

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF PURCHASE PUBLIC SERVICE)
CORPORATION FOR AN ORDER APPROVING A) CASE NO. 2012-00212
TRANSFER OF OWNERSHIP AND CONTROL)

ORDER

Purchase Public Service Corporation ("PPSC") has applied for approval to transfer ownership and control of three sewage utilities to The Electric Plant Board of the City of Mayfield ("Electric Plant Board") d/b/a Mayfield Electric and Water Systems ("MEWS"). 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
2. PPSC owns sewage treatment and collection facilities that serve the Thomas Country Estates, Highland Club Estates, and Holifield Heights Subdivisions in Graves County, Kentucky.
3. The facilities that serve the Thomas Country Estates Subdivision consist of a 40,000-gallon extended aeration sewage treatment plant, two pumping stations,

¹ Articles of Incorporation of Purchase Public Service Corp. at 1-2.

and 13,781 linear feet of polyvinylchloride ("PVC") sewer main. As of December 31, 2011, the facilities served 102 customers.²

4. For the calendar year ending December 31, 2011, PPSC reported that the Thomas Country Estates Subdivision facilities generated total sewage service revenues of \$52,846 and total operating expenses of \$45,105.³

5. For the calendar year ending December 31, 2011, PPSC reported that the Thomas Country Estates Subdivision facilities had net utility plant of \$2,841.

6. For the calendar year ending December 31, 2011, PPSC reported that the Thomas Country Estates Subdivision facilities had total assets of \$92,481⁴ and total liabilities of \$5,450.⁵

7. The facilities that serve the Highland Club Estates Subdivision consist of a 15,000-gallon extended aeration sewage treatment plant, two pumping stations, and 4,035 linear feet of PVC sewer main. As of December 31, 2011, the facilities served 21 customers.⁶

² *Annual Report of Purchase Public Service Company d/b/a Thomas Country Estates to the Public Service Commission for the Calendar Year Ended December 31, 2011* ("Thomas Country Estates Annual Report") at 8, 11-12.

³ *Id.* at 8.

⁴ *Id.* at 2. This amount does not include deferred debits of \$870.

⁵ *Id.* at 3.

⁶ *Annual Report of Purchase Public Service Company d/b/a Highland Club Estates to the Public Service Commission for the Calendar Year Ended December 31, 2011* ("Highland Club Estates Annual Report") at 8, 11-12.

8. For the calendar year ending December 31, 2011, PPSC reported that the Highland Club Estates Subdivision facilities generated total sewage service revenues of \$9,995 and total operating expenses of \$12,403.⁷

9. For the calendar year ending December 31, 2011, PPSC reported that the Highland Club Estates Subdivision facilities had net utility plant of \$34.⁸

10. For the calendar year ending December 31, 2011, PPSC reported that the Highland Club Estates Subdivision facilities had total assets of \$274⁹ and total liabilities and credits of \$619.¹⁰

11. The facilities that serve Holifield Heights Subdivision consist of a lagoon treatment pond, a lift station, 998 linear feet of clay sewer main, and 80 linear feet of PVC sewer main. As of December 31, 2011, the facilities served 11 customers.¹¹

12. Since September 1, 2001, PPSC has contracted with MEWS for the operation of the facilities serving the Thomas Country Estates, Highland Club Estates, and Holifield Heights Subdivisions. Under the terms of this contract, the Electric Plant Board has responsibility for the facilities' daily operations, preventive maintenance,

⁷ *Id.* at 8.

⁸ *Id.* at 8.

⁹ *Id.* at 2. This amount does not include deferred debits of \$345.

¹⁰ *Id.* at 3.

¹¹ *Annual Report of Purchase Public Service Company d/b/a Cardinal Group to the Public Service Commission for the Calendar Year Ended December 31, 2011* ("Cardinal Group Annual Report") at 11-12. When submitting its annual financial and statistical report as 807 KAR 5:006, Section 3, requires, PPSC submits a combined report on the facilities that serve the subdivisions of Holifield Heights, Golden Acres, and Blandville West. These facilities are located in different counties. Each could be treated as a separate entity. PPSC submits 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 "Cardinal Group." See Case No. 90-189, *Investigation of Cardinal Utilities, Inc.; Lorraine P. Kimbrell; and Steve Pope* (Ky. PSC May 10, 1991). Accordingly, the Commission lacks information that addresses solely the operation of the sewer facilities serving Holifield Heights.

emergency repairs, sampling and testing, and submission of discharge monitoring reports.¹²

13. As of July 1, 2010, the Electric Plant Board has provided billing and collection services to PPSC.¹³

14. During the period in which the Electric Plant Board has assumed operational responsibility for the sewage facilities, the Commission did not initiate any formal proceedings against the facilities' owner for non-compliance with Commission regulations regarding sewer service.

