

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF EVERGREEN SEWAGE)	
DISPOSAL, INC. FOR APPROVAL OF)	
TRANSFER OF EVERGREEN SEWAGE)	CASE NO.
DISPOSAL SYSTEM TO FARMDALE)	2016-000290
SANITATION DISTRICT)	

ORDER

Evergreen Sewage Disposal, Inc. (“Evergreen”) has applied for approval of the transfer of its sewage disposal system (“Evergreen System”) in Franklin County, Kentucky, to Farmdale Sanitation District (“Farmdale”).¹ In support of the request, Evergreen submitted a written agreement (“Agreement”) between Evergreen and Farmdale containing the terms of the transfer. Evergreen and Farmdale 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. Evergreen is a Kentucky Corporation that owns facilities used for the collection, transmission, or treatment of sewage for the public for compensation through the Evergreen System and is subject to the Commission’s jurisdiction pursuant to KRS 278.010(3)(f) and KRS 278.040.

¹ Evergreen initially tendered a notice of surrender and abandonment of utility property, and the Commission, by an Order entered on September 9, 2016, initiated this case to investigate Evergreen’s request to abandon its utility service and facilities. During the pendency of the case, Evergreen entered into the Agreement with Farmdale for the transfer of Evergreen’s facilities to Farmdale, and, thereafter, moved to amend the case from a request for authorization to abandon to a request for authorization for a transfer. On January 10, 2017, the Commission entered an Order that, among other things, granted Evergreen’s request to amend.

2. The Evergreen System serves approximately 42 customers in the Evergreen subdivision in Franklin County, Kentucky.²

3. Evergreen does not operate any facilities other than those used to provide wastewater service to the Evergreen subdivision.

4. Pursuant to the Agreement, for \$1.00 and other good and valuable consideration, Evergreen agrees to sell to Farmdale the Evergreen System, which includes certain real property in Franklin County, Kentucky, a wastewater treatment plant ("WWTP"), all Evergreen's bank accounts, business records, and any personal property used in the operation of the WWTP.³

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

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

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

² Notice (filed Aug. 12, 2016) at 1.

³ Motion to Continue Hearing and to Amend This Case to a Petition for a Certificate of Convenience and Necessity to Transfer Ownership ("Motion to Amend") (filed Jan. 6, 2017) at attachment pages 1–2. Per the Agreement, Evergreen may use so much of its cash on hand as may be necessary to pay off and satisfy any of its debts.

⁴ Answers to Commission Staff's First Request for Information ("Staff's First Request") (filed Mar. 1, 2017) at 1.

⁵ *Id.* at 3.

and had approximately \$84,000 in an operating account on January 31, 2017.⁶

8. Farmdale has published requests for proposals (“RFPs”) for a certified operator and laboratory services and states that it will have qualified personnel prior to the proposed transfer of ownership of the Evergreen System.⁷

9. Evergreen states that it will continue to operate the WWTP until the Commission approves the transfer, Evergreen’s assets are transferred to Farmdale, and Farmdale notifies Evergreen that it has a certified operator ready to continue operations.⁸

10. Farmdale does not operate a facility and it does not have any customers at this time.⁹

11. Evergreen charges a flat monthly rate of \$40 per customer and Farmdale states that it anticipates that it will charge a flat monthly rate of \$40 per customers upon completion of the transfer.¹⁰

12. Evergreen does not hold any customer deposits.¹¹

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

1. Evergreen is a utility subject to Commission jurisdiction.

⁶ *Id.*

⁷ *Id.* at 4.

⁸ *Id.* at 6 and Motion to Amend (filed Jan. 6, 2017) at attachment page 2.

⁹ *Id.* at 5.

¹⁰ *Id.*

¹¹ *Id.*

2. Farmdale is a “corporation” and a “person” for purposes of KRS Chapter 278.¹²

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 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 Evergreen System from Evergreen to Farmdale is a transaction subject to the jurisdiction of the Public Service Commission and requires Commission approval.

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

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

¹² KRS 278.010.

8. Upon Farmdale obtaining the services of a certified operator, Farmdale will have the financial, technical, and managerial abilities to provide reasonable service to those persons located in the Evergreen 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 Evergreen System to Farmdale is consistent with regionalization.

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

11. As a sanitation district, Farmdale is not subject to the Commission's jurisdiction over rates or service.¹³

12. Upon Farmdale's acquisition of the Evergreen System serving the Evergreen subdivision, the Evergreen 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 Evergreen 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. Evergreen 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, Evergreen shall file with the Commission a report on the status of the efforts to complete the transfer.

¹³ See *Boone County Water & Sewer Dist. V Public Service Comm'n*, 949 S.W.2d 588 (Ky. 1997).

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

5. Evergreen shall continue to operate the WWTP serving the Evergreen System until Farmdale provides notice that it has a certified operator ready to continue operations.

6. Evergreen shall file with the Commission the copy of any notice provided by Farmdale concerning Farmdale's certified operator.

7. No later than March 31, 2017, Evergreen shall submit its Gross Report and an Annual Report for the calendar year ending December 31, 2016.

8. No later than June 30, 2017, Evergreen shall submit its Gross Report and an Annual Report for the period January 1, 2017, through the date of the transfer.

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

10. 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.

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

12. The case shall be closed and removed from the Commission's docket.

By the Commission

ENTERED
MAR 14 2017
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:

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