

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for approval of transfer of Century-Fairfield Village, Ltd. water system and Certificate No. 640-W in Marion County to GCP Fairfield Village, LLC.

DOCKET NO. 120188-WU
ORDER NO. PSC-13-0217-PAA-WU
ISSUED: May 23, 2013

The following Commissioners participated in the disposition of this matter:

RONALD A. BRISÉ, Chairman
LISA POLAK EDGAR
ART GRAHAM
EDUARDO E. BALBIS

NOTICE OF PROPOSED AGENCY ACTION
ORDER DECLINING ESTABLISHING NET BOOK VALUE FOR TRANSFER PURPOSES
AND DECLINING TO APPROVE AN ACQUISITION ADJUSTMENT
AND
ORDER APPROVING TRANSFER OF THE CENTURY-FAIRFIELD WATER SYSTEM
AND CERTIFICATE NO. 640-W TO GCP FAIRFIELD VILLAGE, LLC., AND DECLINING
TO INITIATE SHOW CAUSE PROCEEDINGS,

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein regarding declining to establish a net book value and declining to approve acquisition adjustment are preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

Background

Century-Fairfield Village, Ltd. (Century-Fairfield or Utility) is a Class C water and wastewater utility serving a 294-unit mobile home community in Marion County. The Utility is in the Southwest Florida Water Management District (SWFWMD). According to the Utility's 2011 annual report, gross revenues were \$19,996. Century-Fairfield reported an operating loss of \$31,258 in 2011.

Prior to 2007, the Utility was statutorily exempt from our regulation because it provided water and wastewater service without specific compensation for service. In response to certain water use permitting requirements, however, Century-Fairfield began charging water conservation charges to discourage excess usage. As a result, the Utility lost its statutory

DOCUMENT NUMBER-DATE

02854 MAY 23 2013

FPSC-COMMISSION CLERK

exemption and obtained Certificate Nos. 640-W and 549-S from this Commission.¹ Century-Fairfield never collected rates for wastewater service; therefore, we subsequently cancelled wastewater Certificate No. 549-S and approved the water conservation rates as part of a settlement agreement.²

On July 11, 2012, an application was filed for the transfer of the Century-Fairfield water system and Certificate No. 640-W to GCP Fairfield Village, LLC. (GCP or Buyer). The closing occurred on December 14, 2010, and was not made contingent upon our approval, as required under Section 367.071(1), Florida Statutes (F.S.). GCP states that the sale was part of a larger transaction in which GCP purchased the Fairfield Village mobile home community, and was unaware at the time of the requirement to transfer the water certificate. We have jurisdiction pursuant to Section 367.071, F.S.

Decision

Operating without a Commission Certificate

Section 367.071(1), F.S., requires that:

No utility shall sell, assign, or transfer its certificate of authorization, facilities or any portion thereof . . . , without determination and approval of the commission that the proposed sale, assignment, or transfer is in the public interest However, a sale, assignment, or transfer of its certificate of authorization, facilities . . . may occur prior to commission approval if the contract for sale, assignment, or transfer is made contingent upon commission approval.

As stated previously, Century-Fairfield closed on the sale of its facilities to GCP on December 14, 2010, prior to obtaining our approval. The Purchase and Sale Agreement contained no provisions to make the agreement contingent upon our approval.

Section 367.161(1), F.S., authorizes us to assess a penalty of not more than \$5,000 for each offense if a utility is found to have knowingly refused to comply with, or to have willfully violated, any provision of Chapter 367, F.S. In closing on the transfer of its facilities prior to our approval, the Utility's act was "willful" in the sense intended by Section 367.161(1), F.S. In Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL, In re: Investigation Into The Proper Application of Rule 25-14.003, Florida Administrative Code, Relating To Tax Savings Refund For 1988 and 1989 For GTE Florida, Inc., having found that the company had not intended to violate the rule, we nevertheless found it appropriate to order it to show cause why it should not be fined, stating that "[i]n our view, 'willful' implies an intent to do an act, and this is distinct from an intent to violate a statute or rule." Additionally, "it is a common maxim,

¹ See Order No. PSC-08-0067-FOF-WS, issued January 29, 2008, in Docket No. 070548-WS, In re: Application for certificates to provide water and wastewater service in Marion County by Century - Fairfield Village, Ltd.

