

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

IN THE MATTER OF:

APPLICATION OF RED BARN WASTE )  
MANAGEMENT, LLC TO TRANSFER )  
OWNERSHIP AND CONTROL TO ) Case No.  
THE MERCER COUNTY SANITIATION ) 2017-00165  
DISTRICT )

ORDER

Red Barn Waste Management, LLC (“Red Barn”) has applied for the transfer of its wastewater collection system and package plant in Mercer County, Kentucky, to Mercer County Sanitation District (“MCSD”). In support of this request, Red Barn has submitted an Agreement for the Transfer of Assets (“Agreement”) containing the terms of the transfer. No person has sought to intervene in this proceeding, and Red Barn has not requested a formal hearing. Having reviewed the application and being otherwise sufficiently advised, the Commission finds that:

1. Red Barn was formed on December 21, 2005, and operates facilities used for the collection, transmission, and treatment of sewage for the public compensation, and is therefore a utility subject to the Commission’s jurisdiction pursuant to KRS 278.010(3)(f) and KRS 278.040.

2. Red Barn serves approximately 18 customers located on Chimney Rock Road, Arthur Court, Klein Court and Ragona Court.<sup>1</sup>

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<sup>1</sup> Application at 2.

3. Red Barn does not operate any facilities other than those used to provide wastewater service.

4. MCSD is a sanitation district established on July 26, 2005, by Mercer County Fiscal Court Ordinance No. 2005-8 pursuant to KRS Chapter 67.<sup>2</sup>

5. The service area of MCSD encompasses Mercer County, excluding the City of Harrodsburg Planning Area.<sup>3</sup>

6. Pursuant to the Agreement, Red Barn agrees to sell MCSD, its wastewater collection system and package plant, located in Mercer County, Kentucky, for one dollar.<sup>4</sup>

7. Red Barn charges a monthly fee of \$40 per customer for the first 2,000 gallons and \$6.50 per 1,000 gallons for sales in excess of 2,000 gallons.<sup>5</sup> If the proposed transfer is approved, MCSD will charge the same rate.<sup>6</sup>

8. Red Barn submitted with its Application an Agreed Order and an Amended Agreed Order between MCSD and the Kentucky Energy and Environmental Cabinet (“Cabinet”) in Case No. DOW 160092. The Orders provide that MCSD shall take specified remedial measures if it acquires the Red Barn wastewater collection system and package plant.<sup>7</sup>

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

<sup>3</sup> *Id. at 2*

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

<sup>5</sup> *Id.*, Exhibit E.

<sup>6</sup> *Id. at 3.*

<sup>7</sup> *Id.*, Exhibit E, and Exhibit F.

9. The Agreed Order states that MCSD plans to replace the existing treatment plant and provides that MCSD shall submit plans for a new wastewater treatment plant to the Cabinet and a closure plan for the present wastewater collection system and package plant.<sup>8</sup>

10. Red Barn submitted with its application a Preliminary Engineering Report dated May 14, 2015, that recommends replacing the existing wastewater treatment plant because the existing plant is “operating beyond its design life, and repairing/upgrading components of the existing plant will not match the useful life and improved treatment of a new plant.” The proposed new plant will have a treatment capacity of 18,000 gallons per day, and will accept and treat wastewater from Red Barn’s existing customers as well as an additional 35 properties that do not now have sewer service.<sup>9</sup>

11. The Cabinet, Division of Water, approved by letter dated February 7, 2017, the plans and specifications for the proposed wastewater treatment plant.<sup>10</sup>

12. MCSD has secured financing to construct the proposed wastewater treatment facilities. Specifically, Kentucky Infrastructure Authority has approved a loan to MCSD of \$423,500, or one approximately half of the approved cost of the new facilities,<sup>11</sup> and the Kentucky Department of Local Government has awarded a grant to

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

<sup>9</sup> *Id.*, Exhibit G.

<sup>10</sup> *Id.*, Exhibit H.

