

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

JOINT APPLICATION OF PURCHASE PUBLIC)
SERVICE CORPORATION AND PADUCAH-)
MCCRACKEN COUNTY JOINT SEWER AGENCY)
TO APPROVE THE TRANSFER OF OPERATIONS) CASE NO. 2013-00333
OF THE BLANDVILLE WEST SUBDIVISION)
WASTEWATER TREATMENT FACILITIES TO)
PADUCAH-MCCRACKEN COUNTY JOINT)
SEWER AGENCY)

ORDER

Purchase Public Service Corporation (“PPSC”), and Paducah-McCracken County Joint Sewer Agency (“JSA”), jointly petitioned for approval to transfer control of the Blandville West Subdivision sewage treatment and collection system to JSA. Having reviewed the application and being otherwise advised, the Commission finds that:

1. PPSC is a non-profit corporation that was organized pursuant to KRS Chapter 273 “[t]o provide for the proper and orderly operation, maintenance, expansion, and construction of infrastructure facilities throughout the eight-county Purchase area.”¹

¹ Articles of Incorporation of Purchase Public Service Corp. at 1-2. PPSC’s Articles of Incorporation can be found at [https://app.sos.ky.gov/ftshow/\(S\(fgbhkvgez0a5lrlnjgjfno1k\)\)/genpdf.aspx?ctr=3875325](https://app.sos.ky.gov/ftshow/(S(fgbhkvgez0a5lrlnjgjfno1k))/genpdf.aspx?ctr=3875325) (last visited Dec. 17, 2013).

2. PPSC owns the sewage treatment and collection facilities that serve the Blandville West Estates Subdivision in McCracken County, Kentucky.²

3. PPSC acquired ownership of the sewage treatment and collection facilities that serve the Blandville West Estates Subdivision in 1991.³

4. The facilities that serve the Blandville West Estates Subdivision consist of a 30,000-gallon-per-day extended-aeration sewage treatment facility, 1,900 feet of eight-inch clay collection lines, and 4,310 feet of six-inch clay collection lines.⁴

5. As of December 31, 2012, the facilities served 65 customers.⁵

6. As of December 31, 2012, PPSC had total assets of \$7,619 and total liabilities of \$85,104.⁶

7. As of December 31, 2012, PPSC had net utility plant of \$4,707.⁷

² In 2012, PPSC divested itself of ownership of three sewage treatment and collection facilities that served subdivisions in Graves County, Kentucky. See Case No. 2012-00212, *Application of Purchase Public Service Corporation for an Order Approving a Transfer of Ownership and Control* (Ky. PSC July 23, 2012). In the same year, it also transferred ownership of sewage treatment and collection facilities that served the Golden Springs Subdivision in Marshall County, Kentucky, and the Great Oaks Subdivision in McCracken County, Kentucky. See Case No. 2012-00436, *Joint Application of Purchase Public Service Corporation and Marshall County Environmental Services, LLC to Approve the Transfer of Ownership and Control of the Golden Acres Subdivision and Great Oaks Subdivision Wastewater Treatment Facilities to Marshall County Environmental Services, LLC* (Ky. PSC Nov. 19, 2012).

³ See Case No. 90-189, *Investigation of Cardinal Utilities, Inc.; Lorraine P. Kimbrell; and Steve Pope* (Ky. PSC May 10, 1991).

⁴ *Annual Report of Purchase Public Service Company d/b/a Cardinal Group for the Calendar Year Ending December 31, 2012* ("Annual Report") at 12.

⁵ *Id.*

⁶ *Id.* at 2 - 3. When submitting its annual financial and statistical report for calendar year 2012 as 807 KAR 5:006, Section 4(2), requires, PPSC submitted a combined report on the facilities that serve the subdivisions of Golden Acres and Blandville West. These facilities are located in different counties. Each could be treated as a separate entity. PPSC submitted a combined report because these facilities were acquired at the same time from Cardinal Utilities, Inc. and originally operated as a single business operation known as its "Cardinal Group." See Case No. 90-189, *supra* note 3. Accordingly, the Commission lacks information that addresses solely the finances of the sewer facilities serving Blandville West.

⁷ *Id.* at 4.

8. For the calendar year ending December 31, 2012, PPSC had operating revenues of \$52,818 and utility operating expenses of \$56,079, which resulted in net utility operating income of (\$3,261).⁸

9. For the calendar year ending December 31, 2012, PPSC had net income of (\$7,860).⁹

10. JSA is a joint sewer agency that the city of Paducah and McCracken County Fiscal Court created, pursuant to KRS 76.231, "to own, manage, control, and operate regional comprehensive wastewater facilities within McCracken County."¹⁰

11. A seven-member board governs JSA. The Paducah City Commission and McCracken County Fiscal Court separately appoint three members to this board. They jointly appoint the seventh member of this board.¹¹

12. JSA owns and operates three sewage treatment plants with a combined wastewater treatment capacity of 10.91 million gallons per day.¹²

13. JSA owns and operates a sewage collection network that consists of 336.68 miles of sewer collection mains, 56.53 miles of sewer interceptor mains, 5,120 manholes, and 71 lift stations.¹³

⁸ *Id.* at 8.

