

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for transfer of) DOCKET NO. 900603-WS
majority organizational control of East)
Marion Water Distribution, Inc. and East) ORDER NO. 24553
Marion Sanitary Systems, Inc. in Marion)
County from Penelope A. Wagner, trustee) ISSUED: 5/20/91
for the Estate of Eric E. Wagner, to)
Forest Lake Village - Del American Ltd.)
_____)

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON
BETTY EASLEY
GERALD L. GUNTER
MICHAEL MCK. WILSON

ORDER APPROVING TRANSFER AND CLOSING DOCKET

BY THE COMMISSION:

Background

On June 29, 1990, Forest Lake Village - Del American Ltd. (FLV) filed an application with this Commission seeking approval of the transfer of majority organization control of East Marion Water Distribution, Inc. and East Marion Sanitary Systems, Inc. (East Marion or Utilities) from Penelope A. Wagner, as Trustee for the Estate of Eric E. Wagner, to FLV. The transfer occurred in July, 1989, following the death of Eric Wagner, the President of the Utilities and owner of the subdivision.

It was initially thought that the transfer involved a transfer of assets. After discussions with FLV, it was determined that the transfer was a transfer of majority organizational control. In its application, FLV indicated that the confusion over whether the transfer was a transfer of majority organizational control or a transfer of assets was the reason the transfer occurred prior to Commission approval. Although this explanation does not excuse FLV for closing on the transfer prior to Commission approval, we do not find it appropriate to penalize the Utilities since FLV filed the application within a reasonable time after the Commission Staff became aware of the transfer.

East Marion was issued certificates in 1987 and currently serves 2 customers. The Utilities will serve 181 equivalent residential connections (ERC) at buildout.

DOCUMENT NUMBER-DATE

04935 MAY 20 1991

SO-RECORDS/REPORTING

Application

Except as discussed previously, the application is in compliance with Section 367.071, Florida Statutes, and other pertinent statutes and administrative rules concerning an application for transfer of majority organizational control. In particular, the application contains:

1. A filing fee in the amount of \$300, as prescribed by Rule 25-30.020, Florida Administrative Code.
2. Evidence that East Marion owns the land upon its facilities are located, as required by Rule 25-30.035 (3)(f), Florida Administrative Code.
3. Proof of compliance with all noticing requirements of Rule 25-30.03, Florida Administrative Code.
4. The territory served by East Marion is described in Attachment A of this Order.

No objections to the application have been received and the time for filing such has expired.

FLV is also the developer of the area served by East Marion and, therefore, has an interest in seeing that adequate service is provided. FLV has contracted with A. P. Utilities (APU) to operate the plants. APU has significant experience in the water and wastewater industry and currently operates and owns several systems under the jurisdiction of this Commission. Further, from our review of the information submitted with the application, it appears that FLV has the financial ability to operate the Utilities.

The Department of Environmental Regulation (DER) was contacted and East Marion has no outstanding notices of violation. However, East Marion's DER construction permit expired on March 26, 1991. According to a representative of DER, FLV contacted them on March 29, 1991, and indicated that an application for a temporary permit was being mailed. A temporary operating permit will be issued by DER upon receipt of the application.

In view of the foregoing, we find that the transfer of majority organizational control of East Marion is in the public interest and it is approved.

Rate Base

The transfer of majority organizational control does not alter the Utilities' asset and liability accounts nor change the rate base balance. Therefore, rate base is not being addressed in this Docket.

Rates and Charges

East Marion's rates and changes were approved in Order No. 18545, issued on January 5, 1988. Rule 25-9.044(1), Florida Administrative Code, requires the new owner of a utility to adopt and use the rates, classification and regulations of the former operating company unless authorized to change by the Commission. FLV has not requested to change the rates and service availability charges and we see no reason to change them at this time.

