

**BEFORE THE
PUBLIC SERVICE COMMISSION OF KENTUCKY**

In the Matter of:

No. 2021-00328

Application of the
Louisville and Jefferson County Metropolitan Sewer District
For an Order Approving a Transfer of Ownership and Control

APPLICATION

Applicant, the Louisville and Jefferson County Metropolitan Sewer District (“MSD”) hereby applies to the Kentucky Public Service Commission (“PSC”) for (a) approval pursuant to KRS 278.020 of a transfer of ownership and control of a jurisdictional utility, and (b) any other approval necessary relating to the acquisition of the Big Valley Sanitation, Inc. and former Bullitt Utilities, Inc. systems. In support of its request, MSD states as follows:

THE APPLICANT

1. MSD is a public body corporate created and organized pursuant to KRS Chapter 76 of the Kentucky Revised Statutes, whose address is 700 West Liberty Street, Louisville, Kentucky.
2. MSD’s statutory responsibilities include the providing of sewage and drainage facilities for to the public; the regulation of public and private sewers and drains and the discharge of waste and waters into the sewer system, and who is authorized to provide for wastewater discharge permits and abatement of and liabilities and penalties for the violations of MSD’s regulations and Metro Government ordinances.

3. In order to carry out these responsibilities MSD owns and operates wastewater treatment plants and pump stations which comprise part of the sanitary sewer system throughout Jefferson County and Oldham County.
4. Pursuant to KRS 76.070, KRS 76.110 and KRS 65.240, MSD has the legal authority to acquire land and existing facilities.
5. Copies of all orders, pleadings and other communications regarding this Application should be directed to:

Jackie Quarles

Louisville and Jefferson County MSD

700 West Liberty Street

Louisville, Kentucky 40203-1911

Jacquelyn.Quarles@louisvillemSD.org

THE TRANSACTION

6. On May 6, 2021 Bullitt County, Bullitt County Sanitation District (“BCSD”) and Louisville and Jefferson County Metropolitan Sewer District (“MSD”) entered into an Interlocal Cooperation Agreement (“ILA”) to sell the wastewater systems owned and operated by BCSD. A First Amended ILA was entered on August 12, 2021.
7. The ILA was approved by Louisville Metro Council, the Mayor of Louisville, and the Kentucky Attorney General in accordance with KRS 65.
8. Pursuant to an order of the Franklin Circuit Court, Division No. II, entered on April 30, 2013, in the matter of *Public Service Commission of*

Kentucky vs. Big Valley Sanitation, Inc., ET AL., Civil Action No. 11-CI-1433, BCSD was appointed, and currently serves as Receiver of Big Valley Sanitation, Inc., with authority to operate, control, and maintain the Big Valley Sanitation's sewage and collection system (the "Big Valley Wastewater System"). The Big Valley Wastewater System serves residents of the Big Valley Mobile Home Park Subdivision in Bullitt County, Kentucky.

9. Approximately eighteen months following a catastrophic failure of the Hunters Hollow wastewater treatment plant which, at the time of the failure, was owned and operated by Bullitt Utilities, Inc., BCSD was also appointed Receiver of Bullitt Utilities pursuant to an order of the Franklin Circuit Court, Division No. II, entered on September 23, 2015, in the matter of *Public Service Commission of Kentucky vs. Bullitt Utilities, Inc., ET AL.*, Civil Action No. 15-CI-946, and was granted authority to operate, control and maintain the Hunters Hollow wastewater collection facilities.
10. On December 18, 2015, Veolia Water Technologies, Inc. ("Veolia") and Perdue Environmental Contracting Company, Inc. ("PECCO") filed an involuntary petition for relief under Chapter 7 of Title 11 of the United States Code to initiate a bankruptcy case against Bullitt Utilities. Veolia and PECCO filed Proof of Claims in the bankruptcy case asserting general unsecured claims for services rendered to and unpaid by Bullitt Utilities in the amounts of \$2,166,418.97 and \$582,290.02, respectively. The case is currently proceeding as Case No. 15-34000-jal in the United States

Bankruptcy Court for the Western District of Kentucky. On December 1, 2017, the Bankruptcy Trustee filed *The Trustee's Complaint Against BCSD* [Adv. Docket No. 1] initiating the adversary proceeding, *Keats v. BCSD*, Adversary No. 17-03072-jal, before the Bankruptcy Court asserting various causes of action against BCSD. By Memorandum-Opinion and Judgement entered on April 30, 2019, the Bankruptcy Court entered a judgment against BCSD and in favor of the bankruptcy estate of Bullitt Utilities in the amount of \$2,789,436.23. Due to the Judgement, which BCSD has since appealed, BCSD faces the potential of becoming insolvent which threatens its ability to continue serving residents of Bullitt County and to meet obligations arising under its Kentucky Pollutant Discharge Elimination System ("KPDES") permits and agreed orders with the Kentucky Energy and Environment Cabinet.

