

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for transfer) DOCKET NO. 950193-WS
of facilities and Certificates) ORDER NO. PSC-95-1271-FOF-WS
Nos. 353-W and 309-S in Lee) ISSUED: October 17, 1995
County from FFEC-Six, Ltd. to)
MHC Systems, 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

BY THE COMMISSION:

Background

On December 3, 1980, FFEC-Six, Inc. filed for certificates to operate a water and wastewater utility in Lee County. We issued certificates Nos. 353-W and 309-S on June 3, 1982, by Order No. 10833, in Docket No. 800733-WS. The formation of this utility was for the primary purpose of providing water and wastewater service to the Lake Fairways Mobile Home Park, located approximately five miles north of North Fort Myers.

On November 3, 1986, we received an application of FFEC-Six, Inc. to amend its Certificates Nos. 353-W and 309-S to include additional territory in Lee County, Florida, pursuant to Section 367.061, Florida Statutes. By Order No. 17020, issued December 24, 1986, in Docket No. 861440-WS, we granted the amendment.

FFEC-Six, Inc. filed an application with this Commission on December 18, 1990 to request acknowledgement of restructuring and name change to FFEC-Six, Ltd. (FFEC-Six) for the above mentioned certificates. FFEC-Six, Inc. would continue to be the general and controlling partner, with FFEC Utility, L.P. as a limited partner without any active involvement in the management of the utility. By Order No. 24240, issued March 14, 1991, in Docket No. 910180-WS, we acknowledged the aforementioned restructuring and changed the name on the certificate to reflect FFEC-Six as the certificate

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holder. At that time, according to its 1989 annual report, FFEC-Six, Inc. was serving approximately 1,258 water and 1,224 wastewater customers in the Lake Fairways and Pine Lakes subdivisions.

FFEC-Six submitted an application to this Commission for transfer of the utility to MHC Systems, Inc. (MHC or utility), for all assets and water certificate no. 535-W and wastewater certificate no. 309-S on February 20, 1995. In the most recent data available, the 1994 annual report, the utility reports total utility operating revenue of \$176,122 and a net loss of \$63,290. The utility services 1,665 residential and 32 commercial water customers as well as 1,655 residential and 15 commercial wastewater customers.

Application

Except as discussed in the paragraph below, 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 certificates and utility assets. The application contains a check in the amount of \$3,000, which is the correct filing fee pursuant to Rule 25-30.020, Florida Administrative Code.

One area that is not in technical compliance with Rule 25-30.037(2)(g), Florida Administrative Code, is the evidence of MHC's ownership of the land upon which the utility facilities are located. As stated earlier, FFEC-Six, Inc. was granted a name change to FFEC-Six, Ltd. by Order No. 24240 in 1991. In the utility's last rate case, the utility was directed to change the deeds or prepare a lease to reflect the name change. The auditors in the current transfer case disclosed that the utility had never completed this requirement. The parties are both aware of this discrepancy and agree that the transfer and completion of a new deed will preclude any further action. We find that the utility has met the intention of the Rule.

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. A description of the territory served by the utility is included as Attachment A.

Based upon investigation and inspection by MHC, we find that FFEC-Six water and wastewater facilities are in satisfactory condition and in substantial compliance with all applicable state, federal and local standards. FFEC-Six has verified that there are no existing violations on behalf of the utility. The Florida Department of Environmental protection has verified that the system has no outstanding Notices of Violation. MHC reports that it has no plans to make any improvements at this time.

MHC will continue to provide adequate service to the existing customers in Pine Lakes and Lake Fairways. MHC will provide on site managers and the appropriately certified water and wastewater managers to oversee the day to day operation of the facility. MHC will provide assistance and consultation to the on site managers as necessary. MHC may also call upon the expertise of its parent's general partner, MHC Operating Limited Partnership to provide assistance and expertise when needed. MHC Operating Limited Partnership also has already acquired several other water utility companies in Florida. In recent Commission decisions, MHC has been granted certificate transfers in Docket No. 940849-WU, which was the transfer of Buccaneer Water Service and Docket No. 940850-WU the transfer of Colonies Water. Orders were issued for both dockets on May 22, 1995. Although MHC does not own any other utility facilities at this time, its affiliates operate other similar facilities throughout the United States.

