

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

JOINT APPLICATION OF HICKORY WATER)
DISTRICT AND GRAVES COUNTY WATER) CASE NO. 2012-00358
DISTRICT FOR APPROVAL OF PROPOSED)
MERGER)

ORDER

Hickory Water District (“Hickory District”) and Graves County Water District (“Graves District”) (collectively “Joint Applicants”) have applied for Commission approval of their proposed merger. Having reviewed the evidence of record and being otherwise sufficiently advised,¹ the Commission finds that:

1. Hickory District is a water district organized pursuant to KRS Chapter 74. It currently provides water service to approximately 1,376 customers in Graves County, Kentucky.²

2. On September 11, 1964, Graves County Court established Hickory District to provide water service to certain portions of Graves County.³

¹ The Joint Applicants filed their application on July 30, 2012. No person has sought to intervene in this matter. In view of the existing record and the lack of any request from the Joint Applicants for a hearing, the Commission finds that a hearing in this matter is not necessary and the case stands ready for decision.

² *Annual Report of Hickory Water District to the Kentucky Public Service Commission for the Year Ended December 31, 2011* (hereinafter “*Hickory Annual Report*”) at 5, 27.

³ Graves County Court, “Order Establishing and Creating Water District to Be Known As Hickory Water District” (Sept. 11, 1964).

3. A Board of Commissioners, composed of three members whom the Graves County Judge/Executive appoints and whom the Graves County Fiscal Court approves, controls and manages Hickory District.

4. As of December 31, 2011, Hickory District had total assets of \$2,441,871 and total liabilities of \$368,672. It has net utility plant of \$2,245,062.⁴

5. As of December 31, 2011, Hickory District's sole long-term debt obligation is a 20-year loan owed to the Kentucky Infrastructure Authority. The unpaid principal on this loan is \$274,402. This loan has a maturity date of June 1, 2021.⁵

6. As of December 31, 2011, Hickory District had no employees. Hickory District has contracted with the Electric Plant Board-City of Mayfield, also known as Mayfield Electric and Water Systems ("MEWS"), to operate and manage Hickory District's facilities.⁶

7. Graves District, a water district organized pursuant to KRS Chapter 74, currently provides water service to approximately 4,849 customers in Carlisle and Graves Counties, Kentucky, and sewer service to approximately 209 customers in Graves County, Kentucky.⁷

⁴ *Hickory Annual Report* at 7, 9.

⁵ *Id.* at 22.

⁶ App. Ex. C.

⁷ *Annual Report of Graves County Water District (Water Division) to the Kentucky Public Service Commission for the Year Ended December 31, 2011* (hereinafter "*Graves District-Water Annual Report*") at 5, 27; *Annual Report of Graves County Water District (Sewer Division) to the Kentucky Public Service Commission for the Year Ended December 31, 2011* (hereinafter "*Graves District-Sewer Annual Report*") at 1, 8.

8. Graves District is the result of the voluntarily merger of Consumers Water District, Fancy Farm Water District, Hardeman Water District, and South Graves Water District, which occurred on May 21, 2008.⁸

9. A Board of Commissioners, composed of five members whom the Graves County Judge/Executive appoints and whom the Graves County Fiscal Court approves, controls and manages Graves District.

10. As of December 31, 2011, Graves District's water operations had total assets of \$6,018,333 and total liabilities of \$1,199,343. It has net utility plant of \$5,572,747 for its water operations.⁹

11. As of December 31, 2011, Graves District's sewer operations had total assets of \$650,936 and total liabilities of \$1,199,343. It has net utility plant of \$521,373 for its sewer operations.¹⁰

12. As of December 31, 2011, Graves District's long-term debt obligations consisted of two loans from the Kentucky Infrastructure Authority. The unpaid principal on these loans is \$1,044,325. These loans mature in 2026.¹¹

13. As of December 31, 2011, Graves District had no employees.¹² Graves District has contracted with MEWS to operate and manage Graves District's facilities.¹³

⁸ Case No. 2007-00496, *Joint Application of Consumers Water District, Fancy Farm Water District, Hardeman Water District, and South Graves Water District for Approval of Merger and Formation of the Graves County Water District* (Ky. PSC May 21, 2008).

⁹ *Graves District-Water Annual Report* at 7, 9.

¹⁰ *Graves District-Sewer Annual Report* at 2-4.

¹¹ *Graves District-Water Annual Report* at 22. Graves District did not report any long-term debt obligations for its sewer operations.

¹² *Id.* at 5; *Graves District-Sewer Annual Report* at 7.

¹³ App. Ex. F.

14. On June 22, 2010, Graves District's Board of Commissioners met and voted unanimously to merge with Hickory District after completion of an investigation of all pertinent records.¹⁴

15. On June 28, 2010, Hickory District's Board of Commissioners met and voted to merge with Graves District.¹⁵

16. On August 23, 2011, Hickory District's Board of Commissioners voted to merge with Graves District and to authorize its chairperson to execute all documents necessary to implement such merger.¹⁶

17. On August 23, 2011, Graves District's Board of Commissioners voted to merge with Hickory District and to authorize its chairperson to execute all documents necessary to implement such merger.¹⁷

18. On August 24, 2011, Graves District and Hickory District executed a "Water District Merger Agreement" that provided for their merger.¹⁸

19. The Water District Merger Agreement provides:

a. Graves District and Hickory District will merge upon the Commission's approval of the proposed merger.¹⁹

¹⁴ App. Ex. G.

¹⁵ App. Ex. H.

¹⁶ *Id.*

¹⁷ App. Ex. I.

¹⁸ App. Ex. J.

