

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION FOR APPROVAL OF )	
TRANSFER OF A WASTEWATER TREATMENT )	
UTILITY FROM PRO MAN PROPERTY )	
MANAGEMENT, LLC TO FOX RUN LIVING, LLC; )	CASE NO.
APPLICATION FOR APPROVAL OF TRANSFER )	2019-00390
FROM FOX RUN LIVING, LLC TO FOX RUN )	
UTILITY, LLC; AND OFFER TO SETTLE ANY )	
VIOLATIONS )	

ORDER

On March 10, 2020, FR Utility, LLC and Fox Run Living, LLC, (Fox Run) filed a motion, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, requesting that the Commission grant confidential treatment for ten years for the General Ledger Trial Balance containing post-closing accounting entries in accordance with the Commission's Uniform System of Accounts for Class C and D Sewer Utilities.

The Commission is a public agency subject to Kentucky's Open Records Act, which requires that all public records “be open for inspection by any person, except as otherwise provided by KRS 61.870 to 61.884.”<sup>1</sup> Fox Run sought the application of KRS 61.878(1)(c)(1), which exempts records that are “[g]enerally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records.” Exceptions to the free and open examination of public records contained in KRS 61.878 should be strictly

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<sup>1</sup> KRS 61.872(1).

construed.<sup>2</sup> The party requesting that materials be treated confidentially has the burden of establishing that one of the exceptions is applicable.<sup>3</sup>

Fox Run purchased rental property that included sewer facilities. The Commission ordered Fox Run to file information allocating acquisition and operating costs between the sewer facilities and the remaining property.<sup>4</sup> In support of its motion, Fox Run argued that making this information public would place it at a disadvantage with regards to its competitors and potential sellers of the same or similar assets.

Having considered the motion and the material at issue, the Commission finds that the motion is granted. The information at issue is Fox Run's opinion on the value of the sewer facilities and the rental properties. This information could be used by other purchasers of investment property to compete against Fox Run. Although the total amount of the completed sale would be memorialized in a publicly recorded deed, the opinion of the value allocated to the sewer facilities and the rest of the property would not. The designated material is generally recognized as confidential or proprietary and would disadvantage Fox Run with its competitors if publicly disclosed; it, therefore, meets the criteria for confidential treatment and is exempted from public disclosure pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(c)(1).

IT IS THEREFORE ORDERED that:

1. Fox Run's motion for confidential treatment is granted.

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<sup>2</sup> See KRS 61.871.

<sup>3</sup> 807 KAR 5:001, Section 13(2)(c).

<sup>4</sup> Order (Ky. PSC Jan. 17, 2020), Appendix.

2. The designated material granted confidential treatment by this Order shall not be placed in the public record or made available for public inspection for ten years or until further Order of this Commission.

3. Use of the designated material granted confidential treatment by this Order in any Commission proceeding shall comply with 807 KAR 5:001, Section 13(9).

4. Fox Run shall inform the Commission if the designated material granted confidential treatment by this Order becomes publicly available or no longer qualifies for confidential treatment.

5. If a nonparty to this proceeding requests to inspect the material granted confidential treatment by this Order and the period during which the material has been granted confidential treatment has not expired, Fox Run shall have 30 days from receipt of written notice of the request to demonstrate that the material still falls within the exclusions from disclosure requirements established in KRS 61.878. If Fox Run is unable to make such a demonstration, the requested material shall be made available for inspection. Otherwise, the Commission shall deny the request for inspection.

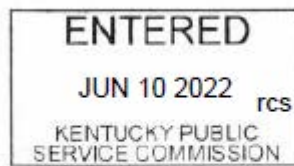
6. The Commission shall not make the requested material available for inspection for 30 days from the date of service of an Order finding that the material no longer qualifies for confidential treatment in order to allow Fox Run to seek a remedy afforded by law.

PUBLIC SERVICE COMMISSION

  
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Chairman

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Vice Chairman

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Commissioner



ATTEST:

  
\_\_\_\_\_  
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