

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for transfer of)
 Certificate No. 349-S from Security)
 Savings and Loan Association to Harder)
 Hall-Howard, Inc. in Highlands County.)

DOCKET NO. 910149-SU
 ORDER NO. 24713
 ISSUED: 6/25/91

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman
 J. TERRY DEASON
 BETTY EASLEY
 GERALD L. GUNTER
 MICHAEL MCK. WILSON

ORDER APPROVING TRANSFER
AND CLOSING DOCKET

BY THE COMMISSION:

Background

On February 13, 1991, an application was filed with this Commission seeking approval of the transfer of Certificate No. 349-S from Security Savings and Loan Association (Security) to Harder Hall-Howard, Inc. (HHHI). The utility serves a small development on Highway 27 near the City of Sebring, Florida. The service territory includes a subdivision, which has 294 residential lots, 2 golf courses, 2 14-unit condominium buildings and a 132 room motel. The motel is not open at this time due to litigation over ownership.

Certificate No. 349-S was originally issued to Harder Hall, Inc., on January 13, 1984. The Certificate was transferred to Security on August 22, 1988, when Harder Hall, Inc. defaulted on a loan. Approximately one year later, Security, which was undergoing dissolution, was placed in a conservatorship by the Federal Savings and Loan Insurance Corporation. The conservatorship was subsequently transferred to the Resolution Trust Corporation (RTC). On August 22, 1989, HHHI agreed to purchase the utility from RTC; the sale occurred on January 15, 1991, prior to Commission approval.

DOCUMENT NUMBER-DATE

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In a statement provided to the Commission, HHHI explained why the transfer was finalized prior to Commission approval. In its explanation, HHHI stated that difficulties were encountered with RTC during negotiations and waiting for Commission approval of the transfer could possibly have worked as a detriment to the sale. The terms of the purchase of the system remained questionable up until the January 15, the closing date. According to HHHI, no opportunity arose during the negotiation process to delay the closing until the certificate transfer was approved by the Commission. Further, no harm has been found to have occurred to any party affected by the transfer. Since HHHI explained the reasons for closing on the purchase prior to Commission approval and filed the application within a short time after the transfer occurred, we will not institute show cause proceedings.

Application

Except as discussed previously, the application is in compliance with Section 367.071, Florida Statutes, and other pertinent statutes and administrative rules. In particular, the application contains:

1. A filing fee in the amount of \$150, as prescribed by Rule 25-30.020, Florida Administrative Code.
2. Evidence that the utility owns the land upon which its facilities are located, as required by 25-30.367, Florida Administrative Code.
3. Proof of notice to interested governmental and regulatory agencies and utilities within a four-mile radius of the territory, and proof of advertisement in a newspaper of general circulation in Highlands County, as prescribed by Rule 25-30.030, Florida Administrative Code.

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

The real property was transferred to Paul E. Howard, who, along with his wife, is one of the principals in HHHI. The title was then transferred to P. E. H. Enterprises (PEH), a general partnership incorporated in Tennessee. The wastewater system portion was then passed to HHHI. From financial statements furnished by Mr. and Mrs. Paul E. Howard, it appears that they are financially able to ensure the continued operation of the utility.

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Howard & Howard Plumbing and Heating Company, Inc., one of the partners of PEH, has wastewater system experience. Pugh Utilities Service, a service company located in Sebring, will provide contractual operating services to the utility. As a result, expert operation and management of the utility should continue. Further, the Department of Environmental Regulation (DER) has indicated that the utility is in compliance with its requirements.

Therefore, we find that the transfer of Certificate No. 349-S from Security to HHHI is in the public interest and it is approved. The Certificate has been returned to the Commission for entry reflecting the change in ownership.

Rate Base

Rate base for the utility was previously established at zero by Order No. 19855, issued on August 22, 1988, in Docket No. 880204-SU, a previous transfer docket, since we were unable to obtain sufficient supporting documentation in that docket to establish rate base. Security did not conduct an original cost study in Docket No. 880204-SU due to the small size of the utility, its deficit in terms of net operating income and the expense of performing the cost study. We do not have any reason to believe that documentation exists which is materially different from that found in the past.

HHHI has not provided any information to determine rate base in this docket. The principals of HHHI were not aware of the Commission's rate base policy. Upon being advised of the method used to determine rate base and that supporting documentation would be necessary, HHHI concurs that rate base should not be set in this proceeding. Therefore, due to insufficient supporting documentation, we are not setting rate base. Rate base will be set in a subsequent proceeding.

Rates and Charges

The rates and charges currently approved for the utility were effective August 22, 1988, pursuant to Order No. 19855, issued in Docket No. 880204-SU. According to Rule 25-9.044(1), Florida Administrative Code, the new owner of a utility must adopt and use the rates, classification and regulations of the previous owner unless authorized to change by the Commission. HHHI has not requested a change in the rates and charges and we see no reason to change them at this time.

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HCCI is directed to continue to charge the rates and charges approved in the utility's tariff until authorized to change by the Commission in a subsequent proceeding. HCCI has filed tariff sheets reflecting the change in ownership. The tariff sheets shall be effective for service provided or connections made after the stamped approval date.

It is, therefore,

ORDERED by the Florida Public Service Commission that the transfer of Certificate No. 349-S from Security Savings and Loan Association, 410 North Scottsdale Road, Scottsdale, Arizona 85251, to Harder Hall-Howard, Inc., 122 East Lake Drive Boulevard, Sebring, Florida 33872, is hereby approved. It is further

ORDERED that Harder Hall-Howard, Inc. shall continue to charge the rates and charges approved in the utility's tariff until authorized to change by this Commission. It is further

ORDERED that the tariff sheets shall be effective for service rendered or connections made after the stamped approval date on the tariff sheets. It is further

ORDERED that Docket No. 910149-SU is hereby closed.

By ORDER of the Florida Public Service Commission, this 25th
day of JUNE, 1991.



STEVE TRIBBLE, Director
Division of Records and Reporting

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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 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.

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ATTACHMENT A

Territory Description

The following described lands located in portions of Sections 1 and 12, Township 35S, Range 28E, Highlands County, Florida:

Section 1

The Southeast 1/4 and the East 1/2 of the Northeast 1/4, less and except that portion lying in Little Lake Jackson.

ALSO

The East 1/2 of the Southwest 1/4 of the Northeast 1/4 and the Southeast 1/4 of the Northwest 1/4 of the Northeast 1/4, all in said Section 1.

Section 12

The North 1/2 of the Northeast 1/4 of said Section, less and except that portion lying in Huckleberry Lake.

ALL in Township 35 South, Range 28 East, Highlands County, Florida.