

State of Florida



Public Service Commission

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

DATE: January 10, 2007

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

FROM: Division of Economic Regulation (Johnson)
Office of the General Counsel (Bennett)

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RE: Docket No. 060352-WS – Application for transfer of majority organizational control of Country Club of Sebring, Inc. in Highlands County and for name change on Certificate Nos. 540-W and 468-S to Country Club Utilities, Inc.

AGENDA: 01/23/07 – Regular Agenda – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Deason

Littlefield-ac

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\ECR\WP\060352.RCM.DOC

Case Background

On June 20, 2006, Country Club of Sebring, Inc. (Country Club or utility) filed an application for transfer of majority organizational control from Mr. R. A. Harris (Seller) to Mr. R. Greg Harris (Buyer). Country Club is a Class C utility providing service to approximately 371 water and wastewater customers in Highlands County. Country Club is located in the Southwest Florida Water Management District in a water resource caution area. In 2005, the utility had annual operating revenues of \$119,618 for water and \$78,349 for wastewater, with a net operating loss of \$19,930 for water and net operating income of \$12,731 for wastewater.

DOCUMENT NUMBER-DATE

00209 JAN-96

FPSC-COMMISSION CLERK

The utility was granted Certificate Nos. 540-W and 468-S in 1992 under the name of Country Club of Sebring, Inc.¹ In 2003, a golf facility was given a name similar to the utility's registered corporate name, which caused confusion for the customers of the utility. To alleviate the customer confusion, Mr. Harris changed the name of the utility to Country Club Utilities, Inc. Upon being informed that a change in name required Commission approval, the utility filed a request for a name change on April 20, 2006, pursuant to Section 367.1214, Florida Statutes.

During staff's review of the application for a name change, staff learned two additional details. The vehicle by which Mr. Harris used to achieve the name change was to allow the old corporation to dissolve and to create a new corporation with the name change, which is technically a transfer. The staff also learned that in January, 2004, a transfer of stock occurred within the family utility business between the father and son. The son, Mr. R. Greg Harris, was given 100% of the stock in Country Club Utilities, Inc. The owner was advised by staff that the transfer of stock without the approval of the Commission or being contingent upon Commission approval is a violation of Section 367.071, Florida Statutes. In filing the appropriate paperwork to effectuate the name change and the transfer of majority organizational control, the new owner included documentation showing that the transfer of stock from father to son was made contingent upon the approval of Commission.

The purpose of this recommendation is to address Country Club's request for a transfer, name change, and transfer of majority organizational control. The Commission has jurisdiction to consider this matter pursuant to Sections 367.071 and 367.1214, Florida Statutes.

¹ Order No. 25788, issued February 24, 1992, in Docket No. 910792-WS, In Re: Application for water and sewer certificates in Highlands County by Country Club of Sebring, Inc.

Discussion of Issues

Issue 1: Should Country Club Utilities, Inc. be ordered to show cause in writing, within 21 days, why it should not be fined for its failure to notify the Commission prior to its transfer and name change pursuant to the requirements of Sections 367.071 and 367.1214, Florida Statutes?

Recommendation: No. Country Club should not be ordered to show cause. (Bennett)

Staff Analysis: Section 367.071, Florida Statutes, requires that a utility shall notify and obtain approval of the Commission prior to a transfer of its certificates or facilities. Section 367.1214, Florida Statutes, requires that a water and wastewater utility notify the Commission and its customers before changing its name. Effective February 19, 2003, the utility recorded with the Florida Department of State, Division of Corporations, a change in organization to a corporation with the name, Country Club Utilities, Inc. This was a transfer in violation of Section 367.071, Florida Statutes, because the utility did not seek approval from the Commission. The new corporation retained the same owner, officers and assets, but changed its name. The name change is in violation of Section 367.1214, Florida Statutes, because the utility did not notify the Commission before changing its name. The subsequent transfer of stock from father to son was made contingent upon Commission approval and is, therefore, not a violation of Section 367.071 Florida Statutes.