² See Order No. PSC-08-0435-PAA-WS, issued July 7, 2008, in Docket No. 070548-WS, In re: Application for certificates to provide water and wastewater service in Marion County by Century - Fairfield Village, Ltd.

familiar to all minds that 'ignorance of the law' will not excuse any person, either civilly or criminally." Barlow v. United States, 32 U.S. 404, 411 (1833).

Although Century-Fairfield's failure to obtain our approval prior to transferring its facilities is an apparent violation of statute, there are circumstances that appear to mitigate the Utility's apparent violation. Based on information provided by GCP, the Century-Fairfield water system was transferred on December 14, 2010, as part of a larger property transaction in which GCP purchased the Fairfield Village mobile home community. GCP was unaware at the time of the requirement to transfer the water certificate. GCP realized this was a requirement after already having purchased the utility, during preparation for its recent filing for an application to transfer Plantation Landings, LLC in Docket No. 120219-WS.³ The Utility filed an application for approval of the transfer shortly after it became aware of the requirement. Under these circumstances, we do not find that the apparent violation of Section 367.071(1), F.S., rises to the level of warranting a show cause order. In similar cases, we have declined to initiate a show cause proceeding against utilities for failure to first obtain, or make a sale contingent upon, the Commission's approval.⁴ In addition, we would note that GCP asserts it has continued to provide reliable service to the tenants of the mobile home community without specific compensation other than the water conservation rates approved by us in Order No. PSC-08-0435-PAA-WS. Thus, we do not find that the customers have been harmed by Century-Fairfield's failure to comply with the statute, and as such, we find that GCP is not required to refund any portion of its previously collected rates.

Therefore, we find that a show cause proceeding shall not be initiated against Century-Fairfield for failing to obtain our approval of the sale of its facilities to GCP or making said agreement contingent upon our approval as Section 367.071(1), F.S., requires. However, the GCP shall be placed on notice that it is expected to know and comply with our rules and regulations. In addition, GCP shall not be required to refund any portion of its previously collected rates.

Transfer of Certificate

As stated, on July 11, 2012, an application was filed for approval of the transfer of the Century-Fairfield water system and Certificate No. 640-W to GCP in Marion County. With the exception of not making the closing contingent upon our approval, as required by Section 367.071(1), F.S., and as discussed above, the application is in compliance with the governing statute and administrative rules concerning applications for transfer of certificates.

³ See Order No. PSC-13-0121-PAA-WS, issued March 11, 2013, in Docket No. 120219-WS, In re: Application for approval of transfer of Plantation Landings, Ltd. water and wastewater system and Certificate Nos. 606-W and 522-S in Polk County to GCP Plantation Landings, LLC.

⁴ See Order Nos. PSC-01-0428-PAA-WS, issued February 22, 2001, in Docket No. 991889-WS, In re: Application for Transfer of Certificates Nos. 525-W and 454-S in Highlands County from Crystal Lake Club to CWS Communities LP d/b/a Crystal Lake Club; and Order No. 01-0425-PAA-WU, issued February 22, 2001, in Docket No. 001083-WU, In re: Application for transfer of Certificate No. 518-W in Lake County from Century Realty Funds, Inc. and Haselton Associates, Ltd. d/b/a Route 19A North Joint Venture to CWS Communities LP.

Noticing, Territory, and Land Ownership

The application contains proof of compliance with the noticing provisions set forth in Section 367.071, F.S. and Rule 25-30.030, F.A.C. No objections to the transfer were filed with this Commission. The application contains a description of the Utility's authorized service territory, which is appended to this Order as Attachment A. The application contains a copy of a special warranty deed that was executed on December 14, 2010, and recorded with the Marion County Clerk of Courts on December 16, 2010, as evidence that GCP owns the land upon which the water treatment facilities are located, in accordance with Section 367.1213, F.S.

