

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application For Transfer) DOCKET NO. 940340-WU
of Certificate No. 513-W From) ORDER NO. PSC-95-0421-FOF-WU
Lucky Hills, Inc. to Wellaqua) ISSUED: March 28, 1995
Company in Citrus County.)
_____)

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK, Chairman
J. TERRY DEASON
JOE GARCIA
JULIA L. JOHNSON
DIANE K. KIESLING

ORDER APPROVING TRANSFER

AND

NOTICE OF PROPOSED AGENCY ACTION

ORDER ESTABLISHING RATE BASE FOR PURPOSES
OF THE TRANSFER

BY THE COMMISSION:

NOTICE IS HEREBY GIVEN by the Florida Public Service Commission that the action establishing rate base for purposes of the transfer as discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

Background

On April 5, 1994, Wellaqua Company (Wellaqua) filed an application with this Commission requesting approval of the transfer of Certificate No. 513-W from Lucky Hills, Inc. (Lucky Hills or utility) to Wellaqua. Lucky Hills, which has been in operation under our jurisdiction since March 27, 1989, currently serves 32 customers. The owner of Wellaqua, Mr. Jerome C. Salmons, Jr., purchased the utility because he owned several lots in the

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subdivision and wanted to be sure that he would be provided with quality water service.

In January of 1994, the Commission was contacted by Ms. Gail Emery, bookkeeper for Lucky Hills, Inc. By letter dated January 14, 1994, the Commission Staff sent Ms. Emery an application package, which included pertinent sections of Commission rules and regulations. The utility was transferred to Wellaqua Company on March 8, 1994. The application for approval of the transfer was filed on April 5, 1994.

No Show Cause Required

Section 367.071, Florida Statutes, states, in part, that no utility shall sell, assign, or transfer its certificate of authorization, facilities or any portion thereof, or majority organizational control without approval of the Commission. Lucky Hills' failure to obtain Commission approval prior to the transfer was "willful" in the sense intended by Section 367.071, Florida Statutes. In 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 "[i]n our view, 'willful' implies an intent to do an act, and this is distinct from an intent to violate a statute or rule." Id. at 6.

Failure of Lucky Hills, Inc. to obtain approval prior to the transfer appears to be due to lack of understanding and knowledge by the parties of the Commission's rules and regulations. According to the new owner, Mr. Salmons, he had no previous involvement with the Commission and knew nothing of its regulation. He believed he was in compliance with the rules since he filed with the Department of Environmental Protection.

The utility was previously owned by Messrs. George Babcock, Donald Luck and Phil LeBrun. Mr. Babcock, who was the only one of the owners who was familiar with Commission regulation since he managed the utility, died suddenly in the fall of 1993. After his death, Mr. Babcock's wife, Isabel Babcock, was appointed manager of the utility. Mrs. Babcock was instructed by the other owners, who live in Canada, to liquidate the utility property along with the remaining unsold lots in the subdivision. As stated previously, the utility was transferred to Wellaqua Company on March 8, 1994. The application for approval of the transfer was filed on April 5, 1994.

Although regulated utilities are charged with knowledge of Chapter 367, Florida Statutes, we find that the violation of Section 367.071, Florida Statutes, does not rise in these circumstances to the level of warranting initiation of show cause proceedings. Because of the application package sent to Ms. Emery in January, Lucky Hills was aware of Commission regulation; however, it is unlikely that a show cause proceeding against Lucky Hills would result in any constructive outcome. Therefore, we do not find it appropriate to order Lucky Hills to show cause for failing to obtain approval from the Commission prior to the transfer of the utility to Wellaquaa.

Application

Except as previously discussed, the application is in compliance with Section 367.071, Florida Statutes, and other pertinent statutes and administrative rules. In particular, the application contains a filing fee in the amount of \$750, pursuant to Rule 25-30.020, Florida Administrative Code. The application also contains evidence that the utility owns the land upon which its facilities are located as required by Rule 25-30.037(2)(g), Florida Administrative Code.

In addition, Wellaquaa provided proof of compliance with the noticing provisions of Rule 25-30.030, Florida Administrative Code, including notice to the customers of the system being transferred. No objections to the application have been received and the time for such filings have expired.

According to information provided with the application, Wellaquaa has the technical ability to continue to operate the system. Wellaquaa is retaining all employees of Lucky Hills who were involved in the daily operations of the utility. Further, according to the Department of Environmental Protection, there are no outstanding notices of violation against the utility. However, during a plant inspection in November, 1994, it was noticed that the fence that surrounds the water treatment facility is in need of repair. Wellaquaa has agreed to repair or replace the fence surrounding the water facility.

Regarding the financial ability, Mr. Salmons, owner of Wellaquaa, provided a financial statement, which indicates that approximately 78% of his net worth is invested in real estate, and that he has approximately \$50,000 in liquid assets. Although we have concerns about Mr. Salmons' financial condition, since the system is small, we believe that the assets of the new owner should be adequate to insure the continued operations of the utility.

Based on the foregoing, we find that the transfer of Certificate No. 513-W from Lucky Hills to Wellaquia is in the public interest and it is approved. The territory which Wellaquia is authorized to serve is described in Attachment A of this Order, which by reference is incorporated herein. Wellaquia shall return Certificate No. 513-W to this Commission within 20 days of the date of this order for entry reflecting the change in ownership. In addition, Wellaquia shall repair or replace the fence surrounding the water treatment facility within 60 days of the effective date of this Order.