Utilities are charged with the knowledge of the Commission's rules and statutes. Additionally, "[i]t is a common maxim, 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). Section 367.161(1), Florida Statutes, authorizes the Commission 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, Florida Statutes, or any lawful order of the Commission. By failing to comply with the provisions of Section 367.1214, Florida Statutes, the utility's acts were "willful" in the sense intended by Section 367.161, Florida Statutes. In Commission Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL titled In Re: Investigation Into The Proper Application of Rule 25-14.003, F.A.C., Relating To Tax Savings Refund for 1988 and 1989 For GTE Florida, Inc., the Commission, having found that the company had not intended to violate the rule, nevertheless found it appropriate to order it to show cause why it should not be fined, stating that "willful implies an intent to do an act, and this is distinct from an intent to violate a statute or rule." Id. at 6.

Even when a utility violates a statute or rule, it may be appropriate not to issue an order to show cause or to fine the utility. The Commission can consider mitigating circumstances. It may also look to the purpose to be served by issuing an order to show cause. One of the major purposes of an order to show cause is to obtain compliance with statutes and rules. Another purpose of a show cause order is to remedy or prevent harm to customers.

Staff believes that although Country Club has admitted to violating Sections 367.071 and 367.1214, Florida Statutes, there are mitigating circumstances that negate the need to issue an order to show cause. First and foremost, with this application, the utility has complied with the statutes in question. Secondly, the transfer and name change were made, not to hinder or harm

customers or the commission, but to help avoid customer confusion. The utility was concerned that customers would become confused because a corporation owning the golf course in the community had a similar name as the utility. Even though the Commission was not notified of the corporate change, the customers were. The name change occurred several years ago and apparently no customer has complained or been harmed by the utility owner's actions. The utility has continued to complete its Commission filings annually. The utility stated it was unaware of the requirement to notify the Commission prior to transferring the facility and prior to changing its name, but upon becoming aware of its violation, the utility immediately took steps to file the necessary documents to request the Commission's approval of the transfer and name change. Due to the length of time the utility has operated under the changed name, the fact that it apparently caused no customer confusion, and the utility's willingness to immediately correct its error, staff recommends that no show cause proceeding be initiated against Country Club for its apparent violations of Sections 367.071, and 367.1214, Florida Statutes.

Issue 2: Should the Commission approve the corporate reorganization and name change of Country Club of Sebring, Inc. to Country Club Utilities, Inc.?

Recommendation: Yes. The corporate reorganization and name change of Country Club of Sebring, Inc. to Country Club Utilities, Inc. should be approved effective the date of the Commission's vote. The subsequent order will serve as the utility's water and wastewater certificates and should be retained by the utility. The utility has submitted tariff sheets reflecting the name change. (Johnson, Bennett)

Staff Analysis: On April 20, 2006, the applicant filed a request on behalf of the utility to change the name on its certificates to Country Club Utilities, Inc. and to approve a corporate reorganization. According to the application, the dissolution of Country Club of Sebring, Inc. and the creation of Country Club Utilities, Inc. took place in 2003. The purpose of the reorganization and name change was to eliminate customer confusion with a golf facility with a name similar to the utility's former name. The rates and charges of the utility will not be affected by the reorganization, nor will the reorganization affect the utility's management, operations, or customer service.

The application was filed pursuant to Rule 25-30.039, Florida Administrative Code, which provides for a name change. The application included documentation from the Florida Department of State, Division of Corporations, showing Country Club Utilities, Inc. as a registered corporation. The application included a copy of the utility's proposed water and wastewater tariffs showing the name change and a copy of the notice for the name change that was mailed to the customers.

The utility has filed the information required by Sections 367.071 and 367.1214, Florida Statutes, and Rule 25-30.039, Florida Administrative Code. Therefore, staff recommends that the corporate reorganization and name change of Country Club of Sebring, Inc. to Country Club Utilities, Inc. be approved effective the date of the Commission's vote. The subsequent order will serve as the utility's water and wastewater certificates and should be retained by the utility. The utility has submitted tariff sheets reflecting the name change.

Issue 3: Should the transfer of majority organizational control of Country Club Utilities, Inc. from Mr. R. A. Harris to Mr. R. Greg Harris be approved?