Purchase Agreement and Financing

Pursuant to Rule 25-30.037(2)(h), F.A.C., the application contains a copy of the executed purchase agreement, which includes the purchase price, terms of payment, and a list of the assets purchased. The Utility's assets and the Fairfield Village mobile home community were purchased by GCP for \$13,925,000. There are no customer deposits, guaranteed revenue contracts, developer agreements, or debt of Century-Fairfield that must be disposed of with regard to the transfer.

Facility Description and Compliance

The water system consists of two wells treated with liquid chlorine which is channeled into a hydropneumatic tank for distribution to customers. The distribution system consists of 2" and 6" inch polyvinylchloride (PVC) mains with about 11,500 lineal feet for distribution to customers. Our staff has verified with the Florida Department of Environmental Protection (DEP) that the water system is currently in satisfactory condition and in substantial compliance with all applicable standards set by DEP.

Technical and Financial Ability

Pursuant to Rule 25-30.037(2)(j), F.A.C., the application contains a statement indicating how the transfer is in the public interest. According to the application, the transfer is in the interest of the customers because it allows for a more efficient operation of the utility system. GCP is a wholly-owned subsidiary of Green Courte Partners, LLC. Although GCP does not own any other water or wastewater utilities, its parent company manages other utility systems in Florida. In response to our staff's data request, GCP stated that Tri-Star Operations, Inc. (Tri-Star) has been and will continue to operate and maintain the system. Tri-Star currently serves approximately 45 water and wastewater utilities in Marion and Citrus counties, including Walden Woods, an exempt sister company of GCP.

The application also includes financial statements demonstrating the financial ability of the applicant to provide service to its customers. In support of its financial ability, GCP provided its 2011 income statement. Further, GCP provided a statement agreeing to fulfill the commitments, obligations, and representations of Century-Fairfield with regard to utility matters. Based on this information, we find that GCP has demonstrated the financial and technical ability to operate the Utility pursuant to Rule 25-30.037(2)(j), F.A.C. Therefore, we find that the

transfer of utility assets and Certificate No. 640-W to GCP Fairfield Village, LLC is in the public interest and is hereby approved.

Rates and Charges

The Utility's rates and charges, including miscellaneous service charges and a late payment fee, were last approved effective July 7, 2008.⁵ In that order, we approved a settlement agreement which stated the purpose of the Utility's rates were "to curb excessive usage and not to provide the Utility with a reasonable revenue requirement based upon standard ratemaking principles" and stated that these rates are "not compensatory rates." The approved rates do not include a base facility charge or a gallonage charge if the customer uses 7,000 gallons or less per month. The conservation rates apply for usage over 7,000 gallons per month. The Utility's existing rates and charges are shown on Schedule 1 which is attached to this Order. Rule 25-9.044(1), F.A.C., provides that, in the case of a change of ownership or control of a utility, the rates, classifications, and regulations of the former owner must continue unless authorized to change by this Commission. Therefore, we find that the Utility's existing rates and charges remain in effect until a change is authorized by us in a subsequent proceeding.

Regulatory Assessment Fees (RAFs) and Annual Reports

Our staff has verified that the Utility is current on its annual report for 2011 and all prior years and there are no outstanding RAFs, fines, or refunds due. GCP will be responsible for filing the annual reports and paying RAFs for 2012 and all future years.

Based on the above, we find that the transfer of the Century-Fairfield water system and Certificate No. 640-W to GCP is in the public interest and shall be approved effective the date of our vote. The territory being transferred is described in Attachment A of this Order. This Order shall serve as GCP's water certificate and shall be retained as such. The Utility's existing rates and charges shall remain in effect until a change is authorized by us in a subsequent proceeding. The tariffs reflecting the transfer shall be effective for services rendered or connections made on or after the stamped approval date on the tariffs, pursuant to Rule 25-30.475(1), F.A.C. GCP shall be responsible for annual reports and RAFs for 2012 and all future years.

