

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF RED BARN WASTE)	
MANAGEMENT, LLC FOR APPROVAL OF THE)	
TRANSFER OF OWNERSHIP AND)	CASE NO. 2006-00284
OPERATING INTERESTS OF CHIMNEY ROCK)	
WASTE MANAGEMENT, LLC)	

O R D E R

On June 12, 2006, Red Barn Waste Management, LLC, (“Red Barn Waste”), a Kentucky Limited Liability Company, tendered, pursuant to KRS 278.020(5) and (6), an application for Commission approval for the transfer and acquisition of the wastewater treatment facilities of Chimney Rock Waste Management, LLC (“Chimney Rock Waste”). The Office of the Attorney General requested and was granted the status of intervenor by Order dated July 25, 2006. The record does not reflect any further participation by him in this proceeding after that date. There are no additional intervenors. None of the parties in this case requested a formal hearing.

By order dated July 11, 2006, the Commission continued the statutory 60-day review period for an additional 60 days up to and including October 10, 2006. Commission Staff issued a data request to the applicant on July 27, 2006. Red Barn Waste filed its response to the data request on August 15, 2006.

Having considered the application and evidence of record, the Commission finds that:

1. Chimney Rock Waste, a Kentucky Limited Liability Company, owns and operates a sewage treatment facility in Mercer County, Kentucky, that serves approximately 19 customers in Chimney Rock Village. One of the customers is the Chimney Rock RV Park. The remaining customers are single-family residences.¹

2. Chimney Rock Waste is not subject to the regulation of any metropolitan sewer district.

3. As of December 31, 2005, Chimney Rock Waste reported net utility plant of \$6,739.²

4. As of December 31, 2005, Chimney Rock Waste reported total assets of \$12,393 and total liabilities of \$17,374.³

5. Red Barn Waste and Chimney Rock Waste entered into a contract for the sale of the sewer treatment plant for the purchase price of \$10,000. Jeffery C. Ruttenberg, the sole member of Red Barn Waste Management will make a \$2,000 cash contribution toward the purchase price, with the rest being financed by Red Barn RV Park, LLC (“Red Barn RV”) over 5 years at a 10 percent annual interest rate.⁴

6. Red Barn Waste was formed on December 21, 2005.⁵

¹ Annual Report of Chimney Rock Waste Management, LLC to the Kentucky Public Service Commission for the Year Ended December 31, 2004 (“Annual Report”) at 12.

² Id. at 2.

³ Id. at 3.

⁴ Red Barn Waste’s Response to Commission Staff’s Interrogatories and Requests for Production of Documents, Item 3.

⁵ Application, Exhibit 5.

7. Jeffrey C. Ruttenberg owns and manages several commercial properties in and around Lexington, Kentucky.

8. Red Barn Waste has indicated it intends to retain Charles Melvin Price, Chimney Rock Waste's current operator, as its wastewater treatment plant operator.⁶

9. Red Barn Waste and Chimney Rock Waste have entered into a 7-month management agreement, which can be extended, pursuant to which Chimney Rock Waste and/or its members will manage Red Barn Waste.⁷

10. Red Barn Waste proposes to record the acquisition in the following manner:

<u>Description</u>	<u>Debit</u>	<u>Credit</u>
Utility Plant in Service	\$10,000	
Cash		\$2,000
Notes Payable		\$8,000

The Uniform System of Accounts for Sewer Utilities requires that plant assets be transferred at original cost along with accumulated depreciation on those assets. Recording the transfer in accordance with the USoA will require Red Barn Waste to record a plant acquisition adjustment. The plant acquisition adjustment should be amortized over the remaining useful life of the assets purchased. The annual amortization may be recorded in account 406, Amortization of Utility Plant Acquisition Adjustment.

⁶ Application, Item 2.

⁷ Id.

11. Red Barn Waste has stated that any cash in Chimney Rock Waste's bank accounts and any outstanding accounts receivable and accounts payable will be transferred to Red Barn Waste on the date of the transfer.⁸

12. Red Barn Waste did not request approval of financing in this proceeding and the Commission herein neither approves nor disapproves the financing.

13. Upon its acquisition of Chimney Rock Waste's sewage treatment system, Red Barn Waste will assess the same rates and charges as Chimney Rock Waste presently assesses.

14. Red Barn Waste has stated that it intends to obtain an irrevocable letter of credit up to an amount of \$10,000.⁹

15. Mr. Ruttenberg has committed to, "[l]oan the limited liability company any funding necessary to ensure the continued operation of the plant in accordance with applicable law."¹⁰

16. 807 KAR 5:071, Section 3(1)(a), requires provision of a third-party beneficiary agreement or other evidence of financial integrity that will ensure the continuity of sewage service. An irrevocable letter of credit is an acceptable evidence of financial integrity. A 10-year term is the minimum that would be acceptable to provide time for this utility to establish operational stability. Therefore, approval of this transfer

⁸ Red Barn Waste's response to Commission Staff's Interrogatories and Requests for Production of Documents, Item 1.

