

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF APPALACHIAN WASTE)
CONTROL, INC. TO TRANSFER OWNERSHIP) CASE NO. 2013-00183
AND CONTROL)

ORDER

Appalachian Waste Control, Inc. ("Appalachian Waste Control") has applied for approval to transfer ownership and control of Neil Price Estates Sewage Treatment Plant to Paintsville Utilities Commission ("PUC").¹ Having reviewed the application and being otherwise advised, the Commission finds that:

1. Appalachian Waste Control is a Kentucky corporation that was organized pursuant to KRS Chapter 271A.²
2. Keith Fairchild and David Bowling incorporated Appalachian Waste Control on January 25, 1988.³

¹ PUC was not a signatory to the application and did not intervene in this matter. While no statute expressly requires that PUC 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." Case No. 2002-00018, *Application for Approval of the Transfer of Control of Kentucky-American Water Company to RWE Aktiengesellschaft and Thames Water Aqua Holdings GmbH* (Ky. PSC May 29, 2002) at 11.

² See [https://app.sos.ky.gov/ftshow/\(S\(y1q1t3fm30p00lbuzlerxjw0\)\)/default.aspx?path=ftsearch&id=0239201&ct=09&cs=99999](https://app.sos.ky.gov/ftshow/(S(y1q1t3fm30p00lbuzlerxjw0))/default.aspx?path=ftsearch&id=0239201&ct=09&cs=99999) (last visited July 15, 2013).

³ Articles of Incorporation of Appalachian Waste Control (Ky. Sec. State filed Jan. 25, 1989) (found at <https://app.sos.ky.gov/corpscans/01/0239201-09-99999-19880125-ART-3910089-PU.pdf>) (last visited July 15, 2013).

3. Prior to 2006, Appalachian Waste Control owned sewage collection and treatment facilities that were located in the Richmond Hills Estate,⁴ Paradise Valley,⁵ Preston Estates,⁶ Neil Price,⁷ and Burkeshire Development Subdivisions of Johnson County, Kentucky and that served approximately 65 customers for compensation.

4. On or about November 3, 1998, the Kentucky Secretary of State administratively dissolved Appalachian Waste Control for failing to file its annual report.⁸

5. On or before September 26, 2002, Appalachian Waste Control attempted to transfer to Lance Bowling d/b/a East Kentucky Waste Control its ownership of all of its sewage treatment facilities without prior Commission approval.⁹

6. On January 30, 2007, the Commission found that Appalachian Waste Control's attempted transfer of ownership of its sewage treatment facilities to Mr. Bowling was void as a matter of law.¹⁰

⁴ Case No. 10141, *Application of Appalachian Waste Control, Inc. for Authority to Acquire and Operate the Sewage Treatment Plant Located at the Richmond Hills Estate Subdivision, Johnson County, Kentucky and for Approval of Rates Therefor* (Ky. PSC July 9, 1991).

⁵ Case No. 89-064, *The Application for Transfer of Paradise Valley Sewage Treatment Plant, Inc. to Appalachian Waste Control, Inc.* (Ky. PSC Sep. 19, 1989). Paradise Valley Subdivision is also known as Paradise Village Subdivision.

⁶ Case No. 92-551, *The Application of Woodland-Preston Enterprises, Inc. for Approval to Transfer Appalachian Waste Control, Inc.* (Ky. PSC Apr. 8, 1993).

⁷ Case No. 93-016, *The Application of Price Estates for Approval to Transfer to Appalachian Waste Control* (Ky. PSC Mar. 15, 1989).

⁸ Certificate of Dissolution Record No. 0239201 (found at <http://apps.sos.ky.gov/corpscans/01/0239201-09-99999-19981103-ADS-736790-PU.pdf> (last visited July 15, 2013)). Administrative dissolution of a corporation does not terminate a corporation's existence, but limits the corporation's ability to continue to conduct business. See KRS 271B.210.

⁹ Case No. 2002-00396, *Gary K. Fairchild; Appalachian Waste Control, Inc.; and Lance Bowling d/b/a East Kentucky Waste Control: Alleged Failure to Comply With 807 KAR 5:071, Section 7(1); KRS 278.020(5) and (6); KRS 278.150(2); and KRS 278.160(2)* (Ky. PSC Jan. 31, 2007) at 5-6.