Recommendation: Yes. The transfer of majority organizational control of Country Club Utilities, Inc. from Mr. R. A. Harris to Mr. R. Greg Harris is in the public interest and should be approved effective the date of the Commission's vote. The subsequent order will serve as the utility's water and wastewater certificates and should be retained by the utility. Pursuant to Rule 25-9.044(1), Florida Administrative Code, the rates and charges approved for Country Club should be continued until authorized to change by the Commission in a subsequent proceeding. Country Club is responsible for all regulatory assessment fees and annual reports for 2006 and into the future. A description of the territory being transferred is appended to this recommendation as Attachment A. (Johnson, Bennett)

Staff Analysis: On June 20, 2006, Country Club filed an application for authority to transfer majority organizational control of Country Club from Mr. R. A. Harris to Mr. R. Greg Harris. The application as filed is in compliance with the governing statute, Section 367.071, Florida Statutes, and the requirements of Rule 25-30.037, Florida Administrative Code, pertaining to an application for transfer of majority organizational control. A description of the territory is appended to this memorandum as Attachment A.

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

The application contained a statement that, after reasonable investigation, the utility systems appear to be in satisfactory condition and in compliance with all applicable standards set by the Florida Department of Environmental Protection (DEP). Staff has confirmed with the DEP that the utility's water and wastewater systems are currently in environmental compliance with respect to DEP standards.

The application contains a statement describing how the transfer is in the public interest, including a summary of the buyer's experience in water and wastewater operations and a showing of the buyer's financial ability. Mr. R. Greg Harris provided documentation of a line of credit with a local bank as evidence of his financial ability to operate and maintain the utility. In addition, Mr. R. Greg Harris, the President of Country Club, has been instrumental in managing and directing the operations of the utility for many years. The acquisition of majority control of the utility by Mr. R. Greg Harris will not result in any change in the management of the utility. Country Club will continue to have the ability to provide consistent and uninterrupted service to its customers. Mr. R. Greg Harris provided a statement that he will fulfill all of the utility's commitments, obligations, and representations with regard to utility matters. Proof of ownership of the land upon which the facilities are located in the form of a recorded warranty deed was provided.

Staff has verified that the utility is current on annual reports and regulatory assessment fees (RAFs) through 2005. The utility will continue to be responsible for filing the annual report and RAFs for 2006 and future years.

Country Club's rates and charges were established pursuant to Order No. 25788. There has been several subsequent price indexes to the rates. Rule 25-9.044(1), Florida Administrative Code, provides that in the case of change of ownership or control of a utility, the rates, classification, and regulations of the former owner must continue unless authorized to change by the Commission. The new owner has not requested a change; therefore, the existing rates and charges should be continued until authorized to change by the Commission in a subsequent proceeding.

Based on all of the above, staff recommends the transfer of majority organizational control of Country Club from Mr. R. A. Harris to Mr. R. Greg Harris is in the public interest and should be approved effective the date of the Commission's vote. The subsequent order will serve as the utility's water and wastewater certificates and should be retained by the utility. Pursuant to Rule 25-9.044(1), Florida Administrative Code, the rates and charges approved for Country Club should be continued until authorized to change by the Commission in a subsequent proceeding. Country Club is responsible for all regulatory assessment fees and annual reports for 2006 and into the future. A description of the territory being transferred is appended to this recommendation as Attachment A.

Docket No. 060352-WS
Date: January 10, 2007

Issue 4: Should this docket be closed?

Recommendation: Yes, because no further action is necessary, this docket should be closed.
(Bennett)

Staff Analysis: Because no further action is necessary, this docket should be closed.

Country Club Utilities, Inc.

TERRITORY DESCRIPTION

The North $\frac{3}{4}$ of Section 9, Township 35 South, Range 28 East, Highlands County,
Florida.

FLORIDA PUBLIC SERVICE COMMISSION

Authorizes

Country Club Utilities, Inc.
pursuant to
Certificate Number 540-W

to provide water service in Highlands 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.

Order Number	Date Issued	Docket Number	Filing Type
25788	02/24/92	910792-WS	Original Certificate
*	*	060352-WS	Name Change and Transfer of Majority Organizational Control

***Order Numbers and dates to be provided at time of issuance.**

FLORIDA PUBLIC SERVICE COMMISSION

Authorizes

Country Club Utilities, Inc.
pursuant to
Certificate Number 468-S

to provide wastewater service in Highlands 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.

Order Number	Date Issued	Docket Number	Filing Type
25788	02/24/92	910792-WS	Original Certificate
*	*	060352-WS	Name Change and Transfer of Majority Organizational Control

***Order Numbers and dates to be provided at time of issuance.**