MHC has the ability to raise cash where necessary to finance its operations through MHC Operating Limited Partnership. MHC has already purchased the housing community properties of which the utility will be serving. FFEC-Six has entered into only two developer agreements: one is with Pine Lakes Venture, an affiliated developer of the Pine Lakes mobile home community, and the second is with the LAB Company, an affiliated developer of the Lake Fairways mobile home community. It is the intent of both MHC and FFEC-Six that the terms and conditions of these developer agreements continue to be honored as written by MHC subsequent to the sale of the utility.

As we determined in Order No. 24733 in Docket No. 900521-WS, in FFEC-Six's last rate case, the utility refinanced its debt with Mutual of New York (MONY) effective December 31, 1990. The MONY debt of \$12,000,000 was secured by the assets of FFEC-Six and an affiliated mobile home development. Pine Lakes was sold to MHC Operating Limited Partnership in July of 1994. Upon that closing, the entire amount of the MONY debt associated with FFEC-Six and Pine Lakes was completely satisfied.

The application contains a copy of the contract for sale which includes the purchase price, terms of payment and a list of the assets purchased and the liabilities assumed. MHC has indicated that there are no leases, guaranteed revenue contracts, customer advances, customer deposits or refunds due. MHC has provided a statement in its application that it will fulfill the commitments, obligations and representations of FFEC-Six. Also, MHC will not assume any debt on behalf of the utility. The purchase price for the FFEC-Six system is \$4,000,000. MHC will fulfill the purchase price with a cash payment. As stated earlier, the system carries no burden of debt since MHC Operating Limited Partnership has already paid the existing mortgage.

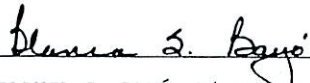
Based on the above information, we find that the transfer of Water Certificate No. 353-W and Wastewater Certificate No. 309-S from FFEC-Six to MHC is in the public interest and is hereby approved. This docket shall remain open in order to allow for the establishment of rate base.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the transfer of Certificates Nos. 353-W and 309-S and utility assets from FFEC-Six, Ltd., 10200 Pine Lakes Boulevard, North Fort Myers, Florida 33903, to MHC Systems, Inc., 2 North Riverside Plaza, Chicago, Illinois 60606, is hereby approved. It is further

ORDERED that this docket shall remain open.

By ORDER of the Florida Public Service Commission, this 17th day of October, 1995.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

TV

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, 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 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.

FFEC-Six, Inc.

TERRITORY DESCRIPTION

The following described lands located in portions of
Lee County, Florida

Township 43 South, Range 24 East, Sections 8 and 9, Lee County,
Florida

Beginning at the southeast corner of said Section 8, and continuing south 88° 31' 00" West, 2349.04 feet; thence north 88° 31' 33" west, 1612.29 feet; thence north 0° 11' 10" east 2199.89 feet; thence south 88° 31' 00" east, 2349.30 feet; thence north 0° 11' 10" east, 362.19 feet; thence south 89° 51' 50" east, 1365.22 feet; thence north 64° 05' 00" east, 380.0 feet; to the west right of way line of U.S. 41; thence south 25° 55' 00" east along said right of way line 1420.27 feet; thence south 25° 57' 31" east, 349.0 feet; thence south 64° 48' 12" west, 380.03 feet to a point on the FP&L easement; thence north 25° 57' 31" west along said easement 30.172 feet; thence south 63° 06' 47" west, 2210.44 feet; thence south 89° 59' 53" west, 155.30 feet; to the point of beginning.

Township 43 South, Range 24 East, Section 8, Lee County, Florida

Beginning at the northeast corner of that parcel described in deed recorded in Official Record Book 1086 at page 797, Lee County Records, run south 88° 31' 00" west parallel with the south line of the southeast quarter (SE 1/4) of said Section 8 along the north line of said parcel for 2349.30 feet to an intersection with a line parallel with and 2199.89 feet north of (as measured on a line parallel with the east line of Section 8) the south line of the southwest quarter (SW 1/4) of said Section 8, said point being at the directional change on the north line of said parcel; thence run north 88° 31' 33" west along said parallel line along the north line of said parcel for 1612.32 feet to the northwest corner of said parcel; thence run south 00° 11' 10" west, parallel with the east line of said Section 8 along the west line of said parcel for 2199.89 feet to the south line of said Section 8; thence run north 88° 31' 33" west along said south line for 1032.32 feet to the southwest corner of said Section 8; thence run north 02° 22' 02" west along the west line of the southwest quarter (SW 1/4) of said Section 8 for 2689.76 feet to the northwest corner of said fraction of a section; thence run north 02° 13' 44" east along the west line of the northwest quarter (NW 1/4) for 1979.63 feet to the southwest corner of the north half (N 1/2) of the north half (N 1/2) of the north half (N 1/2) of said Section 8; thence run along

