

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for transfer ) DOCKET NO. 941320-SU  
of facilities, exemption from ) ORDER NO. PSC-95-0561-POF-SU  
Florida Public Service ) ISSUED: May 8, 1995  
Commission regulation for )  
provision of wastewater service )  
in Monroe County by NORTH KEY )  
LARGO UTILITY CORP., and )  
cancellation of Certificate 363- )  
S by OCEAN REEF CLUB, INC. )  
\_\_\_\_\_ )

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK, Chairman  
J. TERRY DEASON  
JOE GARCIA  
JULIA L. JOHNSON  
DIANE K. KIESLING

ORDER APPROVING TRANSFER, CANCELLING CERTIFICATE,  
INDICATING THE EXEMPT STATUS OF NORTH KEY LARGO  
UTILITY CORP. AND CLOSING DOCKET

BY THE COMMISSION:

BACKGROUND

Ocean Reef Club, Inc. (Ocean Reef) is a utility providing wastewater service in Monroe County. Ocean Reef was granted a Certificate No. 363-S to provide wastewater service by Order No. 13574, issued August 8, 1984. Ocean Reef is providing service to 635 connections in the Ocean Reef Club community and its immediate surrounding area. The 1993 annual report indicates Ocean Reef serves 451 residential customers, 37 commercial customers and 147 "other" customers. The report shows total operating revenue of \$444,000 and a net income of \$10,000.

On December 22, 1994, North Key Largo Utility Corporation, (North Key Largo) filed an application for transfer of the lines, assets and customers of Ocean Reef to North Key Largo. North Key Largo is a newly organized, nonprofit corporation with the sole intent to provide wastewater service in Monroe County.

DOCUMENT NUMBER-DATE

04495 MAY-88

FPSC-RECORDS/REPORTING

APPLICATION

The application is in compliance with the governing statute, Section 367.071, Florida Statutes, and other pertinent statutes and administrative rules concerning an application for transfer of utility assets. The application contains a check for wastewater service totaling \$1,500.00 which is the correct filing fee pursuant to Rule 25-30.020, Florida Administrative Code. The applicant has provided evidence in the form of a warranty deed that the utility owns the land upon which the utility's facilities are located as required by Rule 25-30.037(1)(c), Florida Administrative Code. In addition, the application contains proof of compliance with the noticing provisions set forth in Rule 25-30.030, Florida Administrative Code, including notice to the customers of the system to be transferred. No objections to the notice of application have been received and the time for filing such has expired.

We were informed by North Key Largo that the utility closed on the purchase and sale of Ocean Reef on March 9, 1995. Section 367.071(1), Florida Statutes, requires a utility to obtain Commission approval prior to selling or transferring its certificate or facilities. Although Ocean Reef transferred its facilities to North Key Largo prior to our approval, we do not find that it is in the public interest to initiate show cause proceedings against North Key Largo. Section 367.071(1), Florida Statutes requires the utility, not the purchaser, to obtain Commission approval prior to the sale or transfer of a certificate or facilities. Furthermore, North Key Largo applied for exempt status which will therefore result in the cancellation of Ocean Reef's certificate.

Furthermore, in conjunction with the transfer of this utility system, North Key Largo issued its \$3,400.00 Monroe County Industrial Revenue Bonds Series 1995, to finance the acquisition of, and improvements to the system. These bonds were not publicly offered, but were privately placed with approximately thirty investors. As a result, bond marketing and documentation deadlines, as well as a delivery date to investors, had to be established well in advance of closing. Failing to close by April 1, 1995, would have allowed investors to withdraw their commitment to purchase the bonds and require a second marketing effort.

The filing by North Key Largo requests that the transfer include the 450,000 gallon per day sanitary wastewater collection, treatment and effluent disposal system. The wastewater customers service and rates will be unchanged.

According to the contract for sale, the purchase price for the system is \$1,350,000. North Key Largo has indicated that this transaction will not jeopardize its financial standing. The contract for sale also states that there are no outstanding fees or fines due any regulatory authorities. We confirmed that Ocean Reef is current in the filing of annual reports and regulatory assessment fees. Also, no liabilities for taxes of any kind assessable to Ocean Reef are being assumed by North Key Largo.

North Key Largo is a new operating entity and has no record of utility operation, but the company will continue to utilize the professional operator that Ocean Reef has employed in the past. A condition of the sale agreement is that North Key Largo will hire the lead operator, Mr. Mark Malka, at closing. Mr. Malka has operated the system for several years. North Key Largo is also entering a management agreement with the Ocean Reef Community Association, which currently oversees operation of the system. This same company will provide billing services for the utility. This will provide continuity and stability of the system. The utility has consistently met DEP standards and provided customers with quality service. Ocean Reef has no outstanding violations.

