

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

JOINT APPLICATION OF B & H, INC. AND )  
RICHMOND UTILITIES, LLC FOR APPROVAL OF ) CASE NO. 2004-00336  
THE TRANSFER OF WASTEWATER TREATMENT )  
PLANT TO RICHMOND UTILITIES, LLC )

ORDER

B & H, Inc. ("B & H") and Richmond Utilities, LLC ("Richmond Utilities") have jointly applied for Commission approval of the proposed transfer of its assets to Richmond Utilities.<sup>1</sup>

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

1. B & H, a Kentucky corporation, owns and operates a subdivision sewage treatment facility in Richmond, Madison County, Kentucky that serves approximately 168 customers in the Brocklyn Subdivision of Richmond, Madison County, Kentucky.<sup>2</sup>

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<sup>1</sup> B & H and Richmond Utilities filed their application with the Commission on August 30, 2004. After this filing, Commission Staff propounded interrogatories and requests for production of documents to Richmond Utilities. Responses to these requests have been filed with the Commission. Because of the limited time in which to review the responses to these requests, the Commission, pursuant to KRS 278.020(5), extended the period for its review of the application to 120 days.

The only party in this proceeding, besides the Applicants, is the Attorney General. On September 15, 2004, he moved for full intervention in this proceeding. The Commission granted his motion on September 22, 2004. The record does not reflect any further participation by him in this proceeding after that date.

<sup>2</sup> Annual Report of B & H, Inc. to the Public Service Commission for the Year Ended December 31, 2003 ("Annual Report") at 1 and 12.

Of the 168 customers, approximately 70 customers are single-family residences and 98 are multi-family residences.<sup>3</sup>

2. B & H is not subject to the regulation of any metropolitan sewer district.

3. B & H's sewage treatment facilities include a sewage treatment plant with a maximum daily wastewater treatment capacity of 40,000 gallons, an aeration tank, a settling tank, chlorinating facilities, and 5,250 linear feet of sewer main.<sup>4</sup> These facilities have been in operation since 1969. B & H's sewage treatment plant is considered a Class Type I sewage treatment plant.

4. As of December 31, 2003, B & H reported net utility plant of \$28,292.<sup>5</sup>

5. As of December 31, 2003, B & H reported total assets of \$48,911 and total current and accrued liabilities of \$88,500.<sup>6</sup>

6. As of December 31, 2003, B & H reported a balance of Account No. 271, "Contributions in Aid of Construction," of \$24,309.<sup>7</sup>

7. B & H proposes to transfer to Richmond Utilities, and Richmond Utilities proposes to acquire, all utility assets of B & H pursuant to an agreement between these entities. This agreement provides, inter alia, that:

a. B & H convey to Richmond Utilities its sewage collection system and treatment plant, including all manholes, pumping stations and other fixtures, all

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<sup>3</sup> Id. at 12.

<sup>4</sup> Id. at 11 -12; Application at ¶5.

<sup>5</sup> Annual Report at 4.

<sup>6</sup> Id. at 2 - 3.

<sup>7</sup> Id. at 3.

supplies and equipment associated with the system, and all real property interests upon which these facilities and fixtures are situated for \$100.

b. B & H will transfer all assets, fixtures, equipment, and cash proceeds that are currently owned, administered, or maintained by the Trust created pursuant to a Trust Indenture dated June 5, 1969, by and between B & H Inc., Inland Builders Inc., and State Bank and Trust Company.

c. Richmond Utilities will not assume any liabilities or obligations.

8. Richmond Utilities, a Kentucky limited liability company, was formed on July 16, 2004.<sup>8</sup>

9. Martin Cogan and Larry Smither are Richmond Utilities' sole members.<sup>9</sup>

10. Mr. Cogan has a Master's Degree in Environmental Engineering from the University of Louisville. He has served as a corporate officer of the following public sewer utilities: Brentwood Wastewater Treatment Plant, Inc.; Brownsboro Utilities, Inc.; Bullitt Utilities, Inc.; Covered Bridge Utilities, Inc.; Farmdale Development Corporation; Hayfield Utilities; Lake Columbia Utilities; Orchard Grass Utilities Inc.; and Willow Creek Sewer System.<sup>10</sup> The Environmental and Public Protection Cabinet previously certified Mr. Cogan as a wastewater treatment plant operator, but this certification has expired.<sup>11</sup>

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<sup>8</sup> Application at Exhibit D.

<sup>9</sup> Id. at ¶6.

<sup>10</sup> Id.; Richmond Utilities' Evidence of Financial Integrity (filed Oct. 4, 2004) at ¶1. For a listing of all public sewer utilities on which Mr. Cogan served as an officer, see also <http://psc.ky.gov/UFRNET/PublicRepSelect.aspx>.

<sup>11</sup> Richmond Utilities' Response to Commission Staff's Interrogatories and Requests for Production of Documents, Item 10.

11. Mr. Smither has 30 years of experience operating and managing package wastewater treatment plants. He is currently certified by the Environmental and Public Protection Cabinet as a Class II Wastewater Treatment Plant Operator.<sup>12</sup>

12. Richmond Utilities has operated B & H's sewage treatment system since August 1, 2004. There are no reported instances during this period in which the sewage treatment system has been out of compliance with applicable state statutes and regulations.

