

State of Florida



Public Service Commission

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COMMISSION CLERK

DATE: FEBRUARY 6, 2003

TO: DIRECTOR, DIVISION OF THE COMMISSION CLERK &
ADMINISTRATIVE SERVICES (BAYÓ)

FROM: DIVISION OF ECONOMIC REGULATION (CLAPP, KAPROTH) DM
OFFICE OF THE GENERAL COUNSEL (CROSBY, HELTON) JDT

RE: DOCKET NO. 020930-SU - APPLICATION FOR TRANSFER OF
MAJORITY ORGANIZATIONAL CONTROL OF COLONY PARK UTILITIES,
INC. HOLDER OF CERTIFICATE NO. 137-S IN BREVARD COUNTY,
FROM LENORE WARREN TO EILEEN ROGOW.
COUNTY: BREVARD

AGENDA: 02/18/03 - REGULAR AGENDA - INTERESTED PERSONS MAY
PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\ECR\WP\020930SU.RCM

CASE BACKGROUND

Colony Park Utilities, Inc. (CPU or utility) is a Class C utility providing wastewater service in Brevard County to approximately 300 customers in Colony Park Mobile Home Park Community (Colony Park). Colony Park Mobile Home Village (Village) is a rental community within Colony Park. Water service and CPU's wastewater billings are provided by the City of Cocoa. This area is in the St. Johns River Water Management District, all of which is considered a water use caution area. The utility was granted Certificate No. 137-S by Order No. 6365, issued December 2, 1974, in Docket No. 73391-S. The certificate has been transferred once pursuant to Order No. 7296, issued June 28, 1976, in Docket No. 750664-S. The utility's 2001 annual report lists total gross revenues of \$48,355 with net loss of \$4,508.

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

On September 18, 2001, Robert Warren, Lenore Warren, William Warren, and Carol Kendall (sellers) entered into contracts of sale and purchase for all of the common stock in Colony Park Utilities, Inc. and Colony Park Mobile Home Village, Inc. to Eileen G. Rogow, Arthur Rogow, and Philip Young (buyers). The actual closing of the contracts took place on February 28, 2002. Pursuant to an addendum to the contract, filed on January 31, 2003, and signed by both the buyers and the sellers, the sale was made contingent upon Commission approval. The utility filed an application for transfer of majority organizational control (transfer) on August 29, 2002.

The Commission has jurisdiction pursuant to Section 367.071, Florida Statutes.

DISCUSSION OF ISSUES

ISSUE 1: Should the transfer of majority organizational control of Colony Park Utilities, Inc. from Robert Warren, Lenore Warren, William Warren and Carol Kendall to Eileen G. Rogow, Arthur Rogow, and Philip Young be approved?

RECOMMENDATION: Yes. The transfer of majority organizational control is in the public interest and should be approved. The buyers should be reminded that the utility is subject to all of the provisions of Chapter 367, Florida Statutes, and Chapters 25-9, 25-22, and 25-30, Florida Administrative Code. (CLAPP, KAPROTH, CROSBY)

STAFF ANALYSIS: On August 29, 2002, an application was filed for approval of the transfer of majority organizational control of CPU from the sellers to the buyers. As stated in the case background, the agreement was executed on September 18, 2001. The closing occurred on February 28, 2002. Pursuant to an addendum to the contract, filed on January 31, 2003, and signed by both the buyers and the sellers, the sale was made contingent upon Commission approval.

The application is in compliance with the governing statute, Section 367.071, Florida Statutes, pertaining to an application for transfer of majority organizational control. The application contained the correct filing fee pursuant to Rule 25-30.020, Florida Administrative Code. A description of the territory granted by Certificate No. 137-S is appended to this memorandum as Attachment A.

Noticing. The application contains proof of compliance with the noticing provisions set forth in Rule 25-30.030, Florida Administrative Code. No objections to the application were received, and the time for the filing of such objections has expired.

Financing. Pursuant to Rule 25-30.037(3)(e) and (g), Florida Administrative Code, the application contained a statement describing the financing of the purchase, the entities providing funding to the buyer, and an explanation of the manner and amount of such funding. According to the application documents, the sellers accepted a promissory note from the buyers to finance \$125,000 of the purchase at 8 percent per annum. The principal and accrued interest is to be paid in full by February 28, 2005.