Appropriate Net Book Value (NBV)

In its application, GCP presented an excerpt from the 2011 Annual Report as documentation of its proposed NBV. Pursuant to Section 367.071(5), F.S., which states, in part, we may establish, by order, the rate base for a utility or its facilities or property when we approve a sale, assignment, or transfer thereof. We have never set NBV for the Century-Fairfield water system. Additionally, the Utility was unable to provide original cost documentation for our staff to set NBV in this docketed case. In similar cases, we have found that NBV cannot be established when our staff was unable to obtain sufficient information to determine the Utility's

⁵ See Order No. PSC-08-0435-PAA-WS, issued July 7, 2008, in Docket No. 070548-WS, In re: Application for certificates to provide water and wastewater service in Marion County by Century - Fairfield Village, Ltd.

NBV at the time of transfer.⁶ Thus, we find that NBV cannot be established for GCP because we are unable to obtain sufficient information to determine the Utility's NBV at the time of transfer.

Acquisition Adjustment

An acquisition adjustment results when the purchase price of a utility differs from the original cost calculation adjusted to the time of the acquisition. The Buyer stated in the application that it was not seeking an acquisition adjustment. As previously noted, the Buyer acquired the utility facilities as part of a larger property transaction in which GCP purchased the Fairfield Village mobile home community. Fairfield Village, which included the utility system, had an allocated purchase price of \$13,925,000. In response to our staff's data request, GCP allocated \$33,333 of the purchase price to the water utility assets, but was unable to provide support documentation for this amount other than an estimate of replacement costs obtained from a contractor. In addition, as discussed previously, we find that rate base cannot be established at this time. Therefore, without the rate base or purchase price associated with utility facilities, the amount of an associated acquisition adjustment cannot be determined at this time. GCP shall be put on notice that in any future rate proceeding the Utility will be required to provide support documentation for any assets included in rate base. Based upon the above, neither the NBV of the Utility, nor an acquisition adjustment, can be determined at this time.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the transfer of Century-Fairfield Village, Ltd., water system and Certificate No. 640-W to GCP Fairfield Village, LLC is hereby approved as set forth in the body of this Order. The territory the utility is authorized to serve is shown on Attachment A of this Order, which by reference is incorporated herein. It is further

ORDERED that Certificate No. 643-W to provide water service in the territory described in Attachment A, which is attached to this Order and incorporated herein, shall be effective April 9, 2013. It is further

ORDERED that this Order shall serve as GCP Fairfield Village, LLC.'s, water certificate and shall be retained as such. It is further

ORDERED that Century-Fairfield Village, Ltd. shall not be ordered to show cause for failing to obtain Commission approval of the sale of its facilities to GCP or making said agreement contingent upon Commission approval as required by Section 367.071(1), F.S. It is further

ORDERED that GCP Fairfield Village, LLC., is hereby placed on notice that it is expected to know and comply with the Commission's rules and regulations. It is further

⁶ See Order No. PSC-01-0425-PAA-WU, issued February 22, 2001, in Docket No. 001083-WU, In re: Application for transfer of Certificate No. 518-W in Lake County from Century Realty Funds, Inc. and Haselton Associates, Ltd. d/b/a Route 19A North Joint Venture to CWS Communities LP.

