

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

JOINT APPLICATION OF BULLITT)	
UTILITIES, INC. AND THE BULLITT)	
COUNTY SANITATION DISTRICT)	CASE NO. 2004-00197
FOR APPROVAL OF TRANSFER OF)	
WASTEWATER TREATMENT FACILITY)	

O R D E R

Bullitt Utilities, Inc. (“Bullitt Utilities”) and Bullitt County Sanitation District (“Bullitt Sanitation”) have, by joint application, petitioned the Commission for approval of a proposed transfer of all of the interests and assets of Bullitt Utilities in the 350,000 gallons-per-day (“gpd”) Bullitt Hills Wastewater Treatment Plant (“Bullitt Hills”) and all of its facilities, including the component parts for a 250,000-gpd treatment plant (unassembled), to Bullitt Sanitation.

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

1. Bullitt Utilities is a private subdivision sewer utility that is a Kentucky corporation with its principal place of business at 1706 Bardstown Road, Louisville, Kentucky 40205. Carroll Cogan, President and sole shareholder, was duly authorized by resolution to enter into a sale/purchase agreement with Bullitt Sanitation, selling and transferring all of his interests and assets in Bullitt Hills to Bullitt Sanitation. Bullitt Hills is located in Bullitt County, Kentucky and serves approximately 383 residential customers and 14 commercial customers. Bullitt Hills began operations in July 1977.

2. Bullitt Utilities is not subject to the regulation of any metropolitan sewer district.

3. Bullitt Hills' facilities include, in addition to the unassembled parts for a 250,000-gpd treatment plant, a 350,000-gpd treatment plant, associated sewers, pumping stations, force mains, equipment, sewer easements, and real estate.

4. Bullitt Sanitation is a special district created pursuant to KRS Chapter 67. The Bullitt County Fiscal Court created the special district by ordinance and authorized the operation of a sanitation district pursuant to the powers and authority under KRS Chapter 220 for all purposes allowable under the statute. Jim Hamilton, Chairman of Bullitt Sanitation, was duly authorized by resolution to enter into the sale/purchase agreement with Bullitt Utilities to purchase, transfer, and take control of all of the interests, assets, and facilities of Bullitt Hills owned and operated by Bullitt Utilities.

5. Bullitt Sanitation provides sanitary sewer service to approximately 1,800 customers within the territory of Bullitt County, Kentucky, except for the municipal areas of the county that provide their own wastewater treatment facilities.

6. Bullitt Sanitation operates five wastewater treatment facilities with a combined daily treatment capacity in excess of 690,000 gpd.

7. As of December 31, 2003, Bullitt Sanitation had net plant of \$92,270, total assets of \$958,759, and total liabilities of \$175,805.

8. For the year ending December 31, 2003, Bullitt Sanitation had total revenues of \$457,950 and total operating expense of \$495,093, for a net loss of \$37,143.

9. The Bullitt County Fiscal Court provided Bullitt Sanitation a grant of \$1.01 million during the fiscal year 2002.

10. Bullitt Sanitation has been in existence since 1997.

11. Pursuant to KRS 220.110, a three-member board of directors controls and conducts the affairs of the district. The members are appointed by the Bullitt County Judge/Executive subject to the approval of the Bullitt County Fiscal Court.

12. Bullitt Utilities proposes to transfer to Bullitt Sanitation any and all interests and assets in Bullitt Hills and the facilities thereof pursuant to an agreement between the joint applicants. Bullitt Sanitation does not assume, agree to perform or discharge, or otherwise have any responsibility for, any liabilities or contractual obligations of Bullitt Utilities that directly or indirectly relate to Bullitt Hills and the facilities thereof, occurring prior to the closing date, with the exception of the obligations arising out of the contracts assigned to Bullitt Sanitation pursuant to their agreement. This agreement provides, *inter alia*, that:

a. The total purchase price is \$810,000. Bullitt Utilities will be paid a cash sum in the amount of \$210,000 at the closing of the transaction which will take place within 10 days of the Commission's approval of the transfer hereinabove described.