Rate Base

According to the application, the net book value of the system being transferred was established as of the last rate case, Docket No. 920961-WU. An audit of the books and records of the utility was conducted in that Docket to determine rate base (net book value) as of October 31, 1992. According to Order No. PSC-93-0741-FOF-WU, issued on May 14, 1993, in that docket, rate base was found to be \$26,401. No additions or changes to the plant assets have occurred since the evaluation was performed two years ago.

Rate base is, therefore, found to be \$26,401 for the water system as of date of the transfer, March 4, 1994. Our calculation of rate base is shown on Schedule No. 1.

In determining rate base, consideration is given to the inclusion of an acquisition adjustment. An acquisition adjustment results when the purchase price differs from the original cost calculation. It is Commission practice that in the absence of extraordinary circumstances the purchase of a utility system at a premium or discount shall not affect the rate base calculation. The circumstances in this exchange do not appear to be extraordinary, nor has the utility requested an acquisition adjustment. Therefore, a negative acquisition adjustment has not been included in the calculation of rate base.

The rate base calculation is used purely to establish the net book value of the property being transferred. It does not include the normal ratemaking adjustments of working capital calculations and used and useful adjustments.

Rates and Charges

Lucky Hills' current rates and charges became effective on July 1, 1993, pursuant to Order No. PSC-93-0741-FOF-WU issued in Docket No. 920961-WU. 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 this Commission.

Wellaqua has not requested a change in the rates and charges of the utility and we see no reason to change them at this time. Wellaqua shall continue to charge the rates and charges approved in Lucky Hills' tariff until authorized to change by this Commission in a subsequent proceeding. Wellaqua has filed revised tariff sheets reflecting the change in ownership. The rates and charges shall be effective for service rendered or connections made on or after the stamped approval date on the tariff sheets.

It is, therefore,

ORDERED by the Florida Public Service Commission that the transfer of Certificate No. 513-W from Lucky Hills, Inc., 6579 West Oaklawn Street, Post Office Box 1522, Homosassa Springs, Florida 34447, to Wellaqua Company, 244 South Camellia Avenue, Crystal River, Florida 34429, is hereby approved. Wellaqua Company shall return Certificate No. 513-W to this Commission within 20 days of the date of this Order for entry reflecting the change in ownership. It is further

ORDERED that Wellaqua Company shall repair or replace the fence around the water treatment facility within 60 days of the effective date of this Order. it is further

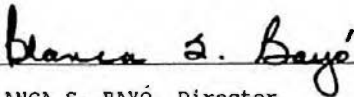
ORDERED that rate base, for purposes of the transfer reflecting net book value, is \$26,401. It is further

ORDERED that Wellaqua Company shall continue to charge the rates and charges approved in the utility's tariff until authorized to change by this Commission in a subsequent proceeding. The rates and charges shall be effective for service rendered or connections made on or after the stamped approval date on the tariff sheets. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective unless an appropriate petition, in the form provided by Rule 25-22.036, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on the date set forth in the "Notice of Further Proceedings or Judicial Review" attached hereto. It is further

ORDERED that in the event this Order becomes final, this Docket should be closed.

By ORDER of the Florida Public Service Commission, this 28th
day of March, 1995.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

ALC

Commissioner J. Terry Deason dissented on the exclusion of a
negative acquisition adjustment from the calculation of rate base.

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.

As identified in the body of this order; our action
establishing rate base for purposes of the transfer is preliminary
in nature and will not become effective or final, except as
provided by Rule 25-22.029, Florida Administrative Code. Any
person whose substantial interests are affected by the action
proposed by this order may file a petition for a formal proceeding,
as provided by Rule 25-22.029(4), Florida Administrative Code, in

the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on April 18, 1995. In the absence of such a petition, this order shall become effective on the date subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If the relevant portion of this order becomes final and effective on the date described above, any party adversely affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or wastewater 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 of the effective date 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.

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 wastewater 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

WELLAQUA CO.

CITRUS COUNTY

THE LUCKY HILLS ESTATES SUBDIVISION

Township 19 South, Range 17 East, Section 36

The East 1/2 of the Southwest 1/4 of the Northeast 1/4 of the Northwest 1/4 less the East 166 feet of the North 241 feet thereof, and the Southeast 1/4 of the Northwest 1/4.

SCHEDULE NO. 1

WELLAQUA CO.

SCHEDULE OF WATER RATE BASE

As of October 31, 1992

<u>DESCRIPTION</u>	<u>BALANCE PER UTILITY</u>	<u>COMMISSION ADJUSTMENTS</u>	<u>BALANCE PER COMMISSION</u>
Utility Plant in Service	\$43,455	\$ 0	\$43,455
Land	447	0	447
Accumulated Depreciation	(13,240)	0	(13,240)
Contributions-in- aid-of-Construction	(7,400)	0	(7,400)
CIAC Amortization	<u>1,988</u>	<u>0</u>	<u>1,988</u>
TOTAL	<u>\$26,401</u>	<u>(0)</u>	<u>\$26,401</u>