

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC JOINT APPLICATION OF	)	
SOUTHERN WATER AND SEWER	)	
DISTRICT; PRESTONSBURG CITY'S	)	
UTILITY COMMISSION; AND THE CITY OF	)	
PRESTONSBURG FOR AN	)	CASE NO. 2017-00044
ORDER APPROVING THE TRANSFER OF	)	
OWNERSHIP OF THE WASTEWATER	)	
SYSTEM AND CERTAIN PORTIONS OF	)	
THE WATER SYSTEM OF SOUTHERN	)	
WATER AND SEWER DISTRICT	)	

ORDER

On February 6, 2017, joint applicants Southern Water and Sewer District ("Southern District"), Prestonsburg City's Utility Commission ("PCUC"), and the city of Prestonsburg, Kentucky, ("Prestonburg") (collectively, "Joint Applicants") filed an application for approval of the transfer of ownership and control of Southern District's wastewater treatment and collection facilities and portions of its water distribution system to PCUC and Prestonsburg. In support of the request, Joint Applicants submitted a written Asset Purchase Agreement between Southern District, Prestonsburg, and PCUC.

By Order entered on February 20, 2017, the Commission established a procedural schedule to ensure the orderly review of Joint Applicants' application. On March 6, 2017, Commission Staff filed its First Request for Information to Joint Applicants ("Staff's First Request"). Joint Applicants filed their response to Staff's First Request on March 13, 2017. Finding that it required additional information from Joint Applicants regarding the proposed transfer, the Commission by Order entered April 6, 2017, directed Joint

Applicants to file responses to requests for information listed in the Appendix to the Order. Pursuant to KRS 278.020(7), the Commission also extended the period for a decision on Joint Applicants' application an additional 60 days so that it could review and fully consider the Joint Applicants' responses to these requests. Joint Applicants filed their responses on April 21, 2017.

No person has sought to intervene in this proceeding, and Joint Applicants did not request a formal hearing. Having reviewed the application and the responses to the discovery requests, and being otherwise sufficiently advised, the Commission finds that:

1. Southern District is a water district organized pursuant to KRS Chapter 74.
2. Southern District owns and operates facilities used for the collection and treatment of sewage for compensation to approximately 306 customers in Floyd County, Kentucky ("Southern District Wastewater System").<sup>1</sup>
3. Southern District owns and operates facilities used for the treatment and distribution of water for compensation to approximately 6,724 customers in Floyd and Knott counties, Kentucky ("Southern District Water System").<sup>2</sup>
4. Southern District is a utility subject to the Commission's jurisdiction pursuant to KRS 278.010(3)(d) and (f) and KRS 278.040.
5. As of December 31, 2015, Southern District had, with respect to its wastewater facilities, net utility plant of \$6,520,476, total current and accrued assets of

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<sup>1</sup> *Annual Report of Southern Water and Sewer District for the Year Ended December 31, 2015* ("2015 Sewer Annual Report") at 12.

<sup>2</sup> *Annual Report of Southern Water and Sewer District for the Year Ended December 31, 2015* ("2015 Water Annual Report") at 25.

\$127,764, total current and accrued liabilities of \$6,136,250, and total long-term debt of \$660,525.<sup>3</sup>

6. As of December 31, 2015, Southern District had, with respect to its water facilities, net utility plant of \$18,284,151, total current and accrued assets of \$7,230,124, total current and accrued liabilities of \$1,386,379, and total long-term debt of \$5,200,254.<sup>4</sup>

7. Prestonsburg is a municipal corporation and home rule class city in Floyd County, Kentucky.<sup>5</sup>

8. PCUC is a component unit and agency of Prestonsburg.<sup>6</sup>

9. Prestonsburg owns, and PCUC operates, water supply, treatment and distribution facilities that provide water service to approximately 7,806 customers in Floyd County, Kentucky.<sup>7</sup>

10. PCUC employs 14 operators who hold water certification licenses issued by the Kentucky Board of Certification of Water System Operators: four are certified as Water Distribution Operators; five are certified as Water Treatment Operators; and five are certified as both Water Distribution Operators and Water Treatment Operators.<sup>8</sup>

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<sup>3</sup> 2015 Annual Sewer Report at 12 and 13.