b. Bullitt Sanitation will execute a promissory note in the principal sum of \$150,000 to bear interest at the rate of 6 percent per annum payable to Bullitt Utilities in 40 equal quarterly installment payments.

c. Bullitt Sanitation will execute an additional promissory note in the principal sum of \$450,000 to bear interest at the rate of 6 percent per annum payable to

Bullitt Utilities in 15 quarterly installment payments computed on the basis of certain revenues of Bullitt Sanitation. Since the exact amount of the installment payments will vary from payment to payment, the total principal and interest may be extended for an additional period of 20 quarterly installment payments until paid.

d. The promissory notes will be secured by a mortgage and vendor's lien providing that the installment payments will be from Bullitt Sanitation revenues first and prior to any other cost or expense owed or to be paid by Bullitt Sanitation.

13. Bullitt Sanitation employs a full-time manager who is licensed as a Class III Operator in Kentucky. His education includes a Bachelor of Science degree from the University of Louisville and a Masters of Environmental Engineering, in 1974 and 1975, respectively. His past experience includes a Class IV Collection Systems Certification in Indiana and Class IV Operator Certification in Kentucky, Indiana, and Illinois. He has worked as a consulting engineer and wastewater plant superintendent. He was employed as wastewater plant superintendent for Frankfort, operating a 9 million-gpd plant, and held the same position at Clarksville, Indiana at a 1.3 million-gpd plant. He has served as a field representative and staff engineer.

14. Bullitt Sanitation has a contract with David M. Derrick, P.E., Derrick Engineering, Inc., as a consulting engineer. Mr. Derrick assisted in this transfer case and has dealt with other state agencies on behalf of Bullitt Sanitation.

15. Bullitt Sanitation has also employed a certified public accounting firm, Logsdon & Cole, to maintain its financial affairs and all matters related thereto.

16. The rate in effect for Bullitt Hills is a flat rate of \$19.40 per 12,000 gallons. Bullitt Sanitation charges a rate of \$14.00 for the first 2,000 gallons of water; thereafter \$4.45 per thousand gallons.

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

1. Bullitt Utilities is a utility that is subject to the Commission's jurisdiction. KRS 278.010(3)(f).

2. As a special district created by the County Judge/Executive of Bullitt County pursuant to KRS Chapter 67 and operating pursuant to KRS Chapter 220, Bullitt Sanitation is not a utility and is therefore not subject to Commission regulation. Oldham County Sanitation v. Kentucky Public Service Comm'n., Ky.App., Case No. 2001-CA-001482-MR (2002 – unpublished Opinion).

3. Bullitt Sanitation is a "corporation" and a "person" for purposes of KRS Chapter 278. KRS 278.010(1) and (2).

4. 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 Bullitt Sanitation is a person and is acquiring ownership of Bullitt Hills and its facilities, a part of Bullitt Utilities, this statute is applicable and requires Commission approval of the proposed transfer.

5. 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 Bullitt Sanitation is a corporation and is acquiring the facilities that Bullitt Utilities uses to provide utility service, this statute is applicable to the transfer and Commission approval is required.

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

7. Bullitt Sanitation has the financial, technical, and managerial abilities to provide reasonable service to the current customers of Bullitt Hills.

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

9. Upon completion of the proposed transfer, the acquired facilities will no longer be subject to Commission jurisdiction.

IT IS THEREFORE ORDERED that:

1. The proposed transfer of the utility assets of Bullitt Hills, a part of Bullitt Utilities, to Bullitt Sanitation is approved.

2. Within 15 days of the completion of the proposed transfer of assets, Bullitt Sanitation and Bullitt Utilities shall notify the Commission in writing of the completion of the transfer of the assets.

3. Bullitt Utilities 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 of the calendar year 2004 that it owned and operated the transferred assets.

Done at Frankfort, Kentucky, this 22nd day of July, 2004.

By the Commission

ATTEST:

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke at the end, positioned above a horizontal line.

Executive Director

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