15. U.S. Environmental Protection records indicate no major violation of the provisions of the Clean Water Act for either Thomas Country Estates or Highland Club Estates for the last five years.¹⁴

16. The City of Mayfield ("Mayfield") is a city of the third class.¹⁵

17. On June 18, 1942, Mayfield accepted the provisions of the T.V.A. Act¹⁶ and created the Electric Plant Board to operate its electric distribution system.¹⁷ It further designated and appointed the Electric Plant Board as its agent to control and operate its municipal waterworks system.¹⁸

¹² Application, Ex. 1.

¹³ Application, Ex. 6.

¹⁴ For a report of each operation's compliance with the requirements of the Clean Water Act, see http://www.epa-echo.gov/echo/compliance_report_water_icp.html (last visited July 17, 2012). As the treatment process used at Holifield Estates Subdivision facility does not involve any discharge into the streams of the Commonwealth, no Clean Water Act compliance records are maintained on that facility.

¹⁵ KRS 81.010(3).

¹⁶ KRS 96.550-.900.

¹⁷ Mayfield, Ky., Code of Ordinances § 8-20 (1985).

¹⁸ *Id.*, § 8-23.

18. As of June 30, 2011, the Electric Plant Board's sewer operations had total assets of \$6,335,952 and total liabilities of \$1,570,707.¹⁹

19. As of June 30, 2011, the Electric Plant Board's sewer operations had net utility plant, including construction work in progress, of \$6,082,474.²⁰

20. For the fiscal year ending June 30, 2011, the Electric Plant Board's sewer operations had revenues of \$1,497,650.²¹

21. For the fiscal year ending June 30, 2011, the Electric Plant Board's sewer operations had operating expenses of \$1,453,777.²²

22. The Electric Plant Board currently employs six employees who are certified wastewater treatment plant operators.²³

23. PPSC and the Electric Plant Board have reached a tentative agreement for the transfer of ownership and control of the sewage treatment and collection facilities that serve the Thomas Country Estates, Highland Club Estates, and Holifield Heights subdivisions.²⁴ This agreement provides:

a. Upon Commission approval and the parties' execution of the proposed agreement, PPSC will transfer all personal and real property that it owns and that the Electric Plant Board currently uses in the operation of the sewage treatment and collection facilities serving the Thomas Country Estates, Highland Club Estates, and Holifield Heights subdivisions.

¹⁹ Application, Ex. 9.

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ Application at ¶ 14.

²⁴ Application, Ex. 7.

b. PPSC will transfer all customer deposits that it holds as of the date of the transfer.

c. The Electric Plant Board will continue to charge the present rates for sewer service for the foreseeable future.

24. The proposed transfer will promote the consolidation of wastewater systems in Graves County, Kentucky and is likely to lead to the improvement of wastewater service for the residents of Graves County.

Based upon these findings, the Commission makes the following conclusions of law:

1. PPSC is a utility that is subject to Commission jurisdiction.²⁵
2. The Electric Plant Board is a body corporate and exercises all powers of municipality.²⁶
3. As an electric plant board organized pursuant to KRS Chapter 96, the Electric Plant Board is a municipal corporation.
4. As the Electric Plant Board is considered a “city,” it is not a utility and is not generally subject to Commission jurisdiction.²⁷

²⁵ KRS 278.010(3)(f).

²⁶ KRS 96.740(1).

²⁷ KRS 278.010(3); KRS 278.200; *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).

