

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF THELMA WASTE CONTROL,)
INC. TO TRANSFER OWNERSHIP AND) CASE NO. 2013-00204
CONTROL)

ORDER

Thelma Waste Control, Inc. ("Thelma Waste Control") has applied for approval to transfer ownership and control of its sewage collection and treatment facilities to Paintsville Utilities Commission for and on behalf of the City of Paintsville ("PUC").¹ Having reviewed the application and being otherwise advised, the Commission finds that:

1. Thelma Waste Control is a Kentucky corporation that was organized pursuant to KRS Chapter 273.²
2. Thelma Waste Control owns and operates sewage collection and treatment facilities that serve approximately 50 customers in the Fraley and Hughes Subdivisions of Johnson County, Kentucky.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/%28S%28zteuzndmqpgtr2amzmxljy41%29%29/default.aspx?path=ftsearch&id=0262714&ct=09&cs=99999> (last visited July 15, 2013); Articles of Incorporation of Thelma Waste Control, Inc. at 1.

³ Application at ¶ 4; *Annual Report of Thelma Waste Control, Inc. to the Public Service Commission for the Calendar Year Ended December 31, 2011* ("Annual Report") at 1.

3. Thelma Waste Control's facilities consist of 24,000 gallons per day variable stage treatment plant, one pumping station, and 5,000 linear feet of cast iron sewer main.⁴

4. For the calendar year ended December 31, 2011, Thelma Waste Control reported total sewage service revenues of \$22,464 and total sewage operating expenses of \$28,704.⁵

5. As of December 31, 2011, Thelma Waste Control reported net utility plant of \$6,194.⁶

6. For the calendar year ended December 31, 2011, Thelma Waste Control reported total assets and debits of \$21,165⁷ and total liabilities of \$18,000.⁸

7. 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 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"⁹

8. PUC has been in existence since 1927.¹⁰

⁴ *Annual Report* at 11 and 12.

⁵ *Id.* at 8.

⁶ *Id.* at 2.

⁷ *Id.*

⁸ *Id.* at 3.

⁹ Paintsville, Ky., Code of Ordinances § 53.15 (1995 & Supp. 2012), *available at* <http://www.amlegal.com/library/ky/paintsville.shtml>.

¹⁰ Paintsville Utilities, <http://www.paintsvilleutilities.com/about> (last visited July 15, 2013).

9. PUC presently serves 1,660 gas, 7,803 water, and 2,478 waste water customers.¹¹

10. As of June 30, 2012, PUC had total assets of \$83,284,055 and total liabilities of \$30,227,778.¹²

11. As of June 30, 2012, PUC had net utility plant, including construction work in progress, of \$73,890,540.¹³

12. For the fiscal year ended June 30, 2012, PUC had total operating revenues of \$7,945,535. PUC's sewer operations accounted for \$2,237,790 of these revenues.¹⁴

13. For the fiscal year ended June 30, 2012, PUC had total operating expenses of \$5,670,558.¹⁵

14. For the fiscal year ended June 30, 2012, PUC had net income of \$890,359.¹⁶

15. PUC currently owns and operates two wastewater treatment plants: the Paintsville Sewage Treatment Plant and the Honey Branch Regional Sewage Treatment Plant.¹⁷

¹¹ *Id.*

¹² 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.

¹³ *Id.* at 3.

¹⁴ *Id.* at 5. PUC reports sewer revenues separately.

¹⁵ *Id.* at 5. PUC does not report sewer operating expenses separately.

¹⁶ *Id.*

¹⁷ *Kentucky Wastewater Management Plan 176-177.*

16. The Paintsville Sewage Treatment Plant has a treatment capacity of 990,000 gallons per day. Approximately 38.52 miles of collection mains, 0.05 miles of interceptor mains and 13 lift stations are involved in the transport of wastewater to this facility.¹⁸

17. 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.¹⁹

18. As of the date of the application, Paintsville Utilities Commission employed five employees who hold at least a Class II treatment or collection certificate.²⁰

19. Thelma Waste Control and PUC have reached an agreement for the transfer of ownership and control of Thelma Waste Control's sewage treatment and collection facilities.²¹ This agreement provides:

a. Thelma Waste Control will transfer to PUC all personal and real property that it owns and uses in the operation of its sewage treatment and collection facilities.

b. PUC will assume all debt associated with Thelma Waste Control's sewage treatment and collection facilities.

¹⁸ *Id.* at 177.

¹⁹ *Id.* at 176.

²⁰ Application, "Paintsville Utilities Commission Licensed Operators" (filed in Case No. 2013-00183, *Application of Appalachian Waste Control, Inc. to Transfer Ownership and Control* (Ky. PSC filed May 9, 2013)) at 1 – 2.

²¹ Application Ex. A.

c. PUC will treat the customers of the Thelma Waste Control Treatment Plant in the same manner and assess the same rates that are assessed to other PUC customers.

20. Upon completion of the transfer, a Thelma Waste Control 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 pay if Thelma Waste Control continued to operate the facilities.²²

21. As part of the proposed transaction, the Kentucky Energy and Environment Cabinet has provided PUC with a grant of \$50,000 to upgrade the sewage treatment facilities that Thelma Waste Control, Inc. currently owns.²³

22. 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. Thelma Waste Control is a utility subject to Commission jurisdiction.²⁴
2. PUC is an agency of Paintsville.
3. Paintsville is a municipal corporation.

²² 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 Thelma Waste Control's current rate schedule, a customer pays \$45.43. 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.

²³ *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.

²⁴ KRS 278.010(3)(f).

4. As Paintsville is a city, it is not a utility and is not generally subject to Commission jurisdiction.²⁵

5. Paintsville is a "corporation"²⁶ and a "person"²⁷ 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 acquiring ownership of Thelma 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 Thelma 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.

²⁵ *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).

²⁶ 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").

²⁷ 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").

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 that Thelma Waste Control currently serves.

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

11. PUC's acquisition of Thelma Waste Control's sewage treatment and collection facilities is in accordance with law and for a proper purpose.

12. Upon PUC's acquisition of Thelma Waste Control's sewage treatment and collection facilities, those facilities will no longer be subject to Commission jurisdiction.

IT IS THEREFORE ORDERED that:

1. The proposed transfer of ownership and control of Thelma Waste Control's facilities to PUC is approved.

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

3. Within 120 days of the date of this Order, Thelma Waste Control shall file with the Commission a financial and statistical report for its operations for the period from January 1, 2013 until the date of transfer of ownership.

4. 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

ENTERED
JUL 18 2013
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:



Executive Director

Case No. 2013-00204

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