

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

JOINT APPLICATION OF FARMDALE)	
DEVELOPMENT CORPORATION AND)	
FARMDALE SANITATION DISTRICT FOR THE)	CASE NO.
APPROVAL OF THE TRANSFER OF A)	2017-00204
WASTEWATER TREATMENT PLANT TO)	
FARMDALE SANITATION DISTRICT)	

ORDER

On May 17, 2017, pursuant to KRS 278.020(6), Farmdale Development Corporation ("Farmdale Development") and Farmdale Sanitation District ("Farmdale Sanitation") (collectively "Joint Applicants"), jointly tendered an application for approval of the transfer of the wastewater treatment plant and collection system ("Farmdale System") serving the Farmdale subdivision in Franklin County, Kentucky, to Farmdale Sanitation. The Commission issued a filing deficiency letter to Joint Applicants on May 25, 2017. The Joint Applicants filed supplemental documentation with the Commission curing the deficiencies on May 26, 2017, at which date the application was accepted as filed.

In support of this request, the Joint Applicants have submitted a written agreement ("Agreement") between Farmdale Development and Farmdale Sanitation containing the terms of the transfer. Farmdale Development and Farmdale Sanitation have responded to a discovery request regarding the proposed transfer. No person has sought to intervene in this proceeding. Having reviewed the application and being otherwise sufficiently advised, the Commission finds that:

1. Farmdale Development, the Seller under the Agreement, is a Kentucky Corporation that owns facilities used for the collection, transmission, or treatment of sewage for the public for compensation and is subject to the Commission's jurisdiction pursuant to KRS 278.010(3)(f) and KRS 278.040.

2. Farmdale Development serves approximately 246 customers in the Farmdale subdivision in Franklin County, Kentucky.¹

3. Pursuant to the Agreement, for \$1.00 Farmdale Development agrees to sell the Farmdale System to Farmdale Sanitation, including but not limited to certain real property in Franklin County, Kentucky, a wastewater treatment plant ("WWTP"), the wastewater collection system, force mains, remote lift station, equipment, buildings, sewer easements, records, and governmental approvals.²

4. Farmdale Sanitation is a sanitation district created on February 6, 2004, pursuant to KRS Chapter 67 and by the Franklin County Fiscal Court by Ordinance No. 4, 2004 Series.³

5. Farmdale Sanitation owns eight acres purchased with funds from a U. S. Environmental Protection Agency ("EPA") grant for the location of a new sewage treatment facility.⁴

6. Farmdale Sanitation holds approximately \$873,000 in funds from the EPA which may be used for both the construction and design of a new sewage treatment

¹ Joint Application at 2 and 3.

² Joint Application, Exhibit A.

³ Joint Application, Exhibit D.

⁴ Joint Application at 4.

facility, and had approximately \$84,000 in an operating account on January 31, 2017.⁵ The Franklin County Fiscal Court has loaned \$30,000 to Farmdale Sanitation to pay current operating expenses.⁶

7. Farmdale Sanitation published requests for proposals for individuals or firms that are capable of providing operations, maintenance, and management of wastewater treatment facilities in the Farmdale Sanitation District's service area in Franklin County.⁷ On June 9, 2017, Farmdale Development filed an Operation and Maintenance Agreement ("O&M Agreement") between Farmdale Sanitation and Professional Wastewater Services, LLC ("Professional Wastewater"). The O&M Agreement sets forth the full range of services that Professional Wastewater will provide, including but not limited to routine operations, preventive maintenance services, emergency callout services, regulatory compliance, and preparation of necessary records and reports.⁸

8. The Joint Applicants further asserted that the principal of Professional Wastewater, Kenneth D. Hogsten, Jr., has all of the necessary licenses required by the Commonwealth of Kentucky and is certified as a Wastewater Treatment Plant Operator Class IV, which is a higher classification than that required for the operation of the Farmdale System.⁹

⁵ *Id.*

⁶ Joint Applicants' response to Commission Staff's First Request for Information ("Response to Staff's First Request") (filed July 5, 2017), Item 4.

⁷ Joint Application, Exhibit J.

⁸ Notice of Filing of Operation and Maintenance Agreement (filed June 9, 2017) at 1.

⁹ Response to Staff's First Request, Item 5.