⁹ *Id.*

¹⁰ City of Paducah, Ky. Ordinance No. 98-5-5927 § 1 (Aug. 25, 1998); McCracken County Fiscal Court Ordinance No. 93-3 § 1 (Sept. 14, 1998).

¹¹ City of Paducah, Ky. Ordinance No. 98-5-5927 § 2; McCracken County Fiscal Court Ordinance No. 93-3 § 2.

¹² Kentucky Infrastructure Authority, *Kentucky Wastewater Management Plan* (Apr. 2013) 743 - 745, available at http://kia.ky.gov/NR/rdonlyres/9A094655-E931-4A98-8F07-914CE0A50D2E/0/CW_ManagementPlan_State_062513.pdf; Joint Applicants' Response to Commission Staff's First Request for Information, Item 13 (filed Oct. 28, 2013)

¹³ *Kentucky Wastewater Management Plan* at 743 – 745.

14. JSA employs 28 persons.¹⁴ The Kentucky Division of Water has certified 12 of these employees as wastewater treatment plant operators and two of these employees as wastewater collection system operators.¹⁵

15. For the fiscal year ending June 30, 2013, JSA reported total assets of \$77,610,943¹⁶ and total liabilities of \$ 19,766,152.¹⁷

16. As of June 30, 2013, JSA had net utility plant and capital assets of \$62,654,717.¹⁸

17. For the fiscal year ending June 30, 2013, JSA reported total operating revenues of \$ 6,971,035 and total operating expenses of \$ 6,488,699.¹⁹

18. JSA has entered into a Consent Decree with the Kentucky Environmental and Public Protection Cabinet that will require JSA to bring combined and sanitary sewer overflows into compliance with Federal and State guidelines. JSA anticipates incurring significant costs to bring its sewer and storm water collection systems into compliance.²⁰

¹⁴ *Id.*

¹⁵ Joint Applicants' Response to Commission Staff's First Request for Information, Item 15.

¹⁶ Kemper CPA Group, *Paducah McCracken Joint Sewer Agency Paducah, Kentucky Financial Statements with Independent Auditor's Report Years Ended June 30, 2013 and 2012 ("Audit Report")* (Sept. 20, 2013) at 9.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.* at 10.

²⁰ *Environmental and Public Protection Cabinet v. Paducah McCracken County Joint Sewer Agency*, No. 07-CI-1252 (Franklin Cir. Ct. Ky. Aug. 16, 2007); Joint Applicants' Response to Commission Staff's First Request for Information, Item 1; *Audit Report* at 20.

19. As of October 28, 2013, with the exception of the litigation noted in Finding 18, JSA had no outstanding legal or administrative actions in which it is a party and that involves the manner in which it operates its sewage treatment and collection facilities.²¹

20. Since 2008, the Kentucky Department for Environmental Protection ("KDEP") has issued two notices of violation against JSA related to its sewer operations. JSA resolved the issues arising out of these violations and the KDEP has either rescinded the notice of violation or determined that no formal enforcement action should be taken.²²

21. On August 9, 2013, PPSC and JSA executed an agreement for the transfer of ownership and control of certain facilities that PPSC owns.²³ This agreement provides:

a. PPSC will transfer to JSA and JSA will accept responsibility for operating the sewage collection and treatment facilities that presently serve the Blandville West Subdivision.²⁴

b. The proposed transfer includes all sewage collection and treatment facilities and equipment, all easement rights, and all contract rights that are used to provide sewer service to Blandville West Subdivision, but does not involve transfer of ownership of the sewage treatment plant serving Blandville West Subdivision.²⁵

²¹ Joint Applicants' Response to Commission Staff's First Request for Information, Item 1. JSA was a defendant in an action regarding the extension of service to certain real estate developments,

²² *Id.* Item 2.

²³ Joint Application Ex.B.

²⁴ Agreement ¶ 1.1.

²⁵ *Id.*

c. Upon completion of the proposed transfer, JSA will assume full control of the operations of the facilities and have full responsibility for providing quality and adequate sewage treatment services.²⁶

d. Upon the transfer of control, JSA will have full responsibility to repair, replace and otherwise maintain the facilities and will operate and maintain the facilities in accordance with its general practices and standards which JSA uses for its other customers.

e. Any increases in the rates for sewer service to present PPSC customers will be based on the same percentage of increase made to the rates of all other JSA customers.²⁷

f. PPSC will make a payment not to exceed \$25,000 to JSA to reimburse JSA for its expenses in making its sewer collection and treatment system available to Blandville West Subdivision.²⁸

g. PPSC will retain ownership of the sewage treatment plant that presently serves Blandville West Subdivision and shall be responsible for decommissioning that plant.²⁹

22. JSA's existing sewer collection mains are within approximately 170 feet of existing PPSC sewer mains that serve Blandville West Subdivision.³⁰

²⁶ Agreement ¶ 8.1.

