

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

OHIO COUNTY WATER DISTRICT'S ) CASE NO. 2004-00157  
ACQUISITION OF ROCKPORT WATER SYSTEM )

ORDER

On May 4, 2004, Ohio County Water District ("Ohio District") notified the Commission in writing of its proposed acquisition of a water distribution system from the city of Rockport, Kentucky ("Rockport"). The Commission considered this notice as an application for Commission approval of the proposed acquisition. Having reviewed the nature of the proposed acquisition, we find that Commission approval of the proposed acquisition is not required and dismiss the application.

Ohio District, a water district organized under KRS Chapter 74, provides retail water to approximately 5,058 customers in Ohio, Daviess, McLean, Butler and Grayson counties, Kentucky. It also provides wholesale water service to North McLean County Water District and the cities of Beaver Dam and Fordsville.

Rockport is a city of the sixth class that is located in Ohio County, Kentucky. KRS 81.010. It operates a water distribution system that serves persons within its corporate limits. Rockport purchases its total water requirements from Ohio District.

Ohio District and Rockport have executed an agreement for the transfer of all assets of Rockport's water distribution system. Under this agreement, Rockport will transfer to Ohio District for one dollar all assets that it currently owns and uses to provide water service. Ohio District will not assume any liability or obligation related to

the assets, but has agreed to pay before the closing of the transaction the remaining balances on two loans totaling \$323,125.35. Ohio District completed payment on this sum on May 28, 2004 using the proceeds of two Coal Severance Fund grants.

We find no statutory requirement for prior Commission approval of the proposed transaction. KRS 278.020(4)<sup>1</sup> and 278.020(5)<sup>2</sup> require prior Commission approval of the transfer of control or ownership of any "utility." As a city, Rockport is not within the statutory definition of "utility." See KRS 278.010(3). KRS 278.020 therefore does not require Commission approval of the proposed transaction. See Northern Kentucky Water District, Case No. 2000-00357 (Ky.P.S.C July 20, 2000) at 2; Kenton County Water District No. 1, Case No. 89-211 (Ky.P.S.C. Nov. 1, 1989) at 3–4.

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<sup>1</sup> 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.

<sup>2</sup> 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. Any acquisition of control without prior authorization shall be void and of no effect. As used in this subsection, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a utility, whether through the ownership of voting securities, by effecting a change in the composition of the board of directors, by contract or otherwise.

We find that KRS 278.300 is not applicable to the application at bar. Ohio District is not issuing any new evidences of indebtedness; nor is it assuming any obligations associated with the Rockport system. It paid Rockport's outstanding loans prior to the completion of the transaction, not in several payments over the course of several years. The purchase agreement therefore does not constitute an evidence of indebtedness. KRS 278.300(1) does not require prior Commission review or approval of the proposed transaction.

IT IS THEREFORE ORDERED that:

1. Ohio District's application for authority to acquire Rockport's water distribution system is dismissed as moot.
2. The Attorney General's Motion to Intervene in this proceeding is granted.

Done at Frankfort, Kentucky, this 12<sup>th</sup> day of July, 2004.

By the Commission

ATTEST:

  
Executive Director