FLV has requested that it be allowed to split the currently approved \$20 customer deposit between water and wastewater. Thus, FLV would collect a \$10 customer deposit for each utility service. We find this request to be reasonable and it is approved. FLV has also requested to increase East Marion's miscellaneous service charges to the level of recently approved for other water and wastewater utilities, as detailed in Staff Advisory Bulletin No. 13, 2nd Revised. The increase in the miscellaneous service charges will be approved administratively.

FLV shall continue to charge the rates and charges approved herein until authorized to change by the Commission. FLV has filed revised tariff sheets reflecting these rates and charges and the change in the issuing officer due to the transfer of majority organizational control. The tariff sheets shall be effective for service provided or connections made after the stamped approval date on the tariff sheets.

It is, therefore,

ORDERED by the Florida Public Service Commission that the transfer of majority organization control of East Marion Water Distribution, Inc. and East Marion Sanitary Systems, Inc. from Penelope A. Wagner, Trustee for the estate of Eric E. Wagner, 2065 Northeast 125th Terrace Road, Silver Springs, Florida 32688, to Forest Lake Village - Del American Ltd., 1101 N. Lake Destiny Drive, Suite 400, Maitland, Florida 32751, is hereby approved. It is further

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ORDERED that Forest Lake Village - Del American shall continue to charge the existing rates and charges until authorized to change by the Commission. It is further

ORDERED that Forest Lake Village - Del American's request to split the approved \$20 customer deposit between water and wastewater, thereby collecting \$10 for each utility service, is hereby approved. It is further

ORDERED that the tariff sheets submitted by Forest Lake Village - Del American shall be effective for service provided or connections made on or after the stamped approval date on the tariff sheets. It is further

ORDERED that Docket No. 900603-WS is hereby closed.

By ORDER of the Florida Public Service Commission, this 20th
day of MAY, 1991.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

ALC

by: Kay Flynn
Chief, Bureau of Records

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

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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 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 or sewer 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.

ATTACHMENT A

**East Marion Water Distribution, Inc.
and
East Marion Sanitary Systems, Inc.**

TERRITORY DESCRIPTION

The following described lands located in portions of Sections 7, 8, 17, Township 15 South, Range 24 East, Marion County, Florida:

Beginning at the S.W. corner of the S.W. 1/4 of the N.W. 1/4 of Section 8, Township 15 South, Range 24 East, Marion County, Florida, thence N 00°29'46" W along the west boundary of said Section 8 a distance of 839.97 feet to the southwesterly right-of-way line of State Road No. 40, thence S 56°59'12" E along said southwesterly right-of-way line 531.25 feet, thence S 33°01'47" W 89.79 feet, thence S 00°11'26" E 1385.87 feet, thence S 36°25'52" E 285.41 feet to the approximate shoreline of Lake Waldena, thence run into said Lake S 29°57'59" E 201.43 feet to a point in said lake, said point being the south-east corner of the West 1/2 of the N.W. 1/4 of the S.W. 1/4 of said Section 8, thence S 89°30'58" W along said south boundary 329.84 feet to a point on the aforesaid approximate shoreline of Lake Waldena, thence continue S 89°30'58" W along said south boundary 330.29 feet to the southwest corner of said West 1/2 of N.W. 1/4 of S.W. 1/4, thence N 00°10'04" W along the west boundary of said Section 8 a distance of 1319.86 feet to the point of beginning.

Also: Lots 107, 108 and 109, in the Town of Waldena, situated in the S.W. 1/4 of Section 8, Township 15 South, Range 24 East, as per plat thereof recorded in Plat Book "E", page 23, Public Records of Marion County, Florida. Less and excepting therefrom that part of the East 200 feet of West 1181.38 feet of the S.W. 1/4 of said Section 8, Township 15 South, Range 24 East, lying south of Lake Waldena, all of which lies in Lot 109.

Also: South 1/2 of S.E. 1/4 of Section 7, Township 15 South, Range 24 East, except the West 70 acres, thereof.

Also: That part of the West 3/4 of the N.W. 1/4 of N.W. 1/4 of Section 17, Township 15 South, Range 24 East, lying north of Fort Gates Road, except additional road right-of-way conveyed in Official Records Book 991, page 173.