

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION FOR TRANSFER OF THE)
SEWER TREATMENT PLANT KNOWN AS THE)
SEWER TREATMENT PLANT SYSTEM NO. 1) CASE NO. 2006-00166
OF THE SOUTH HILLS SUBDIVISION SEWER)
TREATMENT SYSTEM IN THE NAME OF)
SCHLUETER BUILDING CO., INC. TO PRO)
MAN PROPERTY MANAGEMENT, LLC)

O R D E R

On April 21, 2006, Pro Man Property Management, LLC (“Pro Man”), 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 Sewer Treatment Plant System No. 1 of the South Hills Subdivision Sewer Treatment System owned by Schlueter Building Co., Inc. (“Schlueter”). Commission Staff found the application to be deficient and rejected the filing. On May 18, 2006, the deficiency was cured by Pro Man and the application was accepted as filed on that date. The Office of the Attorney General was granted full intervention by Order dated May 25, 2006. The record does not reflect any further participation by him in this proceeding after that date. There are no other intervenors. None of the parties in this case requested a formal hearing.

Commission Staff issued data requests to the applicant on June 1, 2006 and July 7, 2006. Pro Man filed responses to those data requests on June 23, 2006 and July 18, 2006. By Order dated July 7, 2006, the Commission continued the statutory 60-day review period for an additional 60 days up to and including September 15, 2006.

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

1. Schlueter, a Kentucky corporation, owns and operates a subdivision sewage treatment facility in Campbell County, Kentucky, with a rated capacity of 20,000 gallons per day, that serves approximately 62 customers in the South Hills Subdivision. Of the 62 customers, approximately 12 are single-family residences and 50 are multi-family residences.¹

2. Schlueter is not subject to the regulation of any metropolitan sewer district.

3. As of December 31, 2005, Schlueter reported net utility plant of \$500.²

4. As of December 31, 2005, Schlueter reported total assets of \$500 and total liabilities of \$27,166.³

5. Pro Man and Schlueter entered into a contract for the sale of the sewer treatment plant for the purchase price of \$12,000. The purchase price will be financed by Schlueter. The monthly payments will be calculated using a 15-year amortization period and a 5 percent annual interest rate.⁴

6. Schlueter has transferred to Pro Man the real estate consisting of a majority of the units serviced by the treatment plant, including the real estate on which the treatment plant is located.⁵

¹ Annual Report of Schlueter Building Company to the Kentucky Public Service Commission for the Year Ended December 31, 2004 at 12.

² Id. at 2.

³ Id. at 3.

⁴ Pro Man's Response to Commission Staff's Second Set of Interrogatories and Requests for Production of Documents, Item 2.

⁵ Application, Exhibit "A."

7. Pro Man was formed on June 2, 2004⁶ and Brett Cade is Pro Man's sole officer.

8. Brett Cade owns and manages several single-residential and multi-residential rental properties in and around the Campbell County, Kentucky area.

9. Pro Man intends to retain Lucas Sanitation Company as its wastewater treatment plant operator. The Environmental and Public Protection Cabinet has certified Jeff Cox, with Lucas Sanitation Company, to operate a wastewater treatment system in Kentucky.⁷

10. Pro Man proposes to record the acquisition in the following manner:

<u>Description</u>	<u>Debit</u>	<u>Credit</u>
Utility Plant in Service	\$12,000	
Long-Term Debt		\$12,000

The Uniform System of Accounts for Sewer Utilities ("USoA") 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 Pro Man 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.

11. Pro Man did not request approval of financing in this proceeding and the Commission herein neither approves nor disapproves the financing.

⁶ Id., Articles of Organization of Pro Man Property Management, LLC.

⁷ Letter from Lucas Sanitation Company to Pro Man filed as an exhibit in the application and supplemented by filing of copy of Jeff Cox's certificate.

12. Upon its acquisition of Schlueter's sewage treatment system, Pro Man will assess the same rates and charges as Schlueter presently assesses.

13. Pro Man has provided an irrevocable letter of credit up to \$10,000 from The Bank of Kentucky with an expiration date of June 22, 2007.⁸

14. 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. While an irrevocable letter of credit is an acceptable evidence of financial integrity, the expiration date of June 22, 2007 is not acceptable. 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 will be conditioned upon Pro Man providing an irrevocable letter of credit in the amount of \$10,000 with at least a 10-year term.

15. Pro Man provided its financial statements for the year ended December 31, 2005. At December 31, 2005, Pro Man had total assets of \$1,617,572 and total liabilities of \$1,334,780.⁹

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

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

2. Pro Man is not a utility and is therefore not subject to Commission regulation. KRS 278.010(3)(f).

⁸ Pro Man's response to Commission Staff's First Set of Interrogatories and Requests for Production of Documents, Item 3.

⁹ Pro Man's Response to Commission Staff's Second Set of Interrogatories and Requests for Production of Documents, Item 1.

3. Pro Man 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 Pro Man is a person and is acquiring ownership of Schlueter’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 Pro Man is acquiring control of Schlueter’s utility operations through the acquisition of the facilities that Schlueter uses to provide utility service, this statute is applicable to, and requires Commission approval of, the proposed transfer.

6. Pro Man has the financial, technical, and managerial abilities to provide reasonable service to the present customers of Schlueter.

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 Schlueter 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 Schlueter to Pro Man is approved subject to the conditions set forth below:

a. Pro Man shall obtain an irrevocable letter of credit in the amount of \$10,000 with a minimum term of 10 years.

b. Pro Man shall file with the Commission a copy of such letter of credit within 30 days of the date of this Order.

c. Pro Man shall 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	\$35,500	
Plant Acquisition Adjustment	\$11,500	
Accumulated Depreciation		\$35,000
Long-Term Debt		\$12,000

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. Pro Man shall obtain all necessary permits for the operation of the Schlueter 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. Within 10 days of completion of the proposed transfer of assets, Pro Man and Schlueter shall notify the Commission in writing of the completion of the transfer of assets.

3. Within 10 days of the completion of the proposed transfer, Pro Man shall file with the Commission a signed and dated adoption notice in accordance with 807 KAR 5:011, Section 11.

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

5. Schlueter shall be responsible for submitting to the Commission a financial and statistical report, as described in 807 KAR 5:006, Section 3, for the period in calendar year 2006 that it owned and operated the transferred assets.

6. Within 10 days of the completion of the proposed transfer, Pro Man 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 USoA.

Done at Frankfort, Kentucky, this 28th day of August, 2006.

By the Commission

ATTEST:


Executive Director