<sup>4</sup> 2015 Annual Water Report at 20 and 22.

<sup>5</sup> Joint Application at 3.

<sup>6</sup> *Id.* at 2.

<sup>7</sup> *Id.* at 3.

<sup>8</sup> *Id.* at 12.

11. Prestonsburg owns, and PCUC operates, wastewater collection and treatment facilities that provide sewer service to approximately 2,817 customers in Floyd County, Kentucky.<sup>9</sup>

12. PCUC employs eight operators who hold wastewater certification licenses issued by the Kentucky Board of Certification of Wastewater System Operators: four are certified Wastewater Collection System Operators; three are certified Wastewater Treatment Operators; and one is certified as both a Wastewater Collection System Operator and a Wastewater Treatment Operator.<sup>10</sup>

13. Joint Applicants submitted as Exhibit 8 to the Joint Application a copy of PCUC's audited financial statements for the fiscal year ended June 30, 2016. According to these financial statements, for the fiscal year ended June 30, 2016, PCUC reported total assets of \$24,190,362, total liabilities of \$16,382,694, and cash and cash equivalents on hand of \$1,018,754.<sup>11</sup>

14. The Division of Enforcement of the Kentucky Energy and Environment Cabinet has issued numerous Notices of Violation to Southern District for alleged violations of Kentucky water-quality laws in connection with its operation of the Southern Wastewater System. Joint Applicants state that to mitigate or eliminate any civil penalties that could result from these violations, Southern District entered into an operating agreement with PCUC, and that pursuant to this operating agreement, PCUC has

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<sup>9</sup> *Id.* at 3.

<sup>10</sup> *Id.* at 11.

<sup>11</sup> *Id.*, Exhibit 8, at 4 and 8.

managed, operated, repaired, and maintained the Southern District Wastewater System since July 1, 2016.<sup>12</sup>

15. Joint Applicants executed an Asset Purchase Agreement (“Agreement”) pursuant to which Southern District agrees to convey and transfer to Prestonsburg, for the use and benefit of PCUC, the Southern District Wastewater System and portions of the Southern District Water System (collectively, the “Assets”). The Agreement has an effective date of January 1, 2017, and a scheduled closing date of May 1, 2017.<sup>13</sup>

16. The obligations of the parties to the Agreement are contingent on the Commission’s approval of the proposed transfer of assets.<sup>14</sup>

17. On December 19, 2016, Southern District adopted Resolution No. 2016-12-01 approving the Agreement.<sup>15</sup>

18. On December 19, 2016, Prestonsburg adopted Resolution No. 09-2016 approving the Agreement.<sup>16</sup>

19. Under the terms of the Agreement, Southern District will transfer to Prestonsburg all of its wastewater facilities, including but not limited to: the Harold Wastewater Treatment Plant (“WWTP”); the Harold/Betsy Lane Wastewater Collection System; the Eastern Wastewater Collection System; the Eastern WWTP and Collection

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<sup>12</sup> *Id.* at 7.

<sup>13</sup> *Id.*, Exhibit 1.

<sup>14</sup> *Id.* at 6; and Exhibit 1, at 26.

<sup>15</sup> *Id.* at 6; and Exhibit 4.

<sup>16</sup> *Id.* at 7; and Exhibit 6.

System; the Wayland WWTP and Collection System; all sewer lift stations; and real property related to the Southern District Wastewater System.<sup>17</sup>

20. Prestonsburg and PCUC intend to continue to operate the Harold WWTP, the Eastern WWTP, and the Wayland WWTP upon the transfer of the Southern District Wastewater System to Prestonsburg.<sup>18</sup>

21. Under the terms of the Agreement, Southern District will transfer to Prestonsburg the following water facilities: the Pyramid Distribution System, including the Hippo Hill Tank; and the Former Sandy Valley Water Distribution System, including the Eagle Trace Tank, the Mare Creek Road Booster Station the Pike-Floyd Hollow Road Booster Station, and the Stanville Tank. Southern District will also transfer to Prestonsburg real property on which these assets are located and certain other tangible and intangible property and rights used in the operation of these facilities.<sup>19</sup>

