

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF THE HARDIN COUNTY)
WATER DISTRICT NO. 1 FOR APPROVAL TO)
TRANSFER OWNERSHIP OF THE CITY OF)
RADCLIFF, KENTUCKY SANITARY SEWER) CASE NO. 2008-00074
SYSTEM, ASSUME EXISTING DEBT, AND FOR)
PROPOSED TARIFF TO PROVIDE SEWER)
SERVICES TO THE CITY OF RADCLIFF)

ORDER

Hardin County Water District No. 1 (“Hardin District”) has applied for Commission approval of its proposed acquisition of the city of Radcliff’s (“Radcliff”) sanitary sewer system, and for authority to assume the associated outstanding debt obligations.¹ Hardin District stated that it is adopting, per 807 KAR 5:011, Section 11, the current rules, policies, regulations, and rates for Radcliff’s sanitary service² and submitted a copy of Radcliff’s tariff with an effective date of April 20, 2008.³ Although Hardin District did not specifically request Commission authority to adopt Radcliff’s rates, the Commission is interpreting Hardin District’s statement as its request for Commission approval. For reasons set forth below, we grant the application as it relates to the

¹ Hardin District tendered its application on February 29, 2008. Because of deficiencies in the application, the Commission did not accept the application for filing until March 28, 2008.

² Application at 3.

³ Filing dated April 9, 2008.

assumption of debt and assessment of rates but dismiss the request for approval of the transfer as moot.

Hardin District, a water district organized pursuant to KRS Chapter 74, is a utility subject to Commission jurisdiction. KRS 278.010(3)(d); KRS 278.015; KRS 278.040. It provides retail water service to 9,732 customers in Hardin, Breckinridge, and Meade counties, Kentucky⁴ and wholesale water service to Meade County Water District, Hardin County Water District No. 2, the city of Hardinsburg, and the city of Vine Grove, Kentucky.⁵ In September 2004, Hardin District acquired the sanitary and storm water assets serving the Fort Knox Army Base.⁶

Radcliff is a city of the second class that is located in Hardin County, Kentucky. KRS 81.010. It operates a sanitary sewer system and storm water system that serves persons within and without its corporate limits. As of December 31, 2007, Radcliff reported having 8,697 active sewer accounts.⁷

Hardin District and Radcliff have executed an Asset Purchase Agreement for the transfer of Radcliff's wastewater assets to Hardin District. Under the terms of this agreement, Radcliff will transfer to Hardin District all tangible assets devoted to the provision of wastewater service to the public and all restricted and unrestricted sewer cash reserve accounts.⁸ Upon the transfer of the assets, Hardin District will assume all

⁴ Annual Report of Hardin District to the Public Service Commission of the Commonwealth of Kentucky for the Calendar Year Ended December 31, 2007 at 27.

⁵ Application at 1.

⁶ Id.

⁷ Id. at 3.

⁸ Id., Exhibit 1, Wastewater System Acquisition Agreement at 3.

of the outstanding long-term debt associated with the sanitary sewer operations.⁹ At the conclusion of the transfer, Hardin District will convey to Radcliff three tracts of real property.¹⁰

Hardin District has applied to the Commission for approval of the proposed transfer of ownership. We find, however, no statutory requirement for such approval. KRS 278.020(5)¹¹ and KRS 278.020(6)¹² require prior Commission approval of the transfer of control or ownership of any “utility.” As a city, Radcliff is not within the statutory definition of “utility.”¹³ KRS 278.020 therefore does not require Commission approval of the proposed transfer.¹⁴

⁹ Id. at 8.

¹⁰ Id., Exhibit E.

¹¹ 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.

¹² 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.

¹³ See KRS 278.010(3).

¹⁴ See Ohio County Water District, Case No. 2004-00157 (Ky. PSC July 12, 2004); Northern Kentucky Water District, Case No. 2000-00357 (Ky. PSC July 20, 2000) at 2; Kenton County Water District No. 1, Case No. 1989-00211 (Ky. PSC Nov. 1, 1989) at 3–4.

We further find that KRS 278.300(1)¹⁵ is applicable in that Hardin District is requesting Commission approval to assume the outstanding long-term debt of Radcliff's sanitary sewer system. As of December 31, 2007, Radcliff reported that the outstanding long-term debt for its sanitary sewer system was \$3,511,982, which is shown in detail in Table 1 below.

| Table 1: Outstanding Long-Term Debt ¹⁶ | | | | |
|--|---|--------------------|-------------------|-----------------------------|
| | Principal Outstanding <u>12/31/07</u> | Years Remaining | Interest Rates | Avg. Annual Debt Service |
| Kentucky Infrastructure Authority - Revolving Loan | \$ 3,086,982 | 10 Years | 3.8% | \$ 293,719 |
| Kentucky League of Cities Series 2001A – Bonds | \$ 425,000 | 2 Years | 3.8% to 4.4% | \$ 186,797 |
| Totals | <u>\$ 3,511,982</u> | | | <u>\$ 480,516</u> |

As of June 30, 2007, Radcliff's sanitary sewer system reported capital assets of \$28,981,570 and accumulated depreciation of \$10,714,741 for a net capital asset balance of \$18,712,499.¹⁷ For the same period, total operating revenues were reported at \$4,049,569, total operating expenses at \$2,667,001, and depreciation expense of \$696,758.¹⁸ The net operating income for the 2007 Fiscal Year was \$1,382,568¹⁹ and

¹⁵ No utility shall issue any securities or evidences of indebtedness, or assume any obligation or liability in respect to the securities or evidences of indebtedness of any other person until it has been authorized so to do by order of the commission.