⁹ Application, Item 8.

¹⁰ Red Barn Waste's response to Commission Staff's Interrogatories and Requests for Production of Documents, Item 1(b).

will be conditioned upon Red Barn Waste providing an irrevocable letter of credit in the amount of \$10,000 with at least a 10-year term.

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

1. Chimney Rock Waste is a utility that is subject to Commission jurisdiction. KRS 278.010(3)(f).

2. Red Barn Waste is not a utility and is therefore currently not subject to Commission regulation. KRS 278.010(3)(f).

3. Red Barn Waste is a “person” for purposes of KRS Chapter 278. KRS 278.010(2).

4. KRS 278.020(5) 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 Red Barn Waste is a person and is acquiring ownership of Chimney Rock Waste’s sewage treatment facilities, this statute is applicable to and requires Commission approval of the proposed transfer.

5. KRS 278.020(6) 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 Red Barn Waste is acquiring control of Chimney Rock Waste’s utility operations through the acquisition of

the facilities that Chimney Rock Waste uses to provide utility service, this statute is applicable to and requires Commission approval of the proposed transfer.

6. Red Barn Waste has the financial, technical, and managerial abilities to provide reasonable service to the present customers of Chimney Rock Waste.

7. The proposed transfer is in accordance with law and for a proper purpose; it will however, be consistent with the public interest only if the conditions set forth in Ordering Paragraph 1 of this Order are met.

8. Upon completion of the proposed transfer, the Chimney Rock Waste sewage treatment facilities will continue to be subject to Commission jurisdiction.

IT IS THEREFORE ORDERED that:

1. The proposed transfer of the utility assets of Chimney Rock Waste to Red Barn Waste is approved subject to the conditions set forth below that:

a. Red Barn Waste obtain an irrevocable letter of credit in the amount of \$10,000 with a minimum term of 10 years.

b. Red Barn Waste file with the Commission a copy of such letter of credit within 30 days of the date of this Order.

c. Red Barn Waste use the journal entry set forth below to record the acquisition, with account balances updated through the date of the transfer:

<u>Description</u>	<u>Debit</u>	<u>Credit</u>
Utility Plant in Service	\$37,236	
Plant Acquisition Adjustment	\$14,981	
Other Deferred Debits	\$3,350	
Cash	\$1,637	
Prepayments	\$550	
Customer Accounts Receivable	\$117	
Accumulated Depreciation		\$30,497
Accounts Payable to Associated Companies		\$17,103
Notes Payable to Associated Companies		\$8,000

Other Paid-in Capital	\$2,000
Accounts Payable	\$271

The journal entry proposed here is for accounting purposes only. The decision on the rate-making treatment of the debt and plant acquisition adjustment is deferred to the next rate case proceeding.

d. Red Barn Waste shall obtain all necessary permits for the operation of the Chimney Rock sewage system, including a Kentucky Pollutant Discharge Elimination System permit, before the transfer occurs.

e. The proposed transfer shall occur within 90 days of the date of this Order.

2. The Commission herein neither approves nor disapproves the financing as Red Barn Waste did not request approval of financing in this proceeding.

3. Within 10 days of completion of the proposed transfer of assets, Red Barn Waste and Chimney Rock Waste shall notify the Commission in writing of the completion of the transfer of assets.

4. Within 10 days of the completion of the proposed transfer, Red Barn Waste shall file with the Commission a signed and dated adoption notice in accordance with Administrative Regulation 807 KAR 5:011, Section 11.

5. Within 10 days of the filing of its adoption notice, Red Barn Waste shall issue and file with the Commission in its own name Chimney Rock Waste's tariff, or such other tariff as it proposes to put into effect in lieu thereof, in the form prescribed in Administrative Regulation 807 KAR 5:011, Sections 2 through 5, with proper identifying designation.

6. Chimney Rock Waste shall be responsible for submitting to the Commission a financial and statistical report, as described in Administrative Regulation 807 KAR 5:006, Section 3, for the period in calendar years 2006 that it owned and operated the transferred assets.

7. Within 10 days of the completion of the proposed transfer, Chimney Rock Waste shall file with the Commission the journal entry that it proposes to record the asset acquisition. The acquisition shall be recorded in accordance with the Uniform System of Accounts for Sewer Utilities.

Done at Frankfort, Kentucky, this 22nd day of September, 2006.

By the Commission

ATTEST:



Executive Director