9. Additionally, Farmdale Sanitation has entered into contracts with Hayworth-Meyer-Boleyn Professional Engineers, Inc. to provide engineering services, Pace Analytical to perform laboratory services, and with Farmdale Water District to perform billing services.¹⁰

10. Farmdale Development will continue to operate the WWTP through the date of the closing of the Agreement, which will take place within 30 days after the Commission grants approval to the Joint Applicants to transfer the Farmdale System.¹¹

11. Farmdale Development currently charges a flat monthly rate of \$40.19 per customer, and Farmdale Sanitation states that it will continue to charge the flat monthly rate of \$40.19 per customer upon completion of the transfer.¹²

12. Farmdale Development does not hold any customer deposits.¹³

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

1. Farmdale Development is a utility subject to Commission jurisdiction.

2. Farmdale Development is a “corporation” and a “person” for purposes of KRS Chapter 278.¹⁴

3. 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. The commission shall grant

¹⁰ *Id.*, Item 4.

¹¹ Joint Application, Exhibit A.

¹² Response to Staff’s First Request, Item 7.

¹³ *Id.*, Item 6.

¹⁴ KRS 278.010.

its approval if the person acquiring the utility has the financial, technical, and managerial abilities to provide reasonable service.”

4. 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 directory or indirectly, of any utility furnishing utility service in this state without having first 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.”

5. The transfer of the ownership of the Farmdale System from Farmdale Development to Farmdale Sanitation is a transaction subject to the jurisdiction of the Public Service Commission and requires Commission approval.

6. Farmdale Sanitation has the legal authority to provide wastewater service in the territory served by the Farmdale System.

7. In view of its financial assets and its status as a sanitation district, Farmdale Sanitation has sufficient financial integrity to ensure the continuity of service.

8. Farmdale Sanitation has the financial, technical, and managerial abilities to provide reasonable service to those persons located in the Farmdale subdivision.

9. 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 the Farmdale System to Farmdale Sanitation is consistent with regionalization.

10. The transfer of the Farmdale System from Farmdale Development to Farmdale Sanitation is in accordance with the law, for a proper purpose, and is consistent with the public interest.

11. As a sanitation district, Farmdale Sanitation is not subject to the Commission's jurisdiction over rates or service.¹⁵

12. Upon Farmdale Sanitation's acquisition of the Farmdale System serving the Farmdale subdivision, the Farmdale 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 Farmdale System, pursuant to the terms of the Agreement, is approved, subject to the conditions set forth in ordering paragraphs 2 through 9, as of the date of this Order.

2. Farmdale Development shall notify the Commission in writing of the closing of the transaction within ten days of the closing.

3. If the transaction does not close within 90 days of the date of this Order, Farmdale Development 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 require approval by the Commission in order for the amendment to be effective.

5. Farmdale Development shall continue to operate the WWTP serving the Farmdale System until the closing of the transaction, at which time Farmdale Sanitation will begin operating the WWTP.

¹⁵ See *Boone County Water & Sewer Dist. V Public Service Comm'n*, 949 S.W.2d 588 (Ky. 1997).

6. No later than August 31, 2017, Farmdale Development shall submit its Gross Report for the period January 1, 2017, through the date of the transfer.

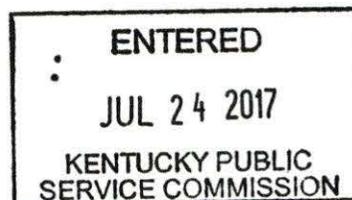
7. Any documents filed pursuant to ordering paragraphs 2, 3, and 6 shall reference this case number and shall be retained in Farmdale Development's general correspondence file.

8. 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.

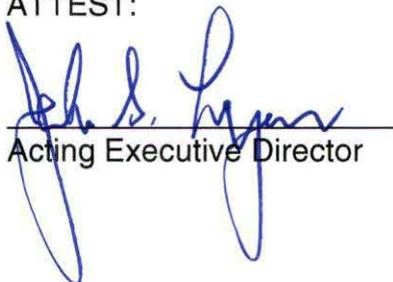
9. A copy of this Order shall be served on the Kentucky Division of Water, the Franklin County Judge/Executive, and the Farmdale Sanitation District.

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

By the Commission



ATTEST:


Acting Executive Director

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