ORDERED that GCP Fairfield Village, LLC., shall not be required to refund any portion of its previously collected rates. It is further

ORDERED that GCP Fairfield Village, LLC.'s existing rates and charges, as set forth herein, shall remain in effect until a change is authorized by us in a subsequent proceeding. It is further

ORDERED that the tariffs reflecting this transfer shall be effective for services rendered or connections made on or after the stamped approval date on the tariffs, pursuant to Rule 25-30.475(1), F.A.C. It is further

ORDERED that GCP Fairfield Village, LLC. shall be responsible for annual reports and RAFs for 2012 and all future years. It is further

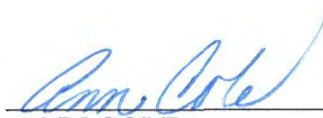
ORDERED that Net Book Value for GCP Fairfield Village, LLC. for the water system cannot be established at this time. It is further

ORDERED that the amount of the acquisition adjustment cannot be determined at this time. It is further

ORDERED that the provisions of this Order addressing net book value and acquisition adjustment are issued as proposed agency action, and shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that in the event this Order becomes final, this docket shall be closed.

By ORDER of the Florida Public Service Commission this 23rd day of May, 2013.



ANN COLE
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399
(850) 413-6770
www.floridapsc.com

Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

KY

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing that is available under Section 120.57, 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 will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The actions proposed herein regarding declining to establish a net book value and declining to approve acquisition adjustment are preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on June 13, 2013.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this/these docket(s) before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

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 Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, 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 Office of Commission Clerk, 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.

GCP Fairfield Village, Ltd.

Marion County

Water Service Territory

PER ORDER NO. PSC-08-0067-FOF -WS

Commence at the West $\frac{1}{4}$ corner of Section 4, Township 16 south, Range 21 East, Marion County, Florida; thence North $89^{\circ}56'18''$ East 50.00 feet to the Easterly right-of-way line of Southwest 60th Avenue (100 feet wide) for the Point of Beginning; thence North $00^{\circ}16'09''$ East along the said Easterly right-of-way 1.41 feet; thence North $00^{\circ}17'45''$ East continuing along said Easterly right-of-way 1318.59 feet to the North boundary line of South $\frac{1}{2}$ of the NW $\frac{1}{4}$ of aforesaid Section 4; thence North $89^{\circ}56'18''$ East along the said North boundary line 1276.58 feet; thence South $00^{\circ}15'45''$ West 1979.61 feet more or less to the SE corner of the North $\frac{1}{2}$ of the NW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of said Section 4; thence South $89^{\circ}56'25''$ West along South boundary line of the said North $\frac{1}{2}$, 1277.42 feet to the aforesaid Easterly right-of-way line of Southwest 60th Avenue; thence North $00^{\circ}16'09''$ East along the said Easterly right-of-way 659.57 feet to the Point of Beginning.

FLORIDA PUBLIC SERVICE COMMISSION

Authorizes

GCP Fairfield Village, Ltd.

pursuant to

Certificate Number 640-W

to provide water service in Marion County in accordance with the provisions of Chapter 367, Florida Statutes, and the Rules, Regulations, and Orders of this Commission in the territory described by the Orders of this Commission. This authorization shall remain in force and effect until superseded, suspended, cancelled or revoked by Order of this Commission.

<u>Order Number</u>	<u>Date Issued</u>	<u>Docket Number</u>	<u>Filing Type</u>
PSC-08-0067-FOF -WS	01/29/08	070548-WS	Original Certificate
PSC-13-0217-PAA-WU	05/23/13	120188-WU	Transfer of Certificate

GCP Fairfield Village, Ltd.

Schedules of Water Rates and Charges

Monthly Service Rates

Residential and General Service

Base Facility Charge	\$ 0
Gallage Charges (per 1,000 gallons)	
0-7,000 gallons	\$ 0
7,001-12,000 gallons	\$ 3.50
Over 12,000 gallons	\$ 5.50

MISCELLANEOUS SERVICE CHARGES

DESCRIPTION	NORMAL HOURS	AFTER HOURS
Water Service		
Initial Connection	\$30.00	\$40.00
Normal Reconnection	\$30.00	\$40.00
Violation Reconnection	\$30.00	\$40.00
Premises Visit Charge	\$30.00	\$40.00
Late Payment Charge	\$5.00	Not Applicable