

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC INVESTIGATION INTO	)	
TRANSFER OF OWNERSHIP TO	)	
PRESTONSBURG CITY UTILITIES	)	
COMMISSION OF THE WASTEWATER	)	CASE NO.
SYSTEM AND CERTAIN PORTIONS OF THE	)	2020-00228
WATER SYSTEM OF SOUTHERN WATER	)	
AND SEWER DISTRICT PURSUANT TO KRS	)	
278.250 AND KRS 278.390	)	

ORDER

The Commission, on its own motion, initiates this investigation into the transfer of wastewater system and portions of the water system assets belonging to Southern Water and Sewer District (Southern District) to the Prestonsburg City Utilities Commission (PCUC), pursuant to KRS 278.250 and KRS 278.390.<sup>1</sup>

In Case No. 2017-00044,<sup>2</sup> the Commission entered an Order approving the transfer of certain wastewater and water system assets from Southern District to PCUC. The parties to Case No. 2017-00044 did not obtain an appraisal of the assets during the pendency of that proceeding, but instead mutually agreed on a market value.<sup>3</sup> During a

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<sup>1</sup> KRS 278.250 authorizes the Commission to investigate the condition of any utility subject to its jurisdiction. KRS 278.390 provides that Commission Orders are in effect until, among other things, they are revoked or modified.

<sup>2</sup> Case No. 2017-00044, *Electronic Joint Application of Southern Water and Sewer District; Prestonsburg City's Utility Commission; and the City of Prestonsburg for an Order Approving the Transfer of Ownership of the Wastewater System and Certain Portions of the Water System of Southern Water and Sewer District* (Ky. PSC May 2, 2017).

<sup>3</sup> *Id.* at 8.

subsequent proceeding, Case No. 2018-00230,<sup>4</sup> the Commission was informed that the transaction had not yet closed or the asset ownership transferred to PCUC because the United States Department of Agriculture, Rural Development Agency (RD) had not yet approved the transfer. RD withheld approval of the transfer pending the completion of an appraisal, among other things. RD required that an appraisal be conducted and accepted before RD would release its lien on water assets transferred to PCUC.<sup>5</sup> The parties obtained an appraisal that valued the transaction at \$4.1 million, but RD determined that the appraisal, which was to value both the wastewater and water systems, covered only the water system, and there was a question whether the valuation was unduly excessive and thus was not fair and reasonable.<sup>6</sup> Recently, the Commission became aware that the parties obtained another appraisal that includes both wastewater and water systems at a lower valuation, and that RD may now approve the transaction.

Additionally, in subsequent proceedings, Southern District revealed that, although PCUC was operating the wastewater system pursuant to an operating and maintenance agreement, that Southern District was retaining revenue collected for the wastewater service and not remitting the funds to PCUC.<sup>7</sup>

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<sup>4</sup> Case No. 2018-00230, *Electronic Application of Southern Water and Sewer District for an Alternative Rate Adjustment* (Ky. PSC Mar. 25, 2019), Notice of Filing Hearing Transcript at 28:9-31:20, 33:7-24.

<sup>5</sup> *Id.*

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

<sup>7</sup> Case No. 2019-00131, *Application of Southern Water and Sewer District for an Alternative Rate Adjustment* (Ky. PSC May 8, 2019), Notice of Filing Southern District's General Ledger; Case No. 2019-00041, *Electronic Investigation into Excessive Water Loss by Kentucky's Jurisdictional Water Utilities* (Ky. PSC Oct. 7, 2019), Hearing Transcript at 42:18-23.

Based on the above, the Commission finds that a proceeding should be established to investigate the status of the transfer of certain wastewater and water assets from Southern District to PCUC. An investigation is warranted because three years have passed since the Commission entered an Order approving the transfer, and the transfer has not been executed. There may also be a change of factual and legal circumstances that would result in the Commission modifying its May 2, 2017 Order in Case No. 2017-00044.

The Commission further finds that Southern District, a utility subject to the Commission jurisdiction, and PCUC, a non-jurisdictional utility, should both be made parties to this proceeding, with each party represented by their own legal counsel.

Finally, within 20 days of the date of entry of this Order, Southern District and PCUC should file a copy of the most recent appraisal and should file their respective responses to this Order, setting forth the status of the transfer, the status of RD approval of the transaction, the status of sewer revenue due to PCUC by Southern District, and any changes of fact that may impact the transfer. The Commission will schedule a hearing in this proceeding after the responses have been filed and the parties address the status of the asset transfer.

Pursuant to the Commission's Orders in Case No. 2020-00085,<sup>8</sup> issued March 16, 2020, and March 24, 2020, Southern District and PCUC should not file the original paper copy of all requested information at this time, as required by electronic filing requirements,

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<sup>8</sup> Case No. 2020-00085, *Electronic Emergency Docket Related to the Novel Coronavirus COVID-19* (Ky. PSC Mar. 16, 2020), Order at 5–6. Case No. 2020-00085, *Electronic Emergency Docket Related to the Novel Coronavirus COVID-19* (Ky. PSC Mar. 24, 2020), Order at 1–3.

but rather shall file original paper copies within 30 days of the lifting of the current state of emergency.

IT IS THEREFORE ORDERED that:

1. This proceeding is established to investigate the status of the transfer of certain wastewater and water system assets from Southern District to PCUC.

2. The records of Case Nos. 2017-00044, 2018-00230, and 2019-00131 are incorporated by reference into this proceeding.

3. Within 20 days of the date of entry of this Order, Southern District and PCUC shall jointly file with the Commission a copy of the most recent appraisal.

4. Within 20 days of the date of entry of this Order, Southern District shall file a response to the Order, setting forth the status of the transfer, the status of RD approval of the transaction, the status of sewer revenue due to PCUC by Southern District, and any changes of fact that may impact the transfer.

5. Within 20 days of the date of entry of this Order, PCUC shall file a response to the Order, setting forth the status of the transfer, the status of RD approval of the transaction, the status of sewer revenue due to PCUC by Southern District, and any changes of fact that may impact the transfer.

6. Southern District and PCUC shall be represented by their own legal counsel, and shall not be represented by the same legal counsel.

7. Southern District and PCUC shall each comply with all provisions of the Commission's regulations related to the service and electronic filing of documents set forth in 807 KAR 5:001, Section 8, with the exception that, pursuant to Commission Orders entered in Case No. 2020-00085, Southern District and PCUC should not file the

original paper copy of all requested information at this time, but rather shall file original paper copies within 30 days of the lifting of the current state of emergency.

8. Pursuant to 807 KAR 5:001, Section 8(9), within seven days of entry of this Order, Southern District and PCUC shall each file a written statement with the Commission that:

a. Certifies that it, or its agent, possesses the facilities to receive electronic transmissions; and

b. Sets forth the electronic mail address to which all electronic notices and messages related to this proceeding should be served.

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By the Commission



ATTEST:

A handwritten signature in blue ink, consisting of stylized initials and a surname, positioned above a horizontal line.

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