13. As of September 15, 2004, the Trust created pursuant to a Trust Indenture dated June 5, 1969, by and between B & H Inc., Inland Builders Inc., and State Bank and Trust Company, was valued at \$20,278.54. Richmond Utilities represents that, upon the completion of the proposed transfer of the B & H sewage treatment system, this amount will be used for the operations of that sewage treatment system.<sup>13</sup>

14. Richmond Utilities proposes to record the acquisition in the following manner:

<u>Description</u>	<u>Debit</u>	<u>Credit</u>
Utility Plant In Service	\$28,615	
Trust Account	\$19,492	
Other Deferred Credits		\$47,684
Accumulated Provision for Depreciation		\$ 323
Cash		\$ 100

15. Upon its acquisition of B & H's sewage treatment system, Richmond Utilities will assess the same rates and charges as B & H presently assesses.

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<sup>12</sup> Id.; Application at ¶6.

<sup>13</sup> Application at ¶6. As a Class II Plant Operator, he may also operate a Class I Wastewater Treatment Plant. 401 KAR 5:010.

16. Given that the B & H sewage treatment plant was constructed in 1969<sup>14</sup> at a cost of \$24,309 and that the depreciable life for this type of asset is generally 20 to 30 years,<sup>15</sup> the sewage treatment plant and collection system should be fully depreciated and Richmond Utilities' journal entry recording the acquisition should reflect accumulated depreciation of \$24,632.

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

1. B & H is a utility that is subject to Commission jurisdiction. KRS 278.010(3)(f).

2. Richmond Utilities is not a utility and is therefore currently not subject to Commission regulation. KRS 278.010(3)(f).

3. Richmond Utilities is a "person" for purposes of KRS Chapter 278. KRS 278.010(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 Richmond Utilities is a person and is acquiring ownership of B & H's sewage treatment facilities, this statute is applicable to and requires Commission approval of the proposed transfer.

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<sup>14</sup> Richmond Utilities states that the plant was constructed in 1963. See Richmond Utilities' Response to Commission Staff's Interrogatories and Requests for Production of Documents, Item 7. B & H, however, has previously advised the Commission that the plant was constructed in 1969. See Annual Report at 11.

<sup>15</sup> Commission on Rural Water, O&M Guide For the Support of Rural Water Systems 246-247 (1974).

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 Richmond Utilities is acquiring control of B & H’s utility operations through the acquisition of the facilities that B & H uses to provide utility service, this statute is applicable to and requires Commission approval of the proposed transfer.

6. Richmond Utilities has the financial, technical, and managerial abilities to provide reasonable service to the present customers of B & H.

7. The proposed transfer is in accordance with law and for a proper purpose; it will, however, be consistent with the public interest only if the conditions set forth in Ordering Paragraph 1 of this Order are met.

8. Upon completion of the proposed transfer, the B & H sewage treatment facilities will continue to be subject to Commission jurisdiction.

IT IS THEREFORE ORDERED that:

1. The proposed transfer of the utility assets of B & H to Richmond Utilities is approved subject to the conditions set forth below that:

a. Richmond Utilities obtain an irrevocable letter of credit in the amount of \$20,000 with a minimum term of 10 years and payable to any receiver appointed by a court of competent jurisdiction to operate the B & H sewage treatment system upon Richmond Utilities or its successors’ failure to properly operate that system or its abandonment of that system.

b. Richmond Utilities file with the Commission a copy of such letter of credit within 30 days of the date of this Order.

c. Upon the transfer of assets of the Trust created pursuant to a Trust Indenture dated June 5, 1969, by and between B & H Inc., Inland Builders Inc., and State Bank and Trust Company, Richmond Utilities shall use those assets solely to meet the operation expenses of the B & H sewage treatment system. None of these assets will be used to reimburse Richmond Utilities' members or companies or entities affiliated with Richmond Utilities for services provided to Richmond Utilities without prior Commission approval.

d. Richmond Utilities use the journal entry set forth below to record the acquisition, with account balances updated through the date of the transfer:

<u>Description</u>	<u>Debit</u>	<u>Credit</u>
Utility Plant In Service	\$28,615	
Other Current and Accrued Assets	\$19,492	
Plant Acquisition Adjustment	\$ 934	
Accumulated Depreciation		\$ 24,632
Contributions in Aid of Construction		\$24,309
Other Paid in Capital		\$ 100

e. Richmond Utilities obtain all necessary permits for the operation of the B & H sewage system, including a Kentucky Pollutant Discharge Elimination System Permit, before the transfer occurs.

f. The proposed transfer shall occur within 90 days of the date of this Order.

2. Within 10 days of completion of the proposed transfer of assets, Richmond Utilities and B & H shall notify the Commission in writing of the completion of the transfer of assets.

3. Within 10 days of the completion of the proposed transfer, Richmond Utilities shall file with the Commission a signed and dated adoption notice in accordance with Administrative Regulation 807 KAR 5:011, Section 11.

4. Within 10 days of the filing of its adoption notice, Richmond Utilities shall issue and file with the Commission in its own name B & H's tariff, or such other tariff as it proposes to put into effect in lieu thereof, in the form prescribed in Administrative Regulation 807 KAR 5:011, Sections 2 through 5, with proper identifying designation.

5. B & H 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 years 2004 and 2005 that it owned and operated the transferred assets.

6. Within 10 days of the completion of the proposed transfer, Richmond Utilities shall file with the Commission a copy of the executed letter of credit described in Ordering Paragraph 1(a) of this Order.

7. Within 10 days of the completion of the proposed transfer, Richmond Utilities shall file with the Commission the journal entry that it proposes to record the asset acquisition. The acquisition shall be recorded in accordance with the Uniform System of Accounts for Sewer Utilities.



Done at Frankfort, Kentucky, this 22<sup>nd</sup> day of December, 2004.

By the Commission

ATTEST:

A handwritten signature in black ink, consisting of several overlapping loops and flourishes, positioned above a horizontal line.

Executive Director

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