¹⁶ Application at 2.

¹⁷ Id., Exhibit 5, City of Radcliff, Kentucky Independent Auditor's Report on Financial Statements and Supplementary Information Year Ended June 30, 2007 ("2007 Fiscal Year") at 15.

¹⁸ Id.

¹⁹ \$4,049,569 (Total Operating Revenues) - \$2,667,001 (Total Operating Expenses) = \$1,382,568.

the cash flow was \$2,079,326.²⁰ Hardin District is receiving assets that have a net worth that is \$15,200,607²¹ above the debt that it is being assumed and the current cash flow of \$2,079,326 will allow Hardin District to have adequate cash flow to pay the annual debt payments of \$480,516 and to fund the anticipated capital projects. Therefore, the acquisition of the municipal utility should not adversely impact Hardin District's ability to provide adequate and reliable service to its existing water and wastewater customers.

The Commission, having considered the evidence of record and being otherwise sufficiently advised, finds that Hardin District's proposal to assume Radcliff's outstanding long-term debt of \$3,511,982 for the purchase of the Radcliff's sanitary sewer facilities is for a lawful object within its corporate purpose, and is necessary or appropriate for and consistent with the proper performance of its service to the public.

We next turn to the Hardin District's request that it be permitted to assess Radcliff's present rates for service to customers served through these assets. For the first 12 months after the transfer date, Hardin District agrees that "the current City wastewater rates shall remain in effect and not change until after that period expires."²² Hardin District and Radcliff anticipate that, after this period, Hardin District should be able to decrease the wastewater user rates by approximately 15 percent; however, both

²⁰ \$1,382,568 (Net Operating Income) + \$696,758 (Depreciation Expense) = \$2,079,326.

²¹ \$18,712,499 (Net Capital Asset Balance) - \$3,511,892 (Outstanding Long-Term Debt) = \$15,200,607.

²² Application at 6-7.

parties acknowledged that there are various uncontrollable variables²³ that could impact the final amount of the reduction.

In a proceeding²⁴ involving similar circumstances the Commission determined that a public utility should generally assess the same rates to the customers of the acquired non-jurisdictional municipal utility as those assessed to its existing customers, but that the public utility's filed rates are presumed to be reasonable as a matter of law.²⁵ The Commission stated that, in contrast, there is no Commission review of municipal utility rates and that, in many instances, no substantial record of evidence on the development of the municipal utility's rates exists. Based upon these findings and given the fact that the Radcliff rates will be in effect for a short period, the Commission finds that Hardin District should be authorized to assess Radcliff's present rates for service to customers served through Radcliff's current wastewater assets.

IT IS THEREFORE ORDERED that:

1. Hardin District's application for approval of the transfer of ownership of Radcliff's sanitary sewer system assets to Hardin District is dismissed as moot.
2. Hardin District is authorized to assume the outstanding long-term debt of Radcliff's sanitary sewer system.

²³ See Wastewater System Acquisition Agreement at 7. Results of a cost-of-service study, approval of the Commission, additional debt needed to fund pre-transfer capital projects committed to by Radcliff, an unforeseen increase in the number of employees to operate the system post-transfer, Hardin District's acquisition costs, higher than anticipated start-up costs of the contractor, and unforeseen major repair or maintenance expenses occurring from a catastrophic system failure occurring in the initial 12-month period.

²⁴ Case No. 2005-00206, The Verified Joint Application of the City of Owenton and Kentucky-American Water Company for Approval of the Transfer of the Ownership of the Assets of the City of Owenton to Kentucky-American Water Company (Ky. PSC July 22, 2005).

²⁵ See, e.g., Keogh v. Chicago & N.W. Ry. Co., 260 U.S. 156, 163 (1922).

3. Hardin District is authorized to assess Radcliff's present rates for service to customers served through Radcliff's current sanitary sewer system assets.

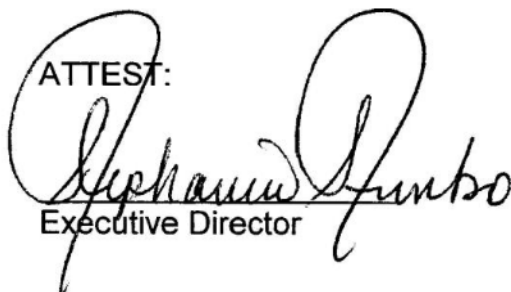
4. Within 10 days of the completion of the transfer of ownership of Radcliff's sanitary sewer system assets to Hardin District, Hardin District shall advise the Commission in writing of the transfer's completion.

5. Within 90 days from the date of this Order, Hardin District shall file new tariff sheets setting forth the terms and conditions of Hardin District's provision of sewer service at the rates set forth herein.

Nothing contained herein shall be construed as a finding of value for any purpose or as a warranty on the part of the Commonwealth of Kentucky or any agency thereof as to the securities authorized herein.

Done at Frankfort, Kentucky, this 23rd day of April, 2008.

By the Commission

ATTEST:

Executive Director