

State of Florida



Public Service Commission

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DATE: March 15, 2012

TO: Office of Commission Clerk (Cole)

FROM: Division of Economic Regulation (Golden, Kaproth, Simpson) *ms*
Office of the General Counsel (Crawford, Jaeger) *CS*

RE: Docket No. 090056-SU – Application for authority to transfer the wastewater facilities of Fountain Lakes Sewer Corporation to Bonita Springs Utilities, Inc., and cancellation of Certificate No. 442-S, in Lee County
County: Lee

AGENDA: 03/27/12 – Regular Agenda – Interested Persons May Participate

COMMISSIONERS ASSIGNED: Brisé, Graham, Brown

PREHEARING OFFICER: Brisé

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\ECR\WP\090056.RCM.DOC

Case Background

Fountain Lakes Sewer Corporation (Fountain Lakes or utility) is a Class B utility providing service to approximately 828 wastewater customers in the Fountain Lakes and Marsh Landing communities in Lee County. The utility is located in the South Florida Water Management District. The utility's 2010 annual report shows gross revenue of \$441,043 and net operating income of \$16,803.

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The utility was originally issued Certificate No. 442-S in 1988.¹ Since then, the utility received approval for a corporate reorganization in 1994.²

On January 29, 2009, Aqua Utilities Florida, Inc. (AUF) filed an application for approval of transfer of the Fountain Lakes wastewater system to AUF, cancellation of Certificate No. 442-S, and amendment of AUF's Certificate No. 268-S. The sale of Fountain Lakes to AUF closed on April 30, 2008, but was made contingent upon Commission approval pursuant to Section 367.071(1), Florida Statutes (F.S.).

On February 23, 2009, the Commission received letters from four customers objecting to the transfer. On April 24, 2009, one customer filed a formal request for evidentiary hearing, and on April 27, 2009, an additional customer filed a letter in support of the request for hearing. In the objections, the customers expressed concerns about the environmental impact of the existing wastewater system on the Estero River and Estero Bay, and the financial impact of future plant upgrades. As an alternative, the customers proposed that the Fountain Lakes customers could be connected to Bonita Springs Utilities, Inc.'s (BSU) central wastewater system, and the Fountain Lakes wastewater system could cease operation. On May 28, 2009, the parties held an informal meeting, and AUF subsequently began discussions for a possible transfer of the wastewater system to BSU.

On August 11, 2011, AUF and BSU entered into an Asset Purchase Agreement for the sale and transfer of the wastewater facilities from AUF to BSU. On November 23, 2011, AUF withdrew its initial application and submitted a new application for authority to transfer the wastewater facilities of Fountain Lakes to BSU, and for cancellation of Certificate No. 442-S. The closing is scheduled to take place on or before March 31, 2012, and is contingent upon Commission approval. The Commission has jurisdiction to consider this matter pursuant to Section 367.071, F.S., and Rule 25-30.037, Florida Administrative Code (F.A.C.).

¹ Order No. 20470, issued December 20, 1988, in Docket No. 880688-SU, In re: Application of Fountain Lakes Sewer Corporation for an original sewer certificate in Lee County, Florida.

² Order No. PSC-94-0230-FOF-SU, issued March 2, 1994, in Docket No. 931223-SU, In re: Request for acknowledgement of corporate reorganization of Fountain Lakes Sewer Corporation in Lee County.

Discussion of Issues

Issue 1: Should the transfer of facilities from Fountain Lakes Sewer Corporation to Bonita Springs Utilities, Inc. and the cancellation of Certificate No. 442-S be approved?

Recommendation: Yes. The transfer of facilities from Fountain Lakes Sewer Corporation to Bonita Springs Utilities, Inc. is in the public interest and should be approved. Certificate No. 442-S should be cancelled administratively upon receipt of the executed agreement confirming the actual date of closing, which is anticipated to be March 31, 2012. Fountain Lakes should be required to pay all outstanding regulatory assessment fees (RAFs) due for January 1, 2012, through the date of closing, by July 30, 2012. (Golden, Kaproth, Simpson)

Staff Analysis: As stated in the case background, on January 29, 2009, AUF filed an application for approval of transfer of the Fountain Lakes wastewater system to AUF, cancellation of Certificate No. 442-S, and amendment of AUF's Certificate No. 268-S. The Commission received objections from four customers and a formal request for evidentiary hearing. AUF subsequently examined options for transferring the Fountain Lakes wastewater system to BSU, in an effort to address the customers' environmental and financial concerns about the existing wastewater system.