the south line of said fraction of a section south $89^{\circ} 31' 02''$ east for 2339.65 feet; thence run south $89^{\circ} 51' 51''$ east for 2701.74 feet to the southeast corner of said fraction of a section; thence run south $00^{\circ} 11' 10''$ west along the east line of said Section 8 for 2446.83 feet to the point of beginning. Containing 344.37 acres of land more or less.

Section 9, Township 43 South, Range 24 East, Lee County, Florida
Wolff Parcel)

From the intersection of the north line of said Section 9 and the former westerly right of way line (100 feet from the centerline) of State Road 45 run south $25^{\circ} 53' 00''$ east along said former right of way line for 400.0 feet; thence run south $64^{\circ} 07' 00''$ west, perpendicular with said former right of way line, for 60.00 feet to the new westerly right of way line (160 feet from the centerline) of State Road 45 as described in instrument recorded in Official Record Book 1080 at page 190, Lee County Records and the point of beginning.

From said point of beginning run south $25^{\circ} 53' 00''$ east along said new right of way line for 360.53 feet to a point of transitional right of way width of said State Road 45; thence south $25^{\circ} 30' 05''$ east along said transitional right of way line for 239.47 feet, thence run south $64^{\circ} 07' 00''$ west, perpendicular with the former right of way line of said State Road 45, for 1002.93 feet to the west line of said Section 9; thence run north $00^{\circ} 11' 10''$ east along said west line for 667.96 feet to an intersection with a line perpendicular to said former right of way line passing through the point of beginning; thence run north $64^{\circ} 07' 00''$ east along said perpendicular line for 710.98 feet to the point of beginning. Subject to a 100 foot Lee County Electric Cooperative Transmission Line Easement, the centerline of which being parallel with and 500 feet southwesterly of the former right of way line (100 feet from the centerline) of said State Road 45.

Section 9, Township 43 South, Range 24 East, Lee County, Florida
Salvatore Parcel)

From the intersection of the north line of said Section 9 and the former westerly right of way line (100 feet from the centerline) of State Road 45 run south $25^{\circ} 53' 00''$ east along said former right of way line for 1,000.0 feet; thence run south $64^{\circ} 07' 00''$ west, perpendicular with said former right of way line, for 61.60 feet to a point on the new right of way line as described in instrument recorded in Official Record Book 1001 at page 781, Lee County Records and the point of beginning.

From said point of beginning continue south $64^{\circ} 07' 00''$ west along said perpendicular line for 1002.93 feet to the west line of said Section 9; thence run south $00^{\circ} 11' 10''$ west along said west line for 293.45 feet to the southwest corner of the north half (N-1/2) of the northwest quarter (NW-1/4) of the southwest quarter (SW-1/4) of the northwest quarter (NW-1/4) of said Section 9; thence run south $89^{\circ} 51' 49''$ east along the south line of said fraction of a section for 827.90 feet to an intersection with a line parallel with and 450 feet southwesterly of said former right of way line; thence run north $25^{\circ} 53' 00''$ west along said parallel line for 376.53 feet to an intersection with a southwesterly prolongation of the southeasterly line of that parcel of land recorded in Deed Book 247 at page 447 of the land records of Lee County, Florida; thence run north $64^{\circ} 07' 00''$ east along said southwesterly prolongation for 386.51 feet to an intersection with the new right of way line of said State Road 45; thence run north $25^{\circ} 30' 05''$ west along said new right of way line for 250.01 feet to the point of beginning. Subject to a 100 feet Lee County Electric Cooperative Transmission Line Easement, the centerline of which being parallel with and 500 feet southwesterly of the former right of way line (100 feet from the centerline) of said State Road 45.