Proof of Ownership. Pursuant to Rule 25-30.037(3)(i), Florida Administrative Code, the application contained a copy of the recorded warranty deed as evidence that the utility owns the land upon which the utility facilities are located.

Annual Reports and Regulatory Assessment Fees (RAFs). Staff has verified that the utility is current on annual reports and RAFs through 2001. The buyers are responsible for filing the annual report and RAFs for 2002 and future years.

Environmental Compliance. Pursuant to Rule 25-30.037(3)(h), Florida Administrative Code, the application contained a statement that the buyer performed a reasonable investigation of the utility system. Staff has confirmed with the Florida Department of Environmental Protection (DEP) that the utility's water system is currently in environmental compliance with respect to DEP standards.

Public Interest. Pursuant to Rule 25-30.037(3)(f), Florida Administrative Code, the application contained a statement of how the transfer is in the public interest including a summary of the

buyers' experience in wastewater operations and a showing of the buyers' financial ability to provide service. The transfer is in the public interest because the customers will continue to receive service from the owners of Colony Park.

Two of the buyers of the utility stock, Eileen G. Rogow and Arthur Rogow (the Rogows), have had prior utility ownership experience with the Public Service Commission under the corporate name of EGR Enterprises, Inc. (EGR). EGR purchased Wildwood Estates on April 4, 1991, from the Resolution Trust Corporation (RTC) which had acquired the assets from a failed Savings and Loan company which had foreclosed on the original certificate holder, Heritage Wood 'N Lakes Estates (Heritage). The transfer of the utility assets from Heritage through the foreclosure and subsequent sales to RTC and ERG was done without prior Commission approval. The transfer of the utility assets to EGR was approved by Order No. PSC-92-0335-FOF-WS, issued May 11, 1992, in Docket No. 911054-WS. In that order, the Commission decided not to initiate show cause proceedings since EGR had filed the application for transfer shortly after being advised of the statutory requirement.

On November 30, 1993, a little over a year after the transfer to EGR was approved, EGR sold the mobile home development and the utility assets to LHTW Properties, Inc. d/b/a Wildwood Estates (LHTW) without prior Commission notification and approval. Since LHTW continued to file annual reports and regulatory assessment fees (RAFs) for the utility under the same name (Wildwood Estates) and from the same address as EGR, the Commission did not become aware that a transfer had occurred until March of 1996. The transfer was approved in Order No. PSC-98-1571-FOF-WS, issued November 23, 1998, in Docket No. 961444-WS. In the order the Commission considered a show cause fine against EGR for transferring without prior Commission approval, however, EGR had been administratively dissolved in 1994. Since the statute of limitations had run for the corporation and for the directors, the Commission decided it would not be cost effective to levy a fine.

When the application for transfer of majority organizational control was filed in this docket, staff talked with Mr. Rogow concerning the Rogows' prior experience with the Commission. Mr. Rogow stated that he was not aware that there had been a problem with the sale of Wildwood Estates. Staff advised Mr. Rogow of the problems and sent him a copy of Order No. PSC-98-1571-FOF-WS.

Staff also reminded Mr. Rogow that he is responsible for operating his utility according to the appropriate Statute and Rules.

For a showing of financial ability, the buyers provided a September 30, 2002, financial statement which indicates a total net worth in excess of \$2 million. Finally, the buyers provided a statement of intent to fulfill the commitments, obligations, and representations of the seller with regard to utility matters.

Rate Base. It has been Commission practice not to establish rate base for transfers of majority organizational control because a stock transfer has no regulatory impact on rate base. Similarly, it has also been Commission practice that an acquisition adjustment is not made for a stock transfer. Therefore, staff's recommendation does not include issues regarding the establishment of rate base at the time of transfer nor an acquisition adjustment.

For informational purposes, the Commission established rate base in staff assisted rate case Docket No. 951591-SU at \$120,777 for the wastewater system as of December 31, 1995.

Conclusion. Staff seriously considered whether to recommend approval of this transfer in light of the Commission's previous experience with the Rogows. Upon talking with the sellers' representative, staff found that the previous manager of the utility died shortly after the 2002 transfer took place and the remaining sellers were unable to run the utility. Additionally, it appears that the Rogows ran Wildwood Estates with few known problems, other than the sale without prior Commission approval. Staff has discussed these issues with the buyers and now believes that they are cognizant of the Commission's jurisdiction and their responsibility with respect to owning and operating a utility under the Commission's jurisdiction.