²⁷ Agreement ¶ 8.2.

²⁸ Agreement ¶ 2.5.

²⁹ Agreement ¶ 1.1.

³⁰ Joint Applicants' Response to Commission Staff's First Request for Information, Item 6.

23. Upon the transfer of control, JSA intends to construct its sewer mains approximately 170 feet to connect the Blandville West Subdivision to its sewer collection system. The expected cost of this extension is \$12,000.³¹

24. Upon the transfer of control, JSA will charge the residents of Blandville West Subdivision the same rates that it assesses all other JSA customers.³²

25. Upon the proposed transfer, PPSC customers who reside within the Blandville West Subdivision will see a reduction in their rates for sewer service. The monthly bill of a PPSC customer who presently uses 5,000 gallons of water per month will be reduced from \$39.57 to \$21.75.³³

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

1. PPSC is a utility subject to Commission jurisdiction.³⁴
2. JSA is a "corporation"³⁵ and a "person"³⁶ for purposes of KRS Chapter 278.

³¹ *Id.*

³² *Id.* Item 8.

³³ *Id.* Item 7.

³⁴ KRS 278.010(3)(f).

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"). Joint sewer agencies are an alternative to a metropolitan sewer district and may possess all the powers granted to a metropolitan sewer district. KRS 76.231. Metropolitan sewer districts are considered public corporations. See *Calvert Investments v. Louisville & Jefferson County Metropolitan Sewer District*, 805 S.W.2d 133 (Ky. 1991), *Fawbush v. Louisville & Jefferson County Metropolitan Sewer Dist.*, 240 S.W.2d 622, 623 (Ky. 1951). As they have the same form and powers as metropolitan sewer districts, joint sewer agencies are public corporations.

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").

3. 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 JSA is a person and is acquiring ownership of PPSC’s sewage collection facilities, this statute is applicable to and requires Commission approval of the proposed transfer.

4. 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 JSA is a corporation and is acquiring control of PPSC’s utility operations through the acquisition of its sewer collection facilities, this statute is applicable to and requires prior Commission approval of the transfer of those facilities.

5. In view of its financial assets and its status as a political subdivision, JSA has sufficient financial integrity to ensure the continuity of utility service.

6. The consolidation of the Blandville West Subdivision sewer treatment and collection facilities into JSA’s sewage collection and treatment facilities is consistent with the Commonwealth’s policy of promoting the consolidation of wastewater systems and the creation of regionalized wastewater treatment facilities.³⁷

7. The proposed transfer is in accordance with law, for a proper purpose, and consistent with the public interest.

³⁷ KRS 224A.300(1).

8. JSA has the financial, technical, and managerial abilities to provide reasonable service to those persons that PPSC's Blandville West Subdivision facilities currently serve.

9. Provided that the transfer is conditioned upon the conditions set forth in ordering paragraphs 2 through 4 of this Order, the proposed transfer is consistent with the public interest.

10. Upon completion of the proposed transfer, the Blandville West Subdivision sewage treatment and collection facilities will no longer be subject to Commission jurisdiction.

IT IS THEREFORE ORDERED that:

1. Subject to the conditions set forth in ordering paragraphs 2 through 4 of this Order, the proposed transfer of control of Blandville West Subdivision sewage treatment and collection system facilities to JSA is approved.

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

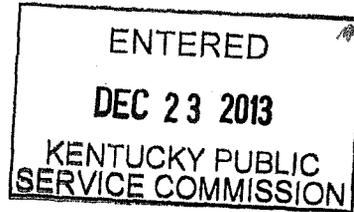
3. If PPSC and JSA fail to execute and implement the proposed transfer of control by March 31, 2014, this Order shall be deemed void and without legal effect.

4. No later than March 31, 2014, PPSC 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 calendar year ending December 31, 2013,

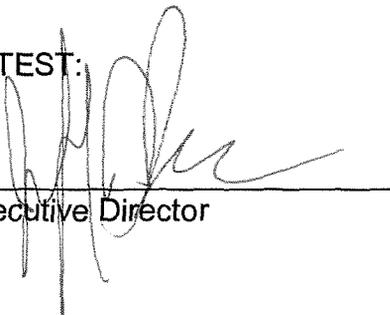
5. Any documents filed pursuant to ordering paragraph 2 shall reference this case number and shall be retained in the utility's general correspondence file.

6. 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. 2013-00333

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