11. In an effort to develop a long-range regional wastewater solution for the residents of Bullitt County that will be cost-effective, improve water quality, add capacity, and that will provide mutual benefit to BCSD, Bullitt County and MSD, BCSD, in its capacity as owner and operator of the BCSD wastewater system, and as court-appointed receiver of the Big Valley Wastewater System, desires to sell to MSD and MSD desires to purchase from BCSD, the Wastewater Systems.

12. MSD was created in 1946 as a public body corporate and subdivision of the Commonwealth of Kentucky. It has complete control, possession, and supervision of the sewer and drainage system within

Louisville/Jefferson County. On June 30, 2020 MSD purchased the Oldham County Environmental Authority wastewater system. KRS Chapter 76 authorizes MSD to construct facilities within its service area and to recover the cost of its services in accordance with rate schedules adopted by its governing Board.

13. The terms and conditions of the Transaction are set out in the Interlocal Cooperation Agreement by and Between the County of Bullitt, Kentucky, the Bullitt County Sanitation District, and the Louisville and Jefferson County Metropolitan Sewer District for Wastewater Collection and Treatment Services ("the ILA") is attached as Exhibit B. The First Amended ILA is attached as Exhibit C.

14. For former BCSD customers residing in areas of Bullitt County served by the Big Valley Wastewater System and the Hunters Hollow Collection System, MSD will maintain the existing charges for wastewater collection and treatment services until December 31, 2021.

15. Beginning January 1, 2022, MSD will increase wastewater charges for these customers to rates equal with other customers in Bullitt County that become effective January 1, 2022. These customers will also pay equivalent capacity charges beginning January 1, 2022 and each calendar year thereafter.

16. Beginning January 1, 2023, and each calendar year thereafter through January 1, 2026, MSD will increase wastewater charges for areas served by the Big Valley Wastewater System and Hunters Hollow Collection

System by 12%. Starting January 1, 2027, and years thereafter, MSD will increase wastewater charges by no more than 3% until charges equalize with charges of MSD's Jefferson County customers. Once charges equalize, MSD's Rates, Rentals, and Charges for all customer classes will be applied going forward.

KRS 278.020 Transfer Requirements

17. The Commission should approve the transfer pursuant to KRS 278.020. MSD has the financial, technical, and managerial abilities to continue to provide reasonable service to the customers. MSD currently has a workforce of over 600 employees. Over 50 are employed as certified operators. MSD is a public utility created pursuant to KRS 76 to manage and operate the sewer systems. MSD's workforce is trained to handle specific job functions directly related to the operation of the sewer system. Additionally, MSD's employees are on-call 24 hours a day, 7 days a week to handle immediate emergencies.
18. As demonstrated by its Comprehensive Annual Financial Report for the Fiscal Year Ended June 30, 2020 and 2019, attached as Exhibit D, and its control and operation of the sewer system within the City of Louisville/Jefferson County and Oldham County, MSD has the financial, managerial, and technical abilities to provide reasonable service to persons currently served by BCSD.
19. The acquisition is consistent with the Commonwealth's and

U.S. EPA policies of regionalization. The acquisition will produce greater economies of scale, eliminate wasteful duplication of costs and efforts, and produce a higher degree of service at a lesser cost.

Other Requirements

20. The Transaction does not include an acquisition within the meaning of KRS 278.020(6) or an acquisition of control as defined by KRS 278.020(7), because MSD is not subject to the jurisdiction of the Commission.

21. If the Commission nonetheless applies KRS 278.020(6) to the Transaction, the Commission should approve the acquisition by MSD of the Big Valley Sanitation, Inc. and former Bullitt Utilities, Inc. systems. As demonstrated by this Application, the Transaction is in accordance with law, for a proper purpose, and is consistent with the public interest. Therefore, the Commission should approve the acquisition by MSD of the Big Valley Sanitation, Inc. and former Bullitt Utilities, Inc. systems.

CONCLUSION

WHEREFORE, Applicant MSD requests an Order of the Commission within 30 days of the filing of the Application which:

- a) Grants approval pursuant to KRS 278.020 for the transfer to MSD by BCSD of ownership and control of the Big Valley Sanitation, Inc. and former Bullitt Utilities, Inc. systems; and
- b) Declares that KRS 278.020(6) and (7) are inapplicable or, in the alternative, grants approval pursuant to KRS 278.020(6) and (7) for the

acquisition by MSD of control of the Big Valley Sanitation, Inc. and former Bullitt Utilities, Inc. systems as provided for in the ILA; and

- c) Declares that no other Commission approvals are necessary for the Transaction or, in the alternative, grants any other approvals necessary.

Respectfully submitted,

/s/ Jackie A. Quarles

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Attorney for Louisville/Jefferson County MSD

Exhibits

- A Verification

- B Interlocal Cooperation Agreement by and Between the County of Bullitt, Kentucky, the Bullitt County Sanitation District, and the Louisville and Jefferson County Metropolitan Sewer District for Wastewater Collection and Treatment Services

- C First Amended ILA

- D Comprehensive Annual Financial Report for the Fiscal Year Ended June 30, 2020 and 2019