Adequate service territory and system maps and a territory description have been provided as prescribed by Rule 25-30.035(9), (10), and (11), Florida Administrative Code. The territory requested by the applicant was verified in a previous transfer and is known to be consistent with the service area in Order No. PSC-93-1850-FOF-SU, issued December 30, 1993, which approved the transfer of Certificate No. 363-S to Ocean Reef.

North Key Largo has presented a plan which demonstrates the financial and technical capability to provide quality service to the existing customer base. The customers will experience consistent service provided within DEP standards. Also, the customers will continue to receive water service from the Florida Keys Aqueduct Authority. We find that pursuant to Section 367.071(1), Florida Statutes, this purchase and sale is in the public interest and that North Key Largo is capable of fulfilling the commitments, obligations and representations of Ocean Reef. Therefore, we find that the transfer of Ocean Reef Club, Inc. to North Key Largo Corporation is in the public interest and it is approved. Accordingly, Certificate No. 363-S, shall be cancelled.

RATE BASE

Rate base for transfer purposes is not generally set in a case where the transfer is to an exempt entity. We do not find it appropriate to set rate base in this instance. However, an audit

was completed on the utility in Docket No. 930436-SU. This was followed by Order No. PSC-93-1850-FOF-SU and the utility provided updated asset documentation. The utility assets were valued at \$1,350,000.

EXEMPT STATUS OF NORTH KEY LARGO UTILITY CORP.

North Key Largo has applied for a non-profit exemption pursuant to Chapter 367.022(7), Florida Statutes, for the provision of wastewater service. Water service is currently provided by the Florida Keys Aqueduct Authority. North Key Largo has submitted all necessary documentation and met all of the requirements of Chapter 367.022(7), Florida Statutes, and Chapter 25-30.060(3)(g), Florida Administrative Code, for a non-profit exemption. The utility will be 100% member owned and all customers of said utility will be members of the non-profit entity. The members will have control of utility operation and management.

We had initial concerns about the voting rights as specified in the Articles of Incorporation filed with the Office of the Secretary of State. Article III (2) states "Each active member shall be entitled to a number of votes upon each matter submitted to a vote, based on the amount of wastewater capacity utilized by such member, provided the member is in good standing as to the wastewater capacity represented by his votes."

Upon further investigation, it was clarified that the members of the association are individual condominiums. Within each condominium, condominium owners have one vote per unit to determine how the "building association" will vote as a whole. Therefore, the utility's articles were designed to reflect the fact that the condominium represents more than one unit of ownership. The non-profit association votes are proportionate to the volume of water used as determined by meter size for each condominium. This actually allows the votes of the condominiums to be fairly represented in relation to single family association members.

Based on the facts as represented, we find that North Key Largo Utility Corp. is exempt from Commission regulation pursuant to Section 367.022(7), Florida Statutes. However, should there be any change in circumstances or method of operation, a representative of North Key Largo must inform the Commission within thirty days of such change, so that we may reevaluate North Key Largo Utility Corp.'s exempt status. Since no further action is necessary, this docket shall be closed.

Based on the foregoing, it is, therefore,

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ORDERED by the Florida Public Service Commission that the transfer of Certificate No. 363-S and assets from Ocean Reef Club, Inc., 31 Ocean Reef Drive, Suite C-300, Key Largo, Florida 33037 to North Key Largo Utility Corp., 31 Ocean Reef Drive, Suite 301-A, Key Largo, Florida 33037, is hereby approved. It is further

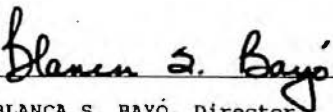
ORDERED that Certificate No. 363-S is hereby cancelled. It is further

ORDERED that, based on the facts as represented, North Key Largo Utility Corp. 31 Ocean Reef Drive, Suite 301-A, Key Largo, Florida 33037, is hereby exempt from Commission regulation pursuant to the provisions of Section 367.022(7), Florida Statutes. It is further

ORDERED that, should there be any change in circumstances or method of operation, a representative of North Key Largo Corp. must inform the Commission within thirty days of such change, so that North Key Largo Utility Corp.'s exempt status may be reevaluated. It is further

ORDERED that this docket is hereby closed.

By ORDER of the Florida Public Service Commission, this 8th day of May, 1995.

  
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BLANCA S. BAYÓ, Director  
Division of Records and Reporting

( S E A L )

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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 and/or wastewater 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.