

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF ADAIR COUNTY WATER)
DISTRICT TO ASSUME CERTAIN SECURITIES IN)
THE OUTSTANDING PRINCIPAL AMOUNT OF) CASE NO. 2010-00361
\$2,236,343 PURSUANT TO THE PROVISIONS OF)
KRS 278.300 AND 807 KAR 5:001)

ORDER

Adair County Water District (“Adair District”) has applied for authorization to assume obligations related to the outstanding water and wastewater bonds of the city of Columbia, Kentucky (“Columbia”) as part of its acquisition of Columbia’s water distribution system and wastewater system. Its application poses the following question: Does KRS 278.300 require Commission authorization of a water district’s assumption of obligations related to bonded debt when such assumption is subject to Rural Development’s supervision and control? Finding it does not, we declare that Commission authorization of Adair District’s assumption of the obligations in question is not required.

Adair District, a water district created pursuant to KRS Chapter 74, owns and operates water distribution facilities that serve approximately 5,919 customers in Adair

County, Kentucky.¹ It is a utility subject to Commission jurisdiction.² Adair purchases its total water requirements from the Columbia/Adair County Water Commission.³

Columbia, a city of the fourth class,⁴ owns and operates a water distribution system that provides retail water service to approximately 1,640 customers.⁵ It also operates a wastewater collection and treatment system that provides wastewater services to approximately 1,460 customers.⁶ Columbia purchases its total water requirements from the Columbia/Adair County Water Commission.

On May 3, 2010, Columbia and Adair District entered into an Asset Purchase Agreement in which Columbia agreed to transfer ownership of its water distribution system and wastewater collection and treatment systems to Adair District. In exchange for Columbia's facilities, Adair District agreed to assume the outstanding debt obligations related to those facilities. These debt obligations consist of eight series of revenue bonds that Columbia issued and that Rural Development has purchased.⁷ As of September 1, 2010, the outstanding principal balance of these bonds was \$2,236,343.⁸

¹ *Annual Report of Adair County Water District to the Public Service Commission of Kentucky for the Year Ended December 31, 2009* at 5 and 27.

² KRS 278.015.

³ The Columbia/Adair County Water Commission is a water commission created under the provisions of KRS 74.420 to 74.520. This commission is not a utility and is not subject to the Public Service Commission's jurisdiction. See KRS 74.510.

⁴ KRS 81.010(3).

⁵ Application at 3.

⁶ *Id.*

⁷ For a listing of these debt obligations, see Exhibit 2 of the Application.

⁸ Application at 4.

Adair District has applied to Rural Development for permission to assume these obligations. Rural Development, the agency of the U.S. Department of Agriculture that administers rural business, cooperative, housing, utilities and community development programs,⁹ has advised Adair District in writing of the conditions necessary to receive approval for the assumption of these obligations.¹⁰ Once these conditions are satisfied, Adair District will execute an assumption agreement with Rural Development.¹¹

Commission approval of Adair District's acquisition of Columbia's facilities is not required. KRS 278.020(5)¹² and 278.020(6)¹³ require prior Commission approval of the transfer of control or ownership of any "utility." As a city, Columbia is not within the

⁹ See Pub. L. 101-624 §2302(b).

¹⁰ Letter from Thomas G. Fern, State Director, Rural Development, to Danny Downey, Chairman, Adair County Water District (May 10, 2010).

¹¹ See Exhibit 4 of the Application for the form of this assumption agreement.

¹² No person shall acquire or transfer ownership of, or control, or the right to control, any utility under the jurisdiction of the commission by sale of assets, transfer of stock, or otherwise, or abandon the same, without prior approval by the commission. The commission shall grant its approval if the person acquiring the utility has the financial, technical, and managerial abilities to provide reasonable service.

¹³ No 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. Any acquisition of control without prior authorization shall be void and of no effect. As used in this subsection, the term 'control' means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a utility, whether through the ownership of voting securities, by effecting a change in the composition of the board of directors, by contract or otherwise.

statutory definition of “utility.”¹⁴ KRS 278.020 therefore does not require Commission approval of the proposed transaction.¹⁵

Generally, Commission approval of a utility’s assumption of a liability with respect to an evidence of indebtedness is required. KRS 278.300(1) provides:

No utility shall issue any securities or evidences of indebtedness, or assume any obligation or liability in respect to the securities or evidences of indebtedness of any other person until it has been authorized so to do by order of the commission.

KRS 278.300(10) provides an exception to this general rule where “the issuance of securities or evidences of indebtedness is subject to the supervision or control of the federal government or any agency thereof.”

Based upon the above, the Commission finds that, as Adair District’s assumption of Columbia’s bonded debt obligations is subject to the control and approval of Rural Development, an agency of the U.S. Government, it falls within the category of transactions that KRS 278.300(10) exempts from the requirement of Commission authorization.¹⁶

The Commission notes that KRS 278.023 requires limited Commission review of the financing of certain construction projects that are financed in whole or in part under

¹⁴ See KRS 278.010(3). See *McClellan v. Louisville Water Co.*, 351 S.W.2d 197 (Ky. 1961).

¹⁵ See Case No. 2008-00074, *Hardin County Water District No. 1* (Ky. PSC Apr. 23, 2008) at 3; Case No. 2004-00157, *Ohio County Water District* (Ky. PSC July 12, 2004) at 2; Case No. 2000-00357, *Northern Kentucky Water District* (Ky. PSC July 20, 2000) at 2; Case No. 89-211, *Kenton County Water District No. 1* (Ky. PSC Nov. 1, 1989) at 3-4.

¹⁶ Our Order does not address whether KRS 278.300 requires Commission authorization of Adair District’s assumption of Columbia’s water purchase contract with the Columbia/Adair County Water Commission. Adair District has not requested Commission authorization of that transaction nor has it provided a copy of that contract to the Commission to permit such review.

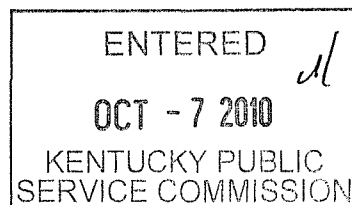
the terms of an agreement between a water district and Rural Development. As the agreement between Adair District and Rural Development in the case at bar does not involve any construction, only the assumption of existing debt obligations, KRS 278.023 is not applicable.

IT IS THEREFORE ORDERED that:

1. Adair District's Application for an Order declaring that its proposed assumption of Columbia's bonded debt obligations related to Columbia's water and wastewater systems does not require Commission approval is granted.

2. Adair District's proposed assumption of Columbia's bonded debt obligations to Rural Development in the principal amount of \$2,236,343 is subject to the supervision of Rural Development, a federal agency within the meaning of KRS 278.300(10), and does not require Commission authorization under KRS 278.300(1).

By the Commission



ATTEST:

Executive Director

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