On August 11, 2011, AUF and BSU entered into an Asset Purchase Agreement for the sale and transfer of the wastewater facilities from AUF to BSU. On November 23, 2011, AUF withdrew its initial application and submitted a new application for authority to transfer the wastewater facilities of Fountain Lakes to BSU, and for cancellation of Certificate No. 442-S. The closing is expected to take place on or before March 31, 2012, and is contingent upon Commission approval.

The new application is in compliance with the governing statute, Section 367.071, F.S., and other pertinent statutes and rules concerning an application for transfer. Pursuant to Rule 25-30.030, F.A.C., the application contains proof of compliance with the noticing provisions. No objections to the notice of application to transfer the wastewater facilities to BSU have been received and the time for filing such has expired.

A copy of the purchase agreement is included in the application. There are no customer deposits, guaranteed revenue contracts, developer agreements, customer advances, or leases that must be disposed of in relation to the transfer. The application indicates that the books and records are available for inspection, and BSU has had an opportunity to inspect Fountain Lakes' federal income tax returns.

BSU is a member owned, not-for-profit corporation that was established on June 7, 1970, and currently provides water and wastewater service to over 40,000 customers within the City of Bonita Springs and certain unincorporated areas in Southwest Lee County. BSU is exempt from Commission regulation pursuant to Section 367.022(7), F.S., which provides that nonprofit corporations that provide service solely to members who own and control the corporation are

exempt from Commission regulation.³ The application states that the transfer is in the public interest because BSU has both the experience and financial wherewithal to ensure consistent compliance with environmental regulations and provide continuous service to Fountain Lakes' present and future customers. Because BSU already provides potable water service to all of the Fountain Lakes' customers, the customers are already members of BSU.

The application states that BSU has determined that the Fountain Lakes wastewater system appears to be in satisfactory condition and in compliance with applicable standards set by the Department of Environmental Protection. Over the next 18 to 24 months, BSU intends to upgrade the collection system, interconnect the collection system to BSU's central wastewater treatment plant, and decommission the existing Fountain Lakes wastewater treatment plant. BSU indicated that replacement of the existing plant with BSU's central wastewater system eliminates a source point of pollution in the community, increases the quality of treatment, avoids odor problems, frees up the site for use by the homeowners, and generally provides environmental benefits to the customers and the community at large.

The purchase was financed through the use of BSU's short-term reserves, and BSU will recover the cost through a special service charge paid by the customers in the Fountain Lakes and Marsh Landing communities. The special service charge was considered at a public hearing of the Bonita Springs City Council on December 21, 2011, and approved in the City of Bonita Springs Ordinance No. 11-12, issued the same day. Based upon BSU's experience, it appears to be qualified to successfully provide the Fountain Lakes residents safe and reliable wastewater service.

The utility has filed all annual reports through 2010 and paid all RAFs through December 31, 2011. In addition, AUF indicated it will file the Fountain Lakes 2011 annual report. Because the utility will not be jurisdictional as of December 31, 2012, no annual report needs to be filed for 2012. However, the utility should be required to pay all outstanding RAFs due for January 1, 2012, through the date of closing, by July 30, 2012.

Based on the above, staff recommends that the transfer of Fountain Lakes wastewater facilities to BSU is in the public interest and should be approved. Certificate No. 442-S should be cancelled administratively upon receipt of the executed agreement confirming the actual date of closing, which is anticipated to be March 31, 2012. Fountain Lakes should be required to pay all outstanding RAFs due for January 1, 2012, through the date of closing, by July 30, 2012.

³ BSU was also granted specific exemption by Order No. 5223, issued September 21, 1971, in Docket No. 70337-W, In re: Cancellation of certificates issued to certain non-profit corporations, associations, and cooperatives.

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Issue 2: Should this docket be closed?

Recommendation: No. This docket should be closed administratively upon receipt of the executed purchase agreement confirming the actual date of closing. (Crawford, Jaeger)

Staff Analysis: This docket should be closed administratively upon receipt of the executed purchase agreement confirming the actual date of closing.