

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

| | | |
|--------------------------------------|---|---------------------|
| JOINT APPLICATION OF SOUTHSIDE WATER |) | |
| ASSOCIATION, INC. AND THE CITY OF |) | |
| BEATTYVILLE FOR AN ORDER APPROVING A |) | CASE NO. 2013-00299 |
| TRANSFER OF OWNERSHIP AND CONTROL |) | |
| PURSUANT TO KRS 278.020(5) AND (6) |) | |

ORDER

Southside Water, Inc. ("Southside"), and the city of Beattyville, Kentucky ("Beattyville"), jointly petitioned for approval to transfer ownership and control of Southside's water distribution system to Beattyville. Having reviewed the application and being otherwise advised, the Commission finds that:

1. Southside, a Kentucky corporation, is organized pursuant to KRS Chapter 273.¹
2. Southside owns and operates a distribution system that serves approximately 489 customers in Lee County, Kentucky.²
3. As of December 31, 2012, Southside had total assets of \$694,229 and total liabilities of \$389,344.³
4. As of December 31, 2012, Southside had net utility plant of \$671,170.⁴

¹ Joint Application Ex. A.

² *Annual Report of Southside Water, Inc. to the Public Service Commission for the Calendar Year Ended December 31, 2012* ("Annual Report") at 5, 21.

³ *Id.* at 7 - 8.

⁴ *Id.* at 7.

5. For the calendar year ending December 31, 2012, Southside had operating revenues of \$224,940 and utility operating expenses of \$252,583, which resulted in utility operating income of (\$27,643).⁵

6. For the calendar year ending December 31, 2012, Southside had net income of (\$42,628).⁶

7. On November 18, 2008, Southside executed a promissory note in the amount of \$344,000 to the United States Department of Agriculture ("USDA"),⁷ the proceeds of which were used to construct a water-storage facility and expand Southside's water distribution system.⁸

8. To meet the annual payment on its 2008 promissory note to the USDA in 2011, Southside borrowed funds from a local lender.⁹

9. In 2012 Southside failed to meet its required annual payment on the 2008 promissory note to the USDA and is currently in default on its obligations under that note.¹⁰

10. Beattyville is a city of the fifth class.¹¹

⁵ *Id.* at 9.

⁶ *Id.*

⁷ Joint Application Ex. B.

⁸ Case No. 2008-00446, *Application of Southside Water Association Inc. of Lee County, Kentucky for a Certificate of Public Convenience and Necessity to Construct, Finance and Increase Rates Pursuant to the Provisions of KRS 278.023* (Ky. PSC Nov. 14, 2008).

⁹ Letter from Thomas G. Fern, State Director, Rural Development, to Gerald Wuetcher, Attorney, Kentucky Public Service Commission (July 11, 2013).

¹⁰ *Id.*

¹¹ KRS 81.010(5)

11. Beattyville owns and operates a water treatment and distribution system that provides water service to persons inside and outside Beattyville's corporate boundaries.¹²

12. Beattyville's system consists of a water treatment plant with a treatment capacity of 2.0 million gallons per day, nine water storage facilities with a total storage capacity of 1.525 million gallons, and 240.19 miles of water transmission and distribution mains.¹³

13. Beattyville's water distribution system currently serves 2,586 customers¹⁴ and provides Southside's total water requirements.¹⁵

14. For the fiscal year ended June 30, 2012, Beattyville reported total assets of \$13,772,664¹⁶ and total liabilities of \$4,735,934.¹⁷

15. As of June 30, 2012, Beattyville had net utility plant in service of \$12,967,164.¹⁸

¹² Kentucky Infrastructure Authority, Kentucky Water Management Plan (Feb. 2013) 461, available at http://kia.ky.gov/NR/rdonlyres/92C135FB-6B5D-4744-A074-D29993FCB807/0/DW_ManagementPlan_State_062413.pdf.

¹³ *Id.*

¹⁴ System Data for Beattyville Water Works ("Water Works System Data"), Water Resource Information System, <http://wris.ky.gov/portal/DwSysData.aspx?PNum=KY0650024> (last visited Sept. 12, 2013).

¹⁵ *Annual Report* at 23.

¹⁶ Joint Application Ex. M at 8. Beattyville also owns a wastewater collection and treatment system. This amount includes wastewater system assets.

¹⁷ *Id.* at 9. This amount includes wastewater system liabilities.

¹⁸ *Id.* at 8. This amount includes plant used to provide wastewater services.

16. For the fiscal year ended June 30, 2012, Beattyville reported total operating revenues of \$1,754,630 and total operating expenses of \$1,410,748. It also reported net non-operating loss of \$156,005.¹⁹

17. Beattyville currently employs six full-time employees for its water operations.²⁰ The Kentucky Division of Water has licensed five employees as drinking water treatment operators or drinking water distribution system operators.²¹

18. At its members' annual meeting on March 26, 2013, a majority of Southside's attending members voted to consolidate Southside's operations with Beattyville's water operations or, in the alternative, to raise rates for service to sufficient levels to bring Southside into a positive financial condition.²²

19. On March 26, 2013, Southside's Board of Directors voted to merge with Beattyville.²³

20. On April 8, 2013, Beattyville's City Council authorized Beattyville's mayor to proceed with the acquisition of Southside's facilities.²⁴

21. On July 1, 2013, Southside and Beattyville executed an agreement for the transfer of ownership and control of Southside's water distribution system.²⁵ This agreement provides:

¹⁹ *Id.* at 10.

