

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for Approval) DOCKET NO. 930526-SU
of Transfer of Certificate No.) ORDER NO. PSC-93-1790-FOF-SU
395-S in Lee County to BONITA) ISSUED: December 14, 1993
SPRINGS UTILITIES by FORTY-ONE)
CORPORATION.)
_____)

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman
SUSAN F. CLARK
JULIA L. JOHNSON

ORDER APPROVING TRANSFER, CANCELLING
CERTIFICATE NO. 395-S AND CLOSING DOCKET

BY THE COMMISSION:

Forty-One Corporation (hereinafter referred to as Forty-One or utility) is a class "C" wastewater utility which provides service to 34 commercial customers in Lee county. Forty-One assumed ownership of the utility through foreclosure in 1991. On June 1, 1993, Forty-One filed its application for transfer of a portion of its facilities to Bonita Springs Utilities (BSU). BSU provides water service to over 13,000 customers in Southwest Lee County. In 1990, BSU began developing a regional wastewater treatment and disposal system. By Order No. 24921, issued August 16, 1991, BSU'S wastewater system became exempt from the Commission's jurisdiction.

BSU plans to eventually expand to allow approximately 60 small wastewater plants to be taken off line. To provide regional service throughout the county, BSU is coordinating its effort with Lee County. To fund the wastewater system, BSU has secured \$22.8 million in Industrial Development Revenue Bonds.

In processing Forty-One's transfer application, after it assumed ownership following foreclosure, in Docket No. 910847, this Commission became aware that the utility was operating under a consent order from the Department of Environmental Protection pending interconnection with BSU. In that Docket, Forty-One filed an executed agreement with BSU which indicated that it would connect to the BSU system when service was available to the area. On April 8, 1993, the Forty-one plant was taken off line and the customers were interconnected to the BSU system.

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We have determined that since the Forty-One plant was operating under a consent order due to capacity and operating problems, present customers as well as growth in the general area will be well served in receiving service from BSU. Forty-One has retired its plant and will retain the plant site for alternate uses. All other wastewater facilities owned by Forty-One have been turned over to BSU. Forty-One held no customer deposits. Based upon the agreement between Forty-one and BSU, customers will not be required to pay any additional charges for connection to the BSU system. Additionally, Forty-One has paid Regulatory Assessment Fees for 1993 through the interconnection date.

APPLICATION

The application submitted by Forty-One is in compliance with the governing statute, Section 367.071, Florida Statutes, and with other pertinent statutes and administrative rules concerning an application for transfer of utility assets. The application contained a check in the amount of \$150.00, which is the correct filing fee pursuant to Rule 25-30.020, Florida Administrative Code. The utility had requested that all noticing requirements be waived since the case was unique in being a transfer to an exempt utility. In Response to that request, by Order No. PSC-93-1163-FOF-SU, issued August 10, 1993, this Commission modified the noticing requirements. We modified the noticing requirements to allow for noticing of governmental bodies and utilities, within the four mile radius, by regular instead of certified mail, and to allow only one week, instead of three consecutive week's newspaper noticing. Subsequently, the utility properly noticed according to the modified requirements. No objections were received and the time for filing objections expired. Since the assets were being transferred to an exempt entity, the utility did not file information relating to rate base or to an acquisition adjustment.

Based on the foregoing, we find that the transfer of assets from Forty-One Corporation to Bonita Springs Utilities and the cancellation of Certificate No. 395-S is in the public interest and is hereby approved.

Based on the foregoing, it is, therefore,

ORDER NO. PSC-93-1790-FOF-SU
DOCKET NO. 930526-SU
PAGE 3

ORDERED by the Florida Public Service Commission that the transfer of the assets from the Forty-One Corporation, 41 South High Street, HC0518, Columbus, Ohio, 43287, to Bonita Springs Utilities, Post Office Box 2368, Bonita Springs, Florida, 33959, is hereby approved. It is further

ORDERED that Certificate No. 395-S is hereby cancelled. It is further

ORDERED that Docket No. 930526-SU is hereby closed.

By ORDER of the Florida Public Service Commission, this 14th day of December, 1993.



STEVE TRIBBLE, Director
Division of Records and Reporting

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ORDER NO. PSC-93-1790-FOF-SU
DOCKET NO. 930526-SU
PAGE 4

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 Civil Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.