22. In the Agreement, Joint Applicants state that the water system facilities proposed to be transferred are in remote sections of the Southern District Water System. Joint Applicants further state that PCUC can more easily provide adequate and reliable water service to those areas.<sup>20</sup>

23. Southern District will retain ownership of and continue to operate the portions of its Water System that it is not transferring to Prestonsburg.<sup>21</sup>

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<sup>17</sup> *Id.* at 4.

<sup>18</sup> Response to Staff's First Request, Item 2.

<sup>19</sup> Joint Application at 4–5; Response to Staff's First Request, Item 3.

<sup>20</sup> Joint Application, Exhibit 1, at 3–4.

<sup>21</sup> Response to Staff's First Request, Item 3.

24. In response to Commission Staff's First Request for Information, Item 3, Joint Applicants submitted a map showing the location of the water system facilities Southern District proposes to transfer, as well as the location of the water system facilities it intends to retain.<sup>22</sup>

25. Prestonsburg will pay Southern District \$2,140,000 for the Assets through a combination of cash payments to Southern District, the assumption or payment of certain Southern District debt obligations, and expenditures incurred for the rehabilitation of certain wastewater facilities. Prestonsburg will either assume or pay in full at closing the following debt obligations of Southern District: (a) KIA Loan No. A04-06 in the approximate principal amount of \$30,588; (b) KIA Loan No. A11-16 in the approximate principal amount of \$660,525; and (c) USDA-RD Loan No. 91-05 in the approximate principal amount of \$501,509, which was originally incurred by the Sandy Valley Water District and later assumed by Southern District.<sup>23</sup>

26. After closing, Southern District will have no debt obligations related to the Southern District Wastewater System or the portions of the Southern District Water System conveyed to Prestonsburg.<sup>24</sup>

27. The total utility plant to be transferred from Southern District's wastewater facilities is \$7,865,636,<sup>25</sup> and the net book value of the assets is \$6,263,206.<sup>26</sup>

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<sup>22</sup> *Id.*

<sup>23</sup> Joint Application at 5.

<sup>24</sup> *Id.*

<sup>25</sup> Joint Applicants' Response to Commission Staff's Second Request for Information ("Response to Second Request"), Item 1.a.

<sup>26</sup> Total Utility Plant \$7,865,636 - Accumulated Depreciation \$1,602,430 = \$6,263,206.

28. The total utility plant to be transferred from Southern District's water facilities is \$542,732,<sup>27</sup> and the net book value of the assets is \$424,595.<sup>28</sup>

29. Joint Applicants state that the proposed transfer of assets will enhance and strengthen Southern District's financial position.<sup>29</sup>

30. Joint Applicants represent that the proposed transfer is an "arm's length" transaction, and that they mutually agreed upon the purchase price for the Assets and other terms of the Agreement following months of negotiation. Joint Applicants further represent that the purchase price represents the fair market value of the Assets, although they did not obtain an appraisal of the Assets.<sup>30</sup>

31. At closing, Southern District will transfer to PCUC and Prestonsburg customer deposits that it holds, including accrued interest through the day of closing. Subsequent to closing, PCUC will be responsible for the refund of these deposits in accordance with its rules and regulations.

32. Upon Prestonsburg's acquisition of the Assets, PCUC will charge Southern District's customers the same rates that Southern District is currently charging, and PCUC will not increase these rates for at least three years from the date of the transfer.

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

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<sup>27</sup> Response to Second Request, Item 1.b.

<sup>28</sup> Total Utility Plant \$542,732 - Accumulated Depreciation \$118,137 = \$424,595.

<sup>29</sup> Joint Application at 8

<sup>30</sup> *Id.* at 6; Response to Staff's First Request, Item 1.