²⁰ Water Works System Data.

²¹ Joint Application Ex. N.

²² Joint Application ¶ 7.

²³ Joint Application Ex. H.

²⁴ Joint Application Ex. I.

²⁵ Joint Application Ex. L.

- a. Southside will transfer to Beattyville all of its personal and real property.²⁶
- b. Southside will transfer to Beattyville all customer security deposits that Southside holds as of the date of closing.²⁷
- c. Beattyville will issue revenue bonds in an amount sufficient to retire and repay all outstanding amounts due under the 2008 promissory note to the USDA, provided that the USDA purchases those bonds. The revenue bonds will be secured by the revenues from Beattyville's water and sewer systems.²⁸
- d. Southside customers will be assessed Beattyville's outside city limits water rates.²⁹
- e. Future increases in the rates charged to Southside customers will be tied directly to increases imposed on Beattyville's resident and nonresident customers with increases to be measured on an absolute dollar per gallon of water basis.³⁰
- f. Beattyville may increase water rates at any time to the extent required to comply with any guidelines established by federal or state law or any existing or future bond issues or loans.³¹

²⁶ Acquisition Agreement at 4.

²⁷ *Id.* at 5.

²⁸ *Id.* at 3.

²⁹ *Id.* at 6.

³⁰ *Id.*

³¹ *Id.*

22. Beattyville's current rates for water service to customers residing outside Beattyville's corporate limits are slightly higher than Southside's current rates for water service.³²

23. The proposed transfer will avoid a foreclosure action against Southside that could lead to significant rate increases, disruptions in water service, or degradation in the quality of water service.

Based upon the findings set forth above, the Commission makes the following conclusions of law:

1. Southside Water Association is a utility subject to Commission jurisdiction.³³

2. As a city, Beattyville is not a utility and is not subject to Commission jurisdiction.³⁴

3. Beattyville is a "corporation"³⁵ and a "person"³⁶ for purposes of KRS Chapter 278.

4. 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

³² For the schedule of Beattyville's rates, see Joint Application Ex. O. Under Southside's present rate schedule, a customer who consumes 5,000 gallons of water monthly will pay a monthly bill of \$36.97. Under Beattyville's schedule of rates for outside city customers, the same customer would pay \$38.45.

³³ KRS 278.010(3)(d); KRS 278.012.

³⁴ *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).

³⁵ 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"). Cities are municipal corporations. See, e.g., *Wilson v. Central City*, 2012 WL1450136 at *2 (Ky. Apr. 26, 2012) ("a city is both a 'municipality' and a 'municipal corporation'").

³⁶ See KRS 278.010(2) (providing that a person includes "natural persons, partnerships, corporations, and two (2) or more persons having a joint or common interest").

commission . . . without prior approval by the commission.” As Beattyville is a person and is acquiring ownership of Southside’s water distribution facilities, this statute is applicable to and requires Commission approval of the proposed transfer.

5. 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 Beattyville is a corporation and is acquiring control of Southside Water’s utility operations through the acquisition of its water distribution facilities, this statute is applicable to and requires prior Commission approval of the transfer of those facilities.

6. In view of its financial assets and its status as a municipal corporation, Beattyville has sufficient financial integrity to ensure the continuity of utility service.

7. The consolidation of Southside’s water distribution system into Beattyville’s water distribution system is consistent with the Commonwealth’s policy of promoting the consolidation of water distribution systems and the creation of regionalized water suppliers.³⁷

8. The proposed transfer is in accordance with law and for a proper purpose.

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

10. Beattyville has the financial, technical, and managerial abilities to provide reasonable service to those persons that Southside currently serves.

³⁷ KRS 224A.300(1).

11. Provided that the transfer is conditioned upon the conditions set forth in ordering paragraphs 2 through 3 of this Order, the proposed transfer is consistent with the public interest.

IT IS THEREFORE ORDERED that:

1. Subject to the conditions set forth in ordering paragraphs 2 and 3 of this Order, the proposed transfer of ownership and control of Southside's facilities to Beattyville is approved.

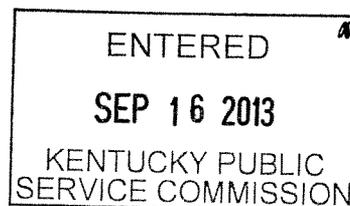
2. Southside and Beattyville shall notify the Commission in writing of the transfer of assets within ten days of the transfer's occurrence.

3. Southside shall submit to the Commission using the Commission's electronic filing system a financial and statistical report as required by 807 KAR 5:006, Section 4, for its operations for the period from January 1, 2013 until the date of transfer of ownership.

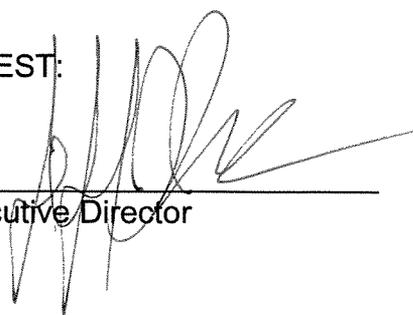
4. Any documents filed pursuant to ordering paragraph 2 shall reference this case number and shall be retained in the utility's general correspondence file.

5. The Executive Director is delegated authority to grant reasonable extensions of time for the filing of any documents required by this Order upon a showing of good cause for such extension.

By the Commission



ATTEST:



Executive Director

Case No. 2013-00299

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