5. The Electric Plant Board is a “corporation”²⁸ and a “person”²⁹ 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 the Electric Plant Board is a person and is acquiring ownership of PPSC’s sewage treatment facilities, this statute is applicable to and requires prior Commission approval of Electric Plant Board’s 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 the Electric Plant Board is a corporation and is acquiring control of PPSC’s utility operations through the acquisition of several of its sewage treatment and collection facilities, this statute is applicable to and requires prior Commission approval of the transfer of those facilities.

8. KRS 278.020(6) further provides that “[a]ny acquisition of control without prior authorization [of the Commission] shall be void and of no effect.”

9. While all parties to a transaction transferring ownership or control of a utility are not required to be signatories to an application to the Commission for

²⁸ 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”).

²⁹ 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”).

authorization for such transaction or parties to a Commission proceeding considering such application,³⁰ the transferor and transferee are jointly responsible for ensuring Commission approval of the transfer before effecting such transfer.

10. In view of its financial assets and its status as a municipal corporation, the Electric Plant Board has sufficient financial integrity to ensure the continuity of utility service.

11. The Electric Plant Board has the financial, technical, and managerial abilities to provide reasonable service to those persons located in Thomas Country Estates, Highland Club Estates, and Holifield Heights subdivisions.

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

13. The Electric Plant Board's acquisition of the sewage treatment and collection facilities presently serving the Thomas Country Estates, Highland Club Estates, and Holifield Heights subdivisions is in accordance with law and for a proper purpose.

14. KRS 278.020(6) authorizes the Commission to approve the acquisition of control of a utility "upon terms and conditions as it deems necessary or appropriate."

15. The transfer of ownership and control of PPSC's sewage treatment and collection facilities to the Electric Plant Board will be consistent with the public interest only upon the condition that:

³⁰ See 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 30, 2002) at 11.

a. Within 60 days of the date of this Order, the proposed transfer agreement, which is set forth as an exhibit to PPSC's application, is executed and an executed copy is filed with the Commission.

b. PPSC file with the Commission within 120 days of the date of this Order a financial and statistical report for its Thomas Country Estates and Highland Club Estate operations for the period from January 1, 2012 until the date of transfer of ownership.

c. Within 10 days of the date of the transfer of ownership, PPSC will file with the Commission revised tariff sheets for its Cardinal Group operations to reflect the transfer of ownership of the sewer collection and treatment facilities serving the Holifield Heights Subdivision.

d. No later than July 31, 2012, PPSC will submit payment to the Kentucky Department of Revenue State Treasury for the assessments made pursuant to KRS 278.130 on its receipts for the calendar year ending December 31, 2011 derived from its facilities serving the Thomas Country Estates, Highland Club Estates, and Holifield Heights subdivisions.

16. Upon the Electric Plant Board's acquisition of the sewage treatment and collection facilities presently serving the Thomas Country Estates, Highland Club Estates, and Holifield Heights subdivisions, those 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 5 of this Order, the proposed transfer of ownership and control of PPSC's facilities that serve

the Thomas Country Estates, Highland Club Estates, and Holifield Heights subdivisions is approved.

2. Within 60 days of the date of this Order, the proposed transfer agreement, which is set forth as an exhibit to PPSC's application, shall be executed and an executed copy filed with the Commission.

3. PPSC shall file with the Commission within 120 days of the date of this Order a financial and statistical report for its Thomas Country Estates and Highland Club Estate operations for the period from January 1, 2012 until the date of transfer of ownership.

4. Within 10 days of the date of the transfer of ownership, PPSC shall file with the Commission revised tariff sheets for its Cardinal Group operations to reflect the transfer of ownership of the sewer collection and treatment facilities serving the Holifield Heights Subdivision.

5. No later than July 31, 2012, PPSC shall submit payment to the Kentucky Department of Revenue State Treasury for the assessments made pursuant to KRS 278.130 on its receipts for the calendar year ending December 31, 2011 derived from its facilities serving the Thomas Country Estates, Highland Club Estates, and Holifield Heights subdivisions.

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

By the Commission

ENTERED *R*
JUL 23 2012
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:



Executive Director

Case No. 2012-00212

Sam B Neely, Jr.
P.O. Box 708
Mayfield, KENTUCKY 42066

Jennifer Beck Walker
Executive Director
Purchase Public Service Corporation d/b/a
1002 Medical Drive
P. O. Box 5100
Mayfield, KY 42066