¹⁰ *Id.* at 9.

7. On December 21, 2006, Franklin Circuit Court entered an Order appointing a special master commissioner and temporary receiver "to collect rates for the five . . . [sewage treatment] plants and to pay the operator that will be appointed by the [Environmental and Public Protection] Cabinet" and further directed the Environmental and Public Protection Cabinet to "petition the Public Service Commission to take the necessary steps to appoint a permanent receiver to take over" the Sewage Treatment Facilities.¹¹

8. On December 18, 2007, after the Environmental and Public Protection Cabinet¹² petitioned for the appointment of a receiver and the Commission had initiated an investigation to examine the status of Appalachian Waste Control, the Commission found that Appalachian Waste Control had abandoned its sewage collection and treatment facilities and that the appointment of a receiver to operate the facilities was in the public interest.¹³

9. On February 25, 2008, the Commission initiated an action in Franklin Circuit Court for the attachment of Appalachian Waste Control's assets and for the appointment of a receiver to operate those assets.¹⁴

¹¹ *Environmental and Public Protection Cabinet v. Bowling*, Civil Action No. 05-CI-1007 (Franklin Cir. Ct. Dec. 21, 2006).

¹² In 2009, the Environmental and Public Protection Cabinet was abolished and the responsibility for the enforcement of water quality laws assigned to the newly created Energy and Environment Cabinet. See 2010 Ky. Acts Ch. 24; Executive Order 2009-538 (issued June 12, 2009).

¹³ Case No. 2006-00569, *An Investigation into the Condition and Management of Appalachian Waste Control, Inc.* (Ky. PSC Dec. 18, 2007) at 6.

¹⁴ *Public Service Commission v. Appalachian Waste Control, Inc.* (Franklin Cir. Ct. Ky. filed Feb. 25, 2008).

10. On February 11, 2009, Franklin Circuit Court entered an Order appointing a receiver to operate Appalachian Waste Control's assets ("Receiver").¹⁵

11. The Receiver has made arrangements with PUC to extend PUC's sewer mains to the areas that four of Appalachian Waste Control's sewage treatment facilities serve and to connect its sewer mains to customers whom these facilities served. Since the connection of these customers to PUC's sewer mains, the four sewage treatment plants have been taken out of operation and dismantled.¹⁶

12. Appalachian Waste Control still owns the sewage treatment facilities that serve six customers in the Neil Price Estates Subdivision of Johnson County, Kentucky.¹⁷

13. The Neal Price Estates Sewage Treatment Plant has a total treatment capacity of 2,500 gallons per day.¹⁸

14. Since August 11, 2010, Appalachian Waste Control has not billed the customers of the Neal Price Estates Sewage Treatment Plant for service because of the poor quality of service that the plant provides.¹⁹

15. The city of Paintsville is a city of the fourth class.²⁰

16. PUC is an agency of the city of Paintsville with the responsibility to "supervise, manage and control the municipal water, waste water and natural gas

¹⁵ *Public Service Commission v. Appalachian Waste Control, Inc.* (Franklin Cir. Ct. Ky. Feb. 11, 2009).

¹⁶ Case No. 2012-00035, *Appalachian Waste Control, Inc. v. Thelma Waste Control, Inc.* (Ky. PSC filed Jan. 27, 2012), Petition to Transfer Ownership at ¶ 2.

¹⁷ *Id.* at 1.

¹⁸ Kentucky Infrastructure Authority, *Kentucky Wastewater Management Plan* 175 (June 25, 2013).

¹⁹ Case No. 2012-00035, Petition to Transfer Ownership at ¶ 3. See also *Environmental and Public Protection Cabinet v. Bowling*, Civil Action No. 05-CI-1007 (Franklin Cir. Ct. Ky. Aug. 10, 2010).

