

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for approval of) DOCKET NO. 881033-WU
transfer of majority organizational)
control of EAGLE SPRINGS UTILITIES,) ORDER NO. 21558
INC., Certificate No. 448-W, from)
LAWRENCE L. SUND and MICHELE G. SUND) ISSUED: 7-17-89
to LEONARD B. (LEN) TABOR and LINDA)
F. TABOR in Marion County.)
_____)

The following Commissioners participated in the disposition of this matter:

MICHAEL McK. WILSON, CHAIRMAN
THOMAS M. BEARD
JOHN T. HERNDON

ORDER APPROVING TRANSFER OF MAJORITY ORGANIZATIONAL CONTROL

BY THE COMMISSION:

BACKGROUND

On November 20, 1986, Len and Linda Tabor (the Tabors) acquired the outstanding shares of common stock of Eagle Springs Utilities, Inc. (Eagle Springs) from Larry Sund in payment of debts owed by Larry Sund to the Tabors. The Tabors filed for approval of a contract with Marion County in December, 1987, to provide service to Silver Springs Village and Silver Springs Woods. During that service availability case, we determined that the utility had changed ownership and advised the Tabors to apply for a transfer. Shortly before the utility received approval of the contract for service, in August, 1988, the application for transfer was filed. The system was constructed after the date of transfer and became operational in December, 1987. As of December, 1988, the utility was providing service to only 36 equivalent residential connections (ERCs).

APPLICATION FOR TRANSFER OF MAJORITY ORGANIZATIONAL CONTROL

Eagle Springs is authorized to provide water service to certain territories in Marion County under Certificate No. 448-W, granted by Order No. 14972 which was issued September 19, 1985. The transfer of the system occurred as a result of the transfer of stock of Eagle Springs in payment of debts owed to

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the Tabors by Lawrence L. Sund and Michele G. Sund (the Sunds). The utility was not operational at the time the stock transfer occurred.

The application states that approval of the transfer is in the public interest because the Tabors have demonstrated their abilities to organize, construct and operate the Eagle Springs water system pursuant to an agreement with the Marion County Board of County Commissioners.

The application is in compliance with Section 367.071, Florida Statutes, and other pertinent statutes and administrative rules concerning transfer applications. In particular, the notarized application contains:

- a) A check in the amount of \$150 which, upon calculation, equates to the correct filing fee as prescribed by 367.141, Florida Statutes;
- b) Adequate legal description pursuant to 25-30.035(i), Florida Administrative Code; and
- c) Proof of Notice to all governmental/regulatory agencies, all utilities within a 4-mile radius, and proof of advertisement in a newspaper of general circulation in the county, pursuant to Rule 25-30.030, Florida Administrative Code.

We have reviewed the personal financial statement of the Tabors and find that the Tabors have the financial ability to operate the utility. Based on the fact that the Tabors have, in fact, organized, constructed and operated this utility, we find that the Tabors have demonstrated that they have the technical ability to operate the utility. Therefore, based on our review of the Tabors' application, we find this transfer is in the public interest, and therefore, we hereby approve it.

Although Section 367.071, Florida Statutes, requires a person acquiring majority organizational control of a utility to receive the prior approval of this Commission, we do not believe that any punitive action is justified in this case. The Tabors filed an application for approval of the transfer of

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The Rule states as follows:

In case of change of ownership or control of a utility which places the operation under a different or new utility...the company which will thereafter operate the utility business must adopt and use the rates, classification and regulations of the former operating company (unless authorized to change by the Commission)...

The new owners have owned and operated the utility since 1986 using the existing tariff. No tariff changes were requested in this docket and, therefore, the utility will continue operation under existing rates and charges. The utility shall file a revised tariff reflecting the new ownership of the utility. Since no further action is required in this docket, it shall be closed upon our approval of the revised tariff sheets.

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that the application for transfer of majority organizational control of Eagle Springs Utilities, Inc.'s Certificate No. 448-W from Lawrence L. Sund and Michele G. Sund to Leonard B. Tabor and Linda F. Tabor in Marion County is hereby approved. It is further

ORDERED that Eagle Springs Utilities, Inc. shall file revised tariff sheets reflecting new ownership of the utility. It is further

ORDERED that, upon our approval of the revised tariff sheets showing the new ownership, this docket shall be closed.

By ORDER of the Florida Public Service Commission
this 17th day of July, 1989.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

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by: Kay Flynn
Chief, Bureau of Records

majority organizational control of this utility once they were made aware of the necessity for doing so. Although the Tabors did not file an application for approval as quickly as they should have, we note that this transfer occurred as payment of a debt owed the Tabors and not as a result of any affirmative effort on their part to acquire majority organizational control. The Tabors were advised in early 1988 that they needed to apply for a transfer, and they filed it within eight months. The Tabors have been very cooperative and they have promptly provided responses to our requests for information. We find the Tabors' explanation that they were totally concentrated on the major task of building and setting up the operation of this utility to be a reasonable one. Therefore, we do not find it appropriate to fine the Tabors for this violation of Section 367.071, Florida Statutes, and Rule 25-30.040, Florida Administrative Code.

We do not usually establish rate base in a proceeding dealing with a transfer of majority organizational control because different ownership of stock does not affect the utility's recorded assets and liability accounts, nor the rate base balance. We did state in Order No. 19887, issued August 29, 1988, (culminating a service availability proceeding) however, that rate base would be established in this docket concerning the transfer of majority organizational control. This was to allow us an opportunity to evaluate the appropriateness of the utility's rates and charges that were set in the original certificate Order No. 15979, issued April 9, 1986.

However, in order to evaluate the appropriateness of the rates and charges, we would have to examine rate base, as well as the utility's expenses, revenues and other rate making issues. Since the utility was not providing service nor was it constructed as of the date of transfer, which is the date for which we set rate base, there are no records to review to determine the reasonableness of the rates and charges as of that date. Therefore, we find it appropriate to set rate base in a future proceeding, such as a rate case, when the utility has had time to gather historical information, so that actual costs of plant in service and operational and maintenance expenses can be analyzed.

Rule 25-9.044(1), Florida Administrative Code, governs rates charged when ownership of a regulated utility changes.

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water or sewer utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.