

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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|--|---|------------|
| NOTICE OF TRANSFER OF A WASTEWATER |) | |
| TREATMENT UTILITY FROM PRO MAN |) | CASE NO. |
| PROPERTY MANAGEMENT, LLC TO FOX RUN |) | |
| LIVING, LLC; APPLICATION FOR APPROVAL OF |) | 2019-00153 |
| SAID TRANSFER; AND OFFER TO SETTLE |) | |
| OUTSTANDING VIOLATIONS |) | |

FOX RUN LIVING'S RESPONES TO STAFF'S INITIAL REQUESTS FOR INFORMATION

Respectfully submitted,

FROST BROWN TODD LLC



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Counsel for Fox Run Living, LLC

Request No 1: KRS 278.020(6) requires the Commission to find that the person acquiring a utility that is subject to its jurisdiction possess the financial, technical, and managerial abilities to provide reasonable service.

- a. Describe Fox Run Living's technical ability and resources to manage and operate the wastewater treatment facilities acquired from Pro Man Property Management, LLC (Pro Man), including, but not limited to, its employment of or contractual arrangement for a qualified and certified operator for the system.
- b. Describe Fox Run Living's financial ability and resources to manage and operate the wastewater treatment facilities acquired Pro Man, including, but not limited to, available funds, lines of credit, loans, grants, or other financial support.
- c. Describe Fox Run Living's management ability and resources to manage and operate the wastewater treatment facilities acquired from Pro Man.

Response:

- a. Carl Crone was hired to serve as the operator of the collection system and waste treatment system when Fox Run acquired the utility. Fox Run does not have a contract with Mr. Crone, but he performs services on a regular basis and invoices Fox Run monthly. If additional work or parts are needed for service and maintenance to the utility, Mr. Crone identifies the issue, the work necessary to resolve the issue, the cost of the work and the parts, and he provides Fox Run with an estimate for approval. A sample invoice from Mr. Crone is provided in Exhibit A.

Fox Run uses Pace Analytical to conduct its lab analysis. Pace invoices Fox Run each time any analysis is conducted. A sample invoice from Pace Analytical provided in Exhibit A.

Fox Run uses Flush Sanitation, LLC to pump and dispose of sludge from the sewage treatment plant. A sample invoice from Flush Sanitation, LLC provided in Exhibit A.

b. See Exhibit B.

c. King Communities is currently the management company that manages Fox Run Living LLC. The Manager on site is Prescilla Isaacs. The site also has 2 maintenance techs, Tony and Steve. Doug Schmitt is the Regional Manager for King Communities and oversees all staff. The bookkeeper for King Communities is Erin Allen, and the owner of King Communities is Jimmy King. All staff listed here are currently involved or available to assist in the management of the wastewater treatment facilities, but Carl Crone is the exclusive operator of the treatment facilities.

Responding Witness: Jimmy King

Request No 2: Provide financial statements, tax returns, or other evidence of the financial integrity of Fox Run Living.

Response: See Exhibit B.

Responding Witness: Jimmy King

Request No 3: KRS 278.020(7) states that, in order to approve the transfer, the Commission must find that the proposed transaction "is to be made in accordance with law, for a proper purpose and is consistent with the public interest." Explain in detail how the transaction that transferred the Pro Man wastewater treatment facilities to Fox Run is in accordance with the law, for a proper purpose, and benefits the public.

Response: Fox Run objects to the extent that this question asks for a legal conclusion or argument. On a factual basis, the transfer is in accordance with the law, for a proper purpose, and benefits the public for the following reasons:

The Pro Man wastewater treatment facilities have not been properly managed or maintained for many years. Since acquiring control of the facilities, Fox Run has invested over \$100,000 into the physical facilities to ensure it continues to operate in such a manner that it serves the Fox Run customers and complies with DOW requirements. As further evidence that Pro Man has not been properly managed, the utility has not sought a rate adjustment of any kind for many years. As such, the utility operated at a loss and the physical facilities declined as a result. Transferring the utility to the control of Fox Run benefits the public by ensuring current and future investment in the continued operation of the utility.

The transaction itself was conducted in accordance with all laws pertaining to the transfer of real estate in the Commonwealth of Kentucky. The current application demonstrates Fox Run's intent to comply with the Commission's authority over the transaction of utilities.

