

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

JOINT APPLICATION OF HILLRIDGE)	
FACILITIES, INC. AND LOUISVILLE AND)	
JEFFERSON COUNTY METROPOLITAN)	
SEWER DISTRICT FOR APPROVAL OF)	CASE NO. 2012-00373
TRANSFER OF THE HILLRIDGE WASTEWATER)	
TREATMENT PLANT AND COLLECTION)	
SYSTEM TO LOUISVILLE AND JEFFERSON)	
COUNTY METROPOLITAN SEWER DISTRICT)	

ORDER

Hillridge Facilities, Inc. (“Hillridge”) and Louisville and Jefferson County Metropolitan Sewer District (“MSD”)¹ have jointly applied for approval of MSD’s acquisition of Hillridge’s sewage treatment and collection facilities.

Having reviewed the application and being otherwise sufficiently advised,² the Commission finds that:

1. Hillridge is a Kentucky corporation³ that is organized pursuant to KRS Chapter 271B.

¹ MSD has joined in the Application “as a perfunctory matter and not as a mandatory requirement.” Joint App. ¶ 10. MSD takes the position that “as a public, municipally owned sewer district, and political subdivision, it is exempt from PSC oversight under KRS 278.040(2), the statutory exemption afforded special districts.” *Id.*

² The Applicants tendered their Application on August 20, 2012. They subsequently supplemented their Application to conform to 807 KAR 5:001, Section 8(3). The Commission accepted the Application, as amended, on August 24, 2012.

³ See <https://app.sos.ky.gov/corpscans/90/0023190-09-99999-19650921-ART-4065440-PU.pdf> (last visited Aug. 31, 2012).

2. Hillridge owns and operates subdivision sewage collection and treatment facilities that serve approximately 720 customers in the Hillridge, Hillridge East, Watterson Trail, and Bristol Oak Subdivisions of Jefferson County, Kentucky.⁴

3. Hillridge's treatment and collection facilities consist of an extended aeration treatment plant with a maximum daily treatment capacity of 326,500 gallons; four pumping stations; and 36,685 linear feet of 8-inch clay collection main. The treatment plant was constructed in 1965.⁵

4. As of December 31, 2011, Hillridge had total net utility plant of \$305,768.⁶

5. As of December 31, 2011, Hillridge had total assets of \$548,776.⁷

6. As of December 31, 2011, Hillridge had total liabilities of \$161,214, which consisted of notes payable of \$136,499, accounts payable of \$16,944, and accrued taxes and interest of \$7,771.⁸

7. MSD is a metropolitan sewer district created pursuant to KRS Chapter 76.

8. MSD provides sanitary sewer and drainage services to approximately 230,240 customers in Jefferson County, Kentucky.⁹

9. MSD operates six large wastewater treatment facilities and 14 small wastewater treatment plants, which are similar in size and design to Hillridge's sewage

⁴ *Annual Report of Hillridge Facilities, Inc. to the Public Service Commission for the Year Ended December 31, 2011* ("Annual Report") at 1 and 12.

⁵ *Id.* at 11-12.

⁶ *Id.* at 2.

⁷ *Id.*

⁸ *Id.*

⁹ Louisville and Jefferson County Metropolitan Sewer District, *Comprehensive Annual Financial Report for the Fiscal Year Ended June 30, 2011* ("Comprehensive Annual Report") 3, available at http://www.msdlouky.org/aboutmsd/pdfs/2011_MSD_CAFR.pdf.

treatment plant. The combined daily treatment capacity of MSD's treatment facilities is 173.4 million gallons.¹⁰

10. As of June 30, 2011, MSD employed 655 persons.¹¹ Approximately 70 of these employees are certified wastewater treatment operators.¹²

11. As of June 30, 2011, MSD had net plant of \$2,002,782,000.¹³

12. As of June 30, 2011, MSD had total assets of \$2.505 billion, total liabilities of \$1.970 billion, and total net assets of \$535,792,000.¹⁴

13. For the year ending June 30, 2011, MSD had total operating revenues of \$185,676,000 and total operating expenses of \$171,590,000.¹⁵

14. MSD has been in existence since 1946.

15. MSD is governed by a board that consists of eight members who are appointed by the Mayor of the Louisville Metro Government, subject to the approval of the Louisville Metro Council.¹⁶

16. The approval of the Louisville Metro Council is required before MSD may implement a change in its rates for service.¹⁷

17. On August 17, 2012, Hillridge and MSD entered into an Agreement that provides:

¹⁰ *Id.* at 63.

¹¹ *Id.* at 18.

¹² App. ¶ 3.

¹³ *Comprehensive Annual Report* at 36 (includes construction work in progress).

¹⁴ *Id.* at 19.

¹⁵ *Id.* at 20.

¹⁶ *Id.* at 23. *See also* KRS 76.030.