¹⁹ Merger Agreement ¶ 2(a).

b. One year following the Commission's approval of the proposed merger, the merged district's board of commissioners will be composed of seven members with two members from Hickory District's present Board of Commissioners.²⁰

c. After the merger occurs, the merged district shall be known as the "Graves County Water District."²¹

d. A separate sinking fund for the purpose of retiring Hickory District's bonded obligations that are secured by Hickory District's right to levy and assessment shall continue and shall be funded from funds collected from geographic areas that currently constituted Hickory District's territory until such obligations are retired.²²

e. Hickory District's present rates shall continue to be assessed to customers of the merged district that are located and served within geographic areas that currently constitute Hickory District. These rates and all other existing provisions of Hickory District's existing tariff shall become part of the merged water district's rate schedules and tariff and shall apply to the geographic areas that currently constitute Hickory District's territory.²³

20. Upon completion of the proposed merger, the merged water district will continue its contractual arrangements with MEWS for the operation and management of its assets and operations.

21. The General Assembly has determined that "reduction of the number of operating water districts in the Commonwealth. . . [is] in the public interest, in that

²⁰ *Id.* at ¶ 2(b).

²¹ *Id.* at ¶ 1.

²² *Id.*

²³ *Id.* at ¶ 5.

mergers of such districts will tend to eliminate wasteful duplication of costs and efforts, result in a sounder and more businesslike degree of management, and ultimately result in greater economies, less cost, and a higher degree of service to the general public; and that the public policy favors the merger of water districts wherever feasible.”²⁴

22. The proposed merger is expected to provide the following benefits:

a. The merged water district’s larger size and greater buying power should result in a reduction in the cost of acquiring of goods and services;

b. Consolidation of existing systems will result in the elimination of redundant or duplicative functions;

c. The merged water district’s larger customer base should make the merged district a more attractive borrower and thus enhance the availability of funds and reduce the cost of borrowing;

d. The merger should produce a more centralized and effective management that will better foster long-term planning and coordinate economic development within the merged water district’s territory; and

e. The merged water district will be better positioned to meet the increased cost of providing water and sewer service and to comply with expected changes in federal and state environmental laws.

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

²⁴ KRS 74.361(1).

1. Hickory District and Graves District are utilities subject to Commission jurisdiction.²⁵

2. 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.”²⁶

3. The proposed merger of the Joint Applicants into a single water district constitutes a transfer of control that requires Commission approval.

4. KRS 74.363(2) implies that Commission approval of a voluntary merger of two or more water districts is required.

5. Upon completion of the proposed merger, the merged water district will have the financial, technical, and managerial abilities to provide reasonable service to the Joint Applicants’ existing customers.

6. The proposed merger is consistent with the legislative finding of fact and policy set forth in KRS 74.361(1).

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

8. The proposed merger is in the public interest.

²⁵ KRS 74.015; KRS 278.010(3)(d).

²⁶ The Commission has previously found that KRS 278.020(6) is not applicable to a merger of two or more water districts. See Case No. 2007-00496, *Joint Application of Consumers Water District, Fancy Farm Water District, Hardeman Water District, and South Graves Water District for Approval of Merger and Formation of Graves County Water District* (Ky. PSC May 21, 2008) at 9, n.30. The merger of two or more water districts is effectively transferring control of these water districts’ property to a new entity. The new entity, however, does not exist until the merger. As there is no acquirer, KRS 278.020(6) is not applicable. See Case No. 2006-00197, *The Joint Petition of Kentucky-American Water Company, Thames Water Aqua Holdings GmbH, RWE Aktiengesellschaft, Thames Water Aqua US Holdings, Inc., and American Waterworks Company, Inc. for Approval of a Change in Control of Kentucky-American Water Company* (Ky. PSC Aug. 14, 2006).

IT IS THEREFORE ORDERED that:

1. The proposed merger between Hickory District and Graves District is approved as of the date of this Order.

2. Within 90 days of the date of this Order, the Joint Applicants shall execute all documents and perform all other actions necessary to effect the proposed merger. Failure of the Joint Applicants to act within this time period shall render the Commission's approval null and void.

3. Any material revisions to the Joint Applicants' merger agreement shall be approved by the Commission before the merger agreement as amended may occur.

4. Within 10 days of the completion of the proposed merger, the merged water district shall:

a. Advise the Commission in writing of the merger's completion.

b. File a signed and dated adoption notice in accordance with 807 KAR 5:011, Section 11, adopting, ratifying, and making its own the rates, rules, classifications, and administrative regulations of the Joint Applicants in effect at the time of the merger.

c. File with the Commission the journal entries that will be used to record the proposed merger.

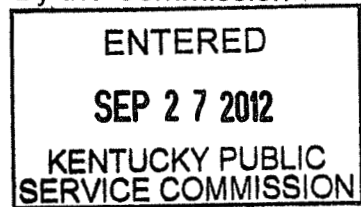
5. Within 10 days of the filing of its adoption notice, the merged water district shall issue and file with the Commission, in its own name, each utility's tariff that it proposes to place into effect in lieu of its present tariff in the form prescribed in 807 KAR 5:011, Section 11.

6. Beginning on November 1, 2012, and every month thereafter until the proposed merger has been completed, the Joint Applicants shall advise the Commission in writing of the status of the proposed merger.

7. The merged water district shall retire bonded obligations secured by the revenue from either Hickory District or Graves District in accordance with KRS 74.363(4).

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

By the Commission



ATTEST:



Executive Director

Kevin Leonard
Hickory Water District
c/o Mayfield Electric & Water
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Mayfield, KY 42066