²⁰ KRS 81.010(3).

production, purchase and distribution systems and to do so in a fiscally sound way consistent with the essential service and safety needs of the residential and commercial consumers of the city utilities”²¹

17. PUC has been in existence since 1927.²²

18. PUC presently serves 1,660 gas, 7,803 water, and 2,478 waste water customers.²³

19. As of June 30, 2012, PUC had total assets of \$83,284,055 and total liabilities of \$30,227,778.²⁴

20. As of June 30, 2012, PUC had net utility plant, including construction work in progress, of \$73,890,540.²⁵

21. For the fiscal year ending June 30, 2012, PUC had total operating revenues of \$7,945,535. PUC’s sewer operations accounted for \$2,237,790 of these revenues.²⁶

22. For the fiscal year ending June 30, 2012, PUC had total operating expenses of \$5,670,558.²⁷

²¹ Paintsville, Ky., Code of Ordinances § 53.15 (1995 & Supp. 2012), *available at* <http://www.amlegal.com/library/ky/paintsville.shtml>.

²² Paintsville Utilities, <http://www.paintsvilleutilities.com/about> (last visited July 15, 2013).

²³ *Id.*

²⁴ Wells & Company, PSC, *Paintsville Utilities Commission: Audited Financial Statements and Supplemental Financial Information June 30, 2012* (Oct. 26, 2012) (“*Audit Report*”) at 3 and 4.

²⁵ *Id.* at 3.

²⁶ *Id.* at 5. PUC reports sewer revenues separately.

²⁷ *Id.* at 5. PUC does not report sewer operating expenses separately.

23. For the fiscal year ending June 30, 2012, PUC had net income of \$890,359.²⁸

24. PUC currently owns and operates two wastewater treatment plants: the Paintsville Sewage Treatment Plant and the Honey Branch Regional Sewage Treatment Plant.²⁹

25. The Paintsville Sewage Treatment Plant has a treatment capacity of 990,000 gallons per day. Approximately 38.52 miles of collection mains, .05 miles of interceptor mains and 13 lift stations are involved in the transport of wastewater to this facility.³⁰

26. The Honey Branch Sewage Treatment Plant has a treatment capacity of 1,000,000 gallons per day. Approximately 22.8 miles of collection mains, 0.12 miles of interceptor mains, and 7 lift stations are involved in the transport of wastewater to this facility.³¹

27. As of the date of the application, Paintsville Utilities Commission employed five employees who hold at least a Class II treatment or collection certificate.³²

28. The Receiver and PUC have reached an agreement for the transfer of ownership and control of the sewage treatment and collection facilities that serve the Neil Price Estate Subdivision.³³ This agreement provides:

²⁸ *Id.*

²⁹ *Kentucky Wastewater Management Plan 176-177.*

³⁰ *Id.* at 177.

³¹ *Id.* at 176.

³² Application, "Paintsville Utilities Commission Licensed Operators."

³³ *Id.* Ex. A.

a. Appalachian Waste Control will transfer to PUC all personal and real property that it owns and uses in the operation of the sewage treatment and collection facilities serving the Neil Price Estate Subdivision.

b. PUC will assume all debt associated with the Neal Price Estates Sewage Treatment Plant.

c. PUC will treat the customers of the Neal Price Estates Sewage Treatment Plant in the same manner and assess the same rates that are assessed to other PUC customers.

29. Upon completion of the transfer, a Neal Price Estates Sewage Treatment Plant customer who uses 5,000 gallons of water or less each month will pay a lower monthly bill for sewage treatment service than he or she would paid if Appalachian Waste Control continued to operate the facilities and collect service charges.³⁴

30. As part of the proposed transaction, the Kentucky Energy and Environment Cabinet has provide PUC with a grant of \$50,000 to connect the customers that Neal Price Estates Subdivision Sewage Treatment Plant currently serves to Thelma Waste Control's sewage treatment facilities and to upgrade the sewage treatment facilities that Thelma Waste Control, Inc. currently owns and that PUC has agreed to purchase.³⁵

³⁴ For a schedule of PUC's rates, see <http://www.paintsvilleutilities.com/wp-content/uploads/2009/08/Rate-Sheet-07012012.pdf> (last visited July 16, 2013). Under Appalachian Waste Control's current rate schedule, a customer pays \$56.72. Under PUC's current rate schedule for wastewater users, a customer who uses 5,000 gallons of water monthly will pay a monthly rate of \$39.17.

