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Public Service Commission

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COMMISSION
CLERK

-M-E-M-O-R-A-N-D-U-M-

DATE: July 6, 2006

TO: Director, Division of the Commission Clerk & Administrative Services (Bayó)

FROM: Division of Economic Regulation (Brady Marsh) *am pb*
Office of the General Counsel (Jaeger) *W*

RE: Docket No. 060009-WS – Application by Floridana Homeowners, Inc. for transfer of facilities to Floridana Homeowners Association, Inc., and for cancellation of Certificate Nos. 586-W and 504-S in Manatee County.
County: Manatee

AGENDA: 07/18/06 – Regular Agenda – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Deason

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\ECR\WP\060009.RCM.DOC

Case Background

Floridana Homeowners, Inc. (Floridana or utility) is a Class C utility providing water and wastewater service to approximately 300 customers within the Floridana mobile home park (MHP) in Manatee County. The utility is located in a portion of the Southwest Florida Water Management District which is considered a water use caution area and obtains bulk water and wastewater service from Manatee County. The utility's 2005 annual report indicates total gross revenues of \$101,803 with a net operating loss of \$25,728.

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FPSC-COMMISSION CLERK

Docket No. 060009-WS
Date: July 6, 2006

The utility was established in 1978 to serve the MHP and park clubhouse facility. The Commission granted the utility grandfather Certificate Nos. 586-W and 504-S by Order No. PSC-97-0211-FOF-WS.¹ There have been no further certification actions.

On January 3, 2006, Floridana filed an application to transfer the utility's water and wastewater facilities to the Floridana Homeowners Association, Inc. (HOA). The application also requests cancellation of the utility certificates pursuant to Section 367.022(7), Florida Administrative Code, which provides an exemption from regulation for non-profit associations providing service solely to its members. The application was found to be deficient. The utility completed the filing requirements on May 31, 2006.

This recommendation addresses approval of the transfer of facilities and cancellation of Certificate Nos. 586-W and 504-S. The Commission has jurisdiction to consider this matter pursuant to Section 367.071 and 367.022, Florida Statutes.

¹ Order No. PSC-97-0211-FOF-WS, issued February 24, 1997, in Docket No. 961232-WS, In Re: Application for grandfather certificates to provide water and wastewater service in Manatee County by Floridana Homeowners, Inc.

Discussion of Issues

Issue 1: Should the transfer of facilities from Floridana Homeowners, Inc. to Floridana Homeowners Association, Inc. and the cancellation of Certificate Nos. 586-W and 504-S be approved?

Recommendation: Yes. The transfer of facilities is in the public interest and should be approved. Certificate Nos. 586-W and 504-S should be cancelled effective February 4, 2005. (Brady, Marsh, Jaeger)

Staff Analysis: The application is in compliance with the governing statute, Section 367.071, Florida Statutes, and other pertinent statutes and rules concerning an application for transfer. Pursuant to Rule 25-30.030, Florida Administrative Code, the application contains proof of compliance with the noticing provisions. No objections to the notice of application have been received and the time for filing such has expired.

The HOA is a Florida not-for-profit corporation established on December 29, 2004, for purposes of owning and maintaining the MHP's real property, including the water distribution and wastewater collection lines, pumps and support stations. Membership in the HOA is exclusive to property owners in the MHP. Each lot owner in the MHP is an automatic member of the HOA and, as such, entitled to voting rights and eligibility to serve on the Board of Directors. A copy of the HOA's registration with the Florida Department of State is included in the application along with its Articles of Incorporation and By-Laws.

The application contains a copy of the Purchase and Sale Agreement between Floridana and the HOA. The closing occurred on February 4, 2005, subject to ultimate approval by the Commission. The transfer was accomplished by a 100% buyout of utility stock which the HOA is financing through a loan with a local banking institution. The loan is secured by an assessment against the HOA members. The application also includes a copy of a recorded warranty deed transferring the land and facilities from Floridana to the HOA. There are no customer deposits, guaranteed revenue contracts, developer agreements, customer advances, or leases that must be disposed of in relation to the transfer.

According to the application, the transfer from the shareholders of Floridana to the members of the HOA will result in less costly operation of the water and wastewater systems by removing the profit motive from the rate structure inherent in ownership by a business entity. The application also indicates that the financial ability of the HOA will be greater than that of Floridana since the HOA is authorized to assess its members for the requisite income to cover the utility's operating expenses and reserves. The application concludes that the HOA is fully aware of Floridana's commitments, obligations and representations with regard to utility matters, and pledges to fulfill said commitments, obligations and representations.

According to Commission records, the utility has paid its regulatory assessment fees (RAFs) and filed its annual reports for all of 2005 and prior years. If the Commission approves the transfer effective February 4, 2005, then the utility may be entitled to a refund for the RAFs paid on revenues received after February 4, 2005. If the utility believes it is so entitled, it may

Docket No. 060009-WS

Date: July 6, 2006

apply for a refund. Because the homeowners association is exempt from Commission regulation, no further RAFs or annual reports will be due after approval of the transfer by this Commission.

Based on the above, staff recommends that the transfer of Floridana Homeowners, Inc.'s water and wastewater facilities to Floridana Homeowners Association, Inc. is in the public interest and should be approved. Certificate Nos. 586-W and 504-S should be cancelled effective February 4, 2005.

Docket No. 060009-WS

Date: July 6, 2006

Issue 2: Should this docket be closed?

Recommendation: Yes. Since there are no pending issues, the docket should be closed upon the issuance of the Commission's final order. (Jaeger)

Staff Analysis: Since there are no pending issues, the docket should be closed upon the issuance of the Commission's final order.