Based on all of the above, staff recommends that the transfer of majority organizational control of CPU from the sellers to the buyers is in the public interest and should be approved. The buyers should be reminded that the utility is subject to all of the provisions of Chapter 367, Florida Statutes, and with Rules 25-9, 25-22, and 25-30, Florida Administrative Code.

ISSUE 2: Should the existing rates and charges for the utility be continued?

RECOMMENDATION: Yes. The rates and charges approved for the utility should be continued. The tariff pages reflecting the transfer should be effective for services provided or connections made on or after the stamped approval date on the tariff sheets. (CLAPP)

STAFF ANALYSIS: The utility's current rates and charges for service were approved by the Commission in the latest staff assisted rate case pursuant to Order No. PSC-96-1083-FOF-SU, issued August 22, 1996, in Docket No. 951591-SU. The utility's approved rates and charges are as follows:

Wastewater Monthly Service Rates
Residential and General Service

Base Facility Charge

Meter Sizes:

5/8" x 3/4"	\$ 6.14
1"	15.36
1 1/2"	30.71
2"	49.14
3"	98.26
4"	154.53
6"	309.07

Residential Gallonage Charge

Per 1,000 gallons \$ 1.80
(10,000 gallon maximum)

General Service Gallonage Charge

Per 1,000 gallons \$ 2.16
(10,000 gallon maximum)

Multi-Residential Service
Colony Park Mobile Home Park

Base Facility Charge \$ 921.22

Gallonage Charge

Per 1,000 gallons \$ 1.80
(1,500,000 gallon maximum)

Service Availability Charges

The utility's territory is fully built-out. The existing tariff includes the following service availability policy:

No specific charge is authorized. Future additions to the plant and collection system should be paid for by the developer requiring the additional capacity and connections.

Rule 25-9.044(1), Florida Administrative Code, provides that:

In case[s] 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)

CPU has not requested a change in the rates and charges of the utility. Accordingly, staff recommends that the utility continue operations under the existing tariff and apply the approved rates and charges until authorized to change by the Commission in a subsequent proceeding.

DOCKET NO. 020930-SU
DATE: FEBRUARY 6, 2003

ISSUE 3: Should the docket be closed?

RECOMMENDATION: Yes. There are no issues remaining and the docket should be closed upon the issuance of the Final Order. (CROSBY, HELTON)

STAFF ANALYSIS: There are no issues remaining and the docket should be closed upon the issuance of the Final Order.

COLONY PARK UTILITIES, INC.
WASTEWATER TERRITORY
BREVARD COUNTY

Order No. 6365

In Township 23 South, Range 36 East, Brevard County, Florida

Section 15

Commence at the Southeast corner of said Section 15 for a Point of Beginning. Thence run North 0°39'04" West along the East line of said Section 15, 1236.97 feet; thence North 89°35'04" West, 477.46 feet; thence South 00°38'31" West, 25.00 feet; thence South 68°21'32" West, 84.30 feet; thence South 76°38'12" West, 83.63 feet; thence South 89°20'56" West, 234.00 feet; thence South 00°39'04" East, 150.00 feet; thence North 89°20'56" East, 5.00 feet; thence South 00°39'04" West, 489.79 feet; thence South 87°45'45" West, 358.30 feet; thence South 2°14'15" East, 150 feet to a point on the South boundary of St. Charles Avenue; thence Westerly 30 feet, more or less; thence South 2°14'15" East, 400 feet, more or less, to a point on the South boundary of said Section 15, thence North 87°45'45" East along the South boundary of said Section 15, 1250 feet, more or less, to the Point of Beginning.

Section 14

Commence at the Southwest corner of said Section 14; thence run North 0°39'04" West along the West boundary of Section 14, 320 feet, more or less, to the Point of Beginning which is also the Southwest corner of the aforesaid parcel; thence North 0°39'04" West along the West line of said parcel, a distance of 947.98 feet; thence North 87°05'16" East, a distance of 710.58 feet; thence North 0°48'54" West, a distance of 10 feet to the North line of said parcel; thence North 89°11'06" East along the North line of said parcel, a distance of 569.57 feet; thence South 2°00'25" East, a distance of 985.11 feet to a point on the South line of said parcel; thence South 89°13'32" West along the South line of said parcel, a distance of 1302.88 feet to the Point of Beginning.