While Fox Run was unaware of the utilities status as a regulated entity when it purchased the utility, the purpose of the transaction was still proper. Fox Run purchased the Pro Man utility with the intent to upgrade the facilities and continue operating the wastewater treatment facilities. The physical treatment facilities provide service to the apartment complex, which was purchased at great expense to Fox Run. It is in the best interest of both Fox Run and the residences served by the wastewater treatment facilities that Fox Run ensure continued and proper operation of the wastewater treatment facilities.

Responding Witness: Jimmy King

Request No 4: Provide the journal entry that Fox Run Living used to record the acquisition of Pro Man.

Response: See “General Ledger” in Exhibit B.

Responding Witness: Jimmy King

Request No 5: Provide a copy of Fox Run Living's (Pro Man) balance sheet, income statement, and statement of retained earnings for the 12 months ending December 31, 2018.

Response: See Exhibit B. Note that the apartment complex is referred to as Norse Landing.

Responding Witness: Jimmy King

Request No 6: Provide a copy of all workpapers and assumptions used to determine the acquisition price of Pro Man.

Response: As explained in the application, the purchase of Pro Man by Fox Run was conducted primarily to acquire the apartment complex serviced by Pro Man, and now by Fox Run. The Pro Man utility and the accompanying apartment complex were sold together. Fox Run simply paid the asking price. Fox Run did not attempt to separately determine the value of the apartment complex and the Pro Man utility.

Responding Witness: Jimmy King

Request No 7: Will the acquisition price paid by Fox Run Living become an obligation of the customers of the wastewater treatment facilities? If the acquisition price is to be "pushed down" onto the customers of the wastewater treatment facilities, enumerate in detail the benefits to be received by those customers that could not be provided by Pro Man.

Response: Fox Run has no intention to "push down" the purchase price of the wastewater treatment facilities. Following conclusion of this matter, Fox Run intends to work with Commission staff to determine the proper value of the utility, the monthly and annual expenses, and an appropriate rate to charge customers following approval from the Commission.

Responding Witness: Jimmy King

Request No 8: In paragraph 7 of its application, Fox Run Living provides brief descriptions of the capital projects that it has constructed since its acquisition of the wastewater treatment facilities from Pro Man. Provide an itemized list of the capital projects that Fox Run Living is referencing including a reason for each project, the cost to construct each project, and the source of funding used for each project.

Response: The two major projects undertaken since Fox Run's acquisition of the utility are a replacement of sewer line 1 (\$58,400) and replacement of sewer line 2 (\$48,600). The invoices for these projects are attached as Exhibit C. Invoices for the additional projects could not be located and are believed to have been completed prior to Fox Run's acquisition of the utility. The sewer line replacements were paid for out of the Fox Run checking account and were necessary to ensure the continued reliable operation of the utility.

Responding Witness: Jimmy King

Request No 9: Provide a duly authorized irrevocable Letter of Credit in the sum of \$10,000 with a minimum term of ten years that is payable to the PSC for use if the Commission, or someone on its behalf, needs to operate the wastewater facility.

Response: Fox Run is working to provide the Letter of Credit, as requested.

Responding Witness: Jimmy King

Request No 10: Explain whether the funds of the wastewater treatment system will be accounted for separately from Fox Run Living's other businesses.

Response: Following conclusion of this matter, Fox Run intends to create a new corporate entity and separate Fox Run utility from the Fox Run apartment complex. The ownership structure will remain exactly the same, but creating a new corporate entity will allow Fox Run to separate the Fox Run utility accounting from the Fox Run apartment complex accounting. This should provide for more transparent record keeping. Fox Run felt it important upon recognizing the status of the wastewater treatment as a regulated utility to get approval of the transaction. Once approval of the transaction is acquired, Fox Run intends to file for a simple name change, and then file for a rate adjustment under 807 KAR 5:076.

Responding Witness: Jimmy King

VERIFICATION

I, Jimmy King, having first been duly sworn, hereby state that I have read the foregoing Response to Staff's Initial Request for Information and that the facts contained therein are, to the best of my knowledge and belief, true and accurate.


Jimmy King, CEO, Fox Run Living, LLC

STATE OF Colorado)

: SS

COUNTY OF Denver)

Subscribed and sworn to before me by Jimmy King, on this 22 day of July, 2019.

My Commission Expires: 9/24/2022.


Pamela C Schmitt

Notary Public, State at Large

PAMELA C SCHMITT
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20144037419
MY COMMISSION EXPIRES 9/24/2022

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