<sup>11</sup> *Id.*, Exhibit I.

Mercer of \$424,000 for the remaining cost of the proposed wastewater treatment facilities.<sup>12</sup>

13. According to its most recent Financial Audit, MCSD had, as of June 30, 2016, total assets of \$3,055,399, including \$64,393 in total current assets, \$2,969,878 in net property and equipment, and \$710,937 in total liabilities.<sup>13</sup>

14. KRS 278.020(6) provides that “[n]o person shall acquire or transfer ownership or, or control, or the right to control, any utility under the jurisdiction of the commission . . . without prior approval by the commission. The commission shall grant its approval if the person acquiring the utility has the financial, technical, and managerial abilities to provide reasonable service.”

15. 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, whether directly or indirectly, of any utility furnishing utility service in this state, without first having obtained the approval of the commission.” KRS 278.020(7) further provides that the “commission shall approve any proposed acquisition when it finds that the same is to be made in accordance with law, for a proper purpose and is consistent with the public interest.”

16. The transfer of Red Barn to the MCSD is a transaction subject to the jurisdiction of the Public Service Commission and requires Commission approval.

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<sup>12</sup> Application Exhibit J DLG CDBG Agreement (April 24, 2017).

<sup>13</sup> Application Exhibit C MCSD Financial Audit–June 30, 2016 (April 24, 2017).

17. MCSD has the legal authority to provide wastewater service in the territory currently served by Red Barn.

18. In view of its financial assets and its status as a sanitation district, MCSD has sufficient financial integrity to ensure continuity of service.

19. MCSD will have the financial, technical, and managerial abilities to provide reasonable service to those persons located in the area now served by Red Barn treatment and package plant.

20. KRS 224A.300(1) provides that the regionalization and consolidation of water and wastewater systems should be encouraged, and the transfer of ownership and control of Red Barn wastewater treatment and package plant to MCSD is consistent with this goal.

21. The transfer of Red Barn wastewater treatment system and package plant is in accordance with the law, for a proper purpose, and is consistent with the public interest.

22. As a Sanitation District, MCSD is not subject to the Commission's jurisdiction over rates and service.<sup>14</sup>

23. Upon MCSD's acquisition of the Red Barn wastewater treatment system and package plant, that system and its customers will no longer be subject to the Commission's jurisdiction.

IT IS THEREFORE ORDERED that:

1. The proposed transfer of ownership and control of the Red Barn wastewater treatment system and package plant, pursuant to the terms of the agreement, is

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<sup>14</sup> See Boone County Water & Sewer District b. Public Service Comm'n 949 S.W.2d 588 (Ky. 1997).

approved, subject to the conditions set forth in ordering paragraphs 2 through 6, as of the date of this Order.

2. Red Barn shall notify the Commission in writing of the closing of the transaction with ten days of the closing.

3. If the transaction does not close within 90 days of the date of this Order, Red Barn shall file with the Commission a report on the status of the efforts to complete the transfer.

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

5. No later than July 1, 2017, Red Barn shall submit its Gross Report and an annual report for the calendar year ending December 31, 2016, and its Gross Report and an Annual Report for the period January 1, 2017, through the date of the transfer.

6. Any documents filed pursuant to ordering paragraphs 2, 3, and 5 shall reference this case number and shall be retained in Red Barn's general correspondence file.

7. 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 an extension.

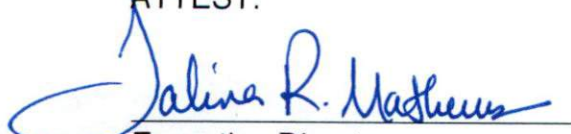
8. A copy of this Order shall be served on the Kentucky Division of Water, Mercer County Judge Executive, and the MCSD.

9. This case is closed and removed from the Commission's docket.

By the Commission

ENTERED  
MAY 31 2017  
KENTUCKY PUBLIC  
SERVICE COMMISSION

ATTEST:

  
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