³⁵ *Environmental and Public Protection Cabinet v. Bowling*, Civil Action No. 05-CI-1007 (Franklin Cir. Ct. Ky. Feb. 25, 2013) at 1; Memorandum from Gerald E. Wuetcher, Executive Advisor, to Case File (Feb. 11, 2013) (filed in Case No. 2012-00035, *An Investigation into the Condition and Management of Appalachian Waste Control, Inc.* (Ky. PSC filed Feb. 11, 2013) at 1. Thelma Waste Control, Inc. applied for Commission approval of its transfer of ownership and control of Thelma No. 1 and No. 2 Wastewater Treatment Plants to PUC. See Case No. 2013-00204, *Application of Thelma Waste Control, Inc. to Transfer Ownership and Control* at 1 – 2 (Ky. PSC filed May 23, 2013).

31. Franklin Circuit Court has authorized the Receiver to execute the agreement transferring ownership and control of the Neal Price Estates Subdivision Sewage Treatment Plant to PUC.³⁶

32. The proposed transfer will promote the consolidation of wastewater systems in Johnson County, Kentucky, and is likely to lead to the improvement of wastewater service for the residents of Johnson County.

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

1. Appalachian Waste Control is a utility subject to Commission jurisdiction.³⁷
2. PUC is an agency of Paintsville.
3. Paintsville is a municipal corporation.
4. As Paintsville is a city, it is not a utility and is not generally subject to Commission jurisdiction.³⁸
5. Paintsville is a "corporation"³⁹ and a "person"⁴⁰ for purposes of KRS Chapter 278.
6. KRS 278.020(5) 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 PUC is a person and is

³⁶ *Environmental and Public Protection Cabinet v. Bowling*, Civil Action No. 05-CI-1007 (Franklin Cir. Ct. Ky. Feb. 25, 2013).

³⁷ KRS 278.010(3)(f).

³⁸ *Simpson County Water District v. City of Franklin*, 872 S.W.2d 460 (Ky.1994); *McClellan v. Louisville Water Co.*, 351 S.W.2d 197 (Ky.1961).

³⁹ See KRS 278.010(1) (providing that a corporation "includes private, quasipublic, and public corporations, and all boards, agencies, and instrumentalities thereof, associations, joint-stock companies, and business trusts").

⁴⁰ See KRS 278.010(2) (providing that a person includes "includes natural persons, partnerships, corporations, and two (2) or more persons having a joint or common interest").

acquiring ownership of Appalachian Waste Control's sewage treatment facilities, this statute is applicable to and requires prior Commission approval of the proposed acquisition.

7. KRS 278.020(6) 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 PUC is a corporation and is acquiring control of Appalachian Waste Control's utility operations through the acquisition of its sewage treatment and collection facilities, this statute is applicable to and requires prior Commission approval of the transfer of those facilities.

8. In view of its financial assets and its status as an agency of a municipal corporation, PUC has sufficient financial integrity to ensure the continuity of utility service.

9. PUC has the financial, technical, and managerial abilities to provide reasonable service to those persons located in the Neil Price Estates Subdivision.

10. KRS 224A.300(1) provides that the regionalization and consolidation of water and wastewater systems should be encouraged.

11. PUC's acquisition of the sewage treatment and collection facilities presently serving the Neil Price Estate Subdivision is in accordance with law and for a proper purpose.

12. Upon PUC's acquisition of the sewage treatment and collection facilities presently serving the Neil Price Estate Subdivision, the facility will no longer be subject to Commission jurisdiction.

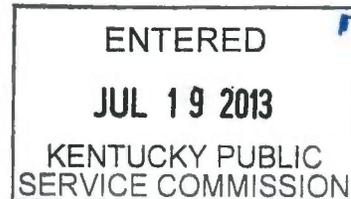
IT IS THEREFORE ORDERED that:

1. The proposed transfer of ownership and control of Appalachian Waste Control's facilities that serve the Neil Price Estate Subdivision is approved.

2. Within 10 days of completion of the transfer of ownership of the facilities from Appalachian Waste Control to PUC, Appalachian Waste Control and PUC shall notify the Commission in writing that the proposed transfer has occurred.

3. Any documents filed pursuant to ordering paragraph 2 shall reference this case number and shall be retained in the utility's general correspondence file.

By the Commission



ATTEST:


Executive Director

Case No. 2013-00183

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