¹⁷ *Comprehensive Annual Report* at 24; KRS 76.080(10).

- a. MSD will pay \$150,000 to Hillridge for Hillridge's treatment and collection facilities.
- b. On October 1, 2012, MSD will begin providing service to Hillridge's customers.
- c. Hillridge will retain any checks issued by the Louisville Water Company ("LWC") for services rendered through September 30, 2012.
- d. Hillridge shall apply to the Commission for approval of the transfer.
- e. Within ten days of closing, Hillridge will move to dismiss its appeals pertaining to the denial of its application for a Kentucky Pollution Discharge Elimination System permit.¹⁸
- f. MSD will complete demolition of the Hillridge facilities on or before March 1, 2013.
- g. Should MSD determine that it is necessary to operate the Hillridge facilities after September 30, 2012, it will pay to Hillridge the sum of \$3,000 per month for the first twelve months of operation, \$4,000 per month for the next twelve months, and it may not operate the plant beyond twenty-four months.

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

1. Hillridge is a utility that is subject to Commission jurisdiction.¹⁹

¹⁸ *Hillridge Facilities, Inc. v. Energy and Environment Cabinet*, No. 12-CI-00643 (Franklin Cir. Ct. Ky. May 14, 2012); *Hillridge Facilities, Inc. v. Energy and Environment Cabinet*, DOW-43685-039 (EEC Ky. filed May 14, 2012).

¹⁹ KRS 278.010(3)(f).

2. MSD is not a utility and is therefore not subject to Commission regulation.²⁰

3. As a metropolitan sewer district organized pursuant to KRS Chapter 76, MSD is a municipal corporation.²¹

4. MSD is a "corporation"²² and a "person"²³ for purposes of KRS Chapter 278.

5. 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 MSD is a person and is acquiring ownership of Hillridge's sewage treatment facilities, this statute is applicable to and requires prior Commission approval of MSD's acquisition.

6. 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 MSD is a corporation and is acquiring control of Hillridge's utility operations through the acquisition of

²⁰ See KRS 278.010(3)(f) (expressly excluding from definition of "utility" any person who owns facilities that are subject to regulation by a metropolitan sewer district).

²¹ See *Rash v. Louisville & Jefferson County Metropolitan Sewer District*, 309 Ky. 442, 217 S.W.2d 232 (1948). See also *Louisville-Jefferson County Metro Ethics Com'n v. Schardein*, 259 S.W.2d 510, 513 ("the MSD is 'a public body corporate, and political subdivision"); *Fawbush v. Louisville-Jefferson County Metropolitan Sewer District*, 240 S.W.2d 622, 623 (Ky. 1951) (holding that MSD "is an independent public corporation").

²² 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").

²³ 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").

Hillridge's sewage treatment and collection facilities, this statute is applicable to and requires prior Commission approval of the transfer of those facilities.

7. 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."

8. 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 authorization for such transaction or parties to a Commission proceeding considering such application,²⁴ the transferor and transferee are jointly responsible for ensuring Commission approval of the transfer before effecting such transfer.

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

10. MSD has the financial, technical, and managerial abilities to provide reasonable service to Hillridge's present customers.

11. MSD's acquisition of Hillridge's sewage treatment and collection facilities is in accordance with law, for a proper purpose, and is consistent with the public interest.

IT IS THEREFORE ORDERED that:

1. MSD's acquisition of Hillridge's sewage treatment and collection facilities is approved.

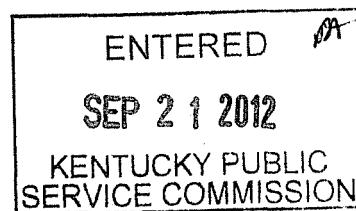
²⁴ See Case No. 2002-00018, *Application for Approval of the Transfer of Control of Kentucky-American Water Company to RWE Aktiengesellschaft and Thames Water Aqua Holdings GmbH* (Ky. PSC May 30, 2002) at 11.

2. Within ten days of completion of the transfer of ownership of Hillridge's sewer collection and treatment facilities, Hillridge shall file with the Commission written notice of the transfer's occurrence.

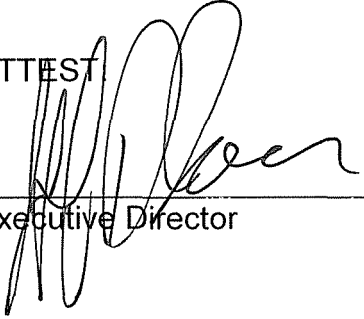
3. Within 120 days of the date of this Order, Hillridge shall file with the Commission a financial and statistical report for its sewer operations for the period from January 1, 2012 until the date of transfer of ownership.

4. Any documents filed in the future pursuant to ordering paragraphs 2 and 3 shall reference this case number and shall be retained in the utility's general correspondence file.

By the Commission



ATTEST



Executive Director

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