1. Southern District is a utility subject to the jurisdiction of the Commission.<sup>31</sup>
2. As a city, Prestonsburg, by and through PCUC, is not a utility and is not subject to the jurisdiction of the Commission.<sup>32</sup>
3. Prestonsburg is a “corporation” and a “person” for purposes of KRS 278.<sup>33</sup>
4. KRS 278.020(6) 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 Prestonsburg is a person and is acquiring ownership of Southern District’s sewage collection facilities and a portion of its water distribution facilities, this statute is applicable to and requires Commission approval of the proposed transfer.
5. KRS 278.020(7) 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 Prestonsburg is a corporation and is acquiring control, by and through PCUC of Southern District’s sewage collection facilities and a portion of its water distribution facilities, this statute is applicable to and requires prior Commission approval of the transfer of these facilities.

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<sup>31</sup> KRS 278.010(3)(f).

<sup>32</sup> *Simpson Co. Water Dist. v. City of Franklin*, 872 S.W.2d 460 (Ky. 1994).

<sup>33</sup> 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, WLI and business trusts”). Cities are municipal corporations. See e.g., *Wilson v. Central City*, 2012 4501 36 at \*2 (Ky. Apr. 26, 2012) (“a city is both a ‘municipality’ and a ‘municipal corporation’”).

6. Prestonsburg, by and through PCUC, has the legal authority to provide wastewater and water service in the territory served by the Southern District Wastewater System and the portions of the Southern District Water System proposed to be transferred.<sup>34</sup>

7. Due to Prestonsburg's and PCUC's financial assets and their status as a municipal corporation and a department of a municipal corporation, respectively, Prestonsburg and PCUC have sufficient financial integrity to ensure the continuity of utility service.

8. Prestonsburg, by and through PCUC, has the financial, technical, and managerial abilities to provide reasonable service to the customers that Southern District currently serves with the facilities proposed to be transferred.

9. Prestonsburg's proposed acquisition of the Southern District Wastewater System and portions of the Southern District Water System is consistent with the Commonwealth's policy to encourage the regionalization and consolidation of wastewater and water systems.<sup>35</sup>

10. The proposed transfer is in accordance with law, for a proper purpose, and is consistent with the public interest.

11. Upon completion of the proposed transfer, the Southern District Wastewater System and the portions of the Southern District Water System acquired by Prestonsburg will no longer be subject to the Commission's jurisdiction.

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<sup>34</sup> KRS 106.010,020.

<sup>35</sup> KRS 224A.300(1); KRS 74.361(1).

12. Upon completion of the proposed transfer, the portions of the Southern District Water System retained by Southern District will remain subject to the Commission's jurisdiction.

IT IS THEREFORE ORDERED that:

1. The proposed transfer of ownership and control of the Southern District Wastewater System and portions of the Southern District Water System to Prestonsburg is approved.

2. Within ten days of the transfer of the Assets, Southern District and Prestonsburg shall notify the Commission in writing of the transfer's occurrence.

3. Any material revision to the proposed transaction must be approved by the Commission in order for the amendment to be effective.

4. No later than June 30, 2017, Southern District shall submit its Gross Report and Annual Report for its sewer system for the period January 1, 2017, through the date of the transfer. Southern District shall submit its Gross Report and Annual Report for its water system for the year ending December 31, 2017, in accordance with the Commission's regulations.

5. Any documents filed pursuant to ordering paragraphs 2 and 4 shall reference this case number and shall be retained in Southern District's general correspondence file.

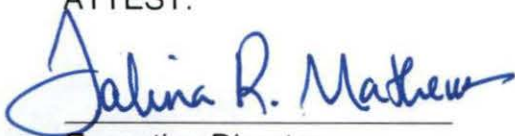
6. The Executive Director is delegated authority to grant reasonable extensions of time for the filing of any documents required by this Order upon a showing of good cause for such extension.

7. A copy of this Order shall be served on the Kentucky Division of Water.
8. This case shall be closed and removed from the Commission's docket.

By the Commission



ATTEST:

A handwritten signature in blue ink that reads "Jalina R. Mathews". The signature is written in a cursive style with a large initial "J".

Executive Director

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