forest currently assesses a monthly rate of \$24.05 to such customers.

2. As a metropolitan sewer district organized pursuant to KRS Chapter 76, MSD is a municipal corporation. See Rash v. Louisville & Jefferson County Metropolitan Sewer District, 309 Ky. 442, 217 S.W.2d 232 (1948).

3. MSD is not a utility and is therefore not subject to Commission regulation. KRS 278.010(3)(f).

4. MSD is a "corporation" and a "person" for purposes of KRS Chapter 278. KRS 278.010(1) and (2).

5. KRS 278.020(4) provides that "[n]o person shall acquire or transfer ownership of, or control, or the right to control, any utility under the jurisdiction of the commission . . . without prior approval by the commission." As MSD is a person and is acquiring ownership of Lake Forest's sewage treatment facilities, this statute is applicable to and requires Commission approval of the proposed transfer.

6. KRS 278.020(5) provides that "[n]o 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." As MSD is a corporation and is acquiring control of Lake Forest's utility operations through the acquisition of the facilities that Lake Forest uses to provide utility service, this statute is applicable to and requires Commission approval of the proposed transfer.

7. In view of its financial assets and its status as a political subdivision of the Commonwealth, MSD has sufficient financial integrity to ensure the continuity of utility service.

8. MSD has the financial, technical, and managerial abilities to provide reasonable service to the present customers of Lake Forest.

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

10. Upon completion of the proposed transfer, Lake Forest sewage treatment facilities will no longer be subject to Commission jurisdiction.

IT IS THEREFORE ORDERED that:

1. The proposed transfer of the utility assets of Lake Forest to MSD is approved.

2. Within 10 days of completion of the proposed transfer of assets, MSD and Lake Forest shall notify the Commission in writing of the completion of the transfer of assets.

3. Lake Forest 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 2004 it owned and operated the transferred assets.

Done at Frankfort, Kentucky, this 10th day of June, 2004.

By the Commission

ATTEST:

A handwritten signature in black ink, consisting of several overlapping loops and a horizontal line at the bottom.

Executive Director

Case No. 2004-00094