

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application For Transfer) DOCKET NO. 950781-SU
of Majority Organizational) ORDER NO. PSC-96-0770-FOF-SU
Control of Sun Coast Investment) ISSUED: June 17, 1996
Group, Ltd. and Change of Name)
on Certificate No. 298-S From)
North Trail Utilities to Chateau)
Communities, Inc. in Lee 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, CHANGE OF NAME ON
CERTIFICATE NO. 298-S

AND

NOTICE OF PROPOSED AGENCY ACTION
ORDER SETTING RATE BASE

BY THE COMMISSION:

NOTICE IS HEREBY GIVEN by the Florida Public Service Commission that the action discussed herein is final except for the setting of rate base, which is preliminary in nature and which 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 July 7, 1995, Chateau Properties, Inc. (Chateau) filed an application on behalf of North Trail Utilities (North Trail or utility) for approval of the transfer of Certificate No. 298-S to Chateau. The utility is owned by Sun Coast Investment Group, Ltd. (Sun Coast). North Trail is the fictitious name under which Sun Coast chose to operate the utility. To eliminate confusion, North Trail is synonymous with Sun Coast in the body of this order.

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FPSC-RECORDS/REPORTING

Although Chateau requested approval of the transfer of Certificate 298-S from Sun Coast to Chateau, upon review of the application, it was determined that the transfer is more accurately a transfer of majority organizational control because it was accomplished through a form of stock exchange. Prior to the transfer, Sun Coast was comprised of individual partners. After the transfer, Sun Coast is 1 percent owned by Chateau, as the general partner, and 99 percent owned by CP, Ltd, as the limited partner. Chateau also owns 40.8342 percent interest in CP, Ltd.

As originally filed, the application requested that the name on Certificate No. 298-S remain North Trail. However, since North Trail is not registered with the Secretary of State's office as a fictitious name, a supplemental motion was filed to change the name on the certificate to Chateau Properties, Inc. When that name was found to be unavailable, Chateau filed an amended supplemental motion requesting that the name be changed to Chateau Communities, Inc.

Chateau also requested a waiver of Rule 25-30.030(6), Florida Administrative Code, which requires that notice of a filing be given to customers of the utility no more than 21 days before the application is filed or no later than 7 days after. Chateau noticed the customers 22 days prior to filing the application for transfer.

The transfer occurred in October of 1994. The application for approval of the transfer was not filed until July 7, 1995. Since the transfer occurred prior to Commission approval, North Trail is in apparent violation of Section 367.071, Florida Statutes.

Show Cause

As stated previously, Sun Coast is in apparent violation of Section 367.071, Florida Statutes, which states, in part, "No utility shall sell, assign, or transfer . . . majority organizational control without determination and approval of the Commission that the proposed . . . transfer is in the public interest . . ." Majority organizational control was transferred from Sun Coast to Chateau in October of 1994. The application for Commission approval of the transfer was filed in July of 1995. Such action is "willful" in the sense intended by Section 367.161, Florida Statutes. Section 367.161, Florida Statutes, authorizes the Commission to assess a penalty of not more than \$5,000 for each offense, if a utility is found to have knowingly refused to comply with, or to have willfully violated any provision of Chapter 367, 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 Sun Coast to obtain Commission approval prior to the transfer appears to be due to lack of knowledge of the statutes and Commission's rules. Sun Coast first became aware of the necessity to obtain approval of the transfer early in 1995, when it was preparing the 1994 annual report. The utility immediately contacted the Commission and filed an application for approval of the transfer shortly thereafter.

Although regulated utilities are charged with knowledge of Chapter 367, Florida Statutes, we does not believe that the violation of Section 367.071, Florida Statutes, rises in these circumstances to the level of warranting initiation of show cause proceedings. Even though utilities are required to obtain approval from the Commission prior to a transfer, Sun Coast filed the application for approval of the transfer shortly after becoming aware of the requirement. Therefore, we will not order Sun Coast to show cause for failing to obtain the approval of the Commission prior to the transfer.

Application

Except as discussed previously, the application is in compliance with Section 367.071, Florida Statutes, and Rule 25-30.037, Florida Administrative Code, and other pertinent statutes and rules. In particular, the application contains a filing fee in the amount of \$1,500, pursuant to Rule 25-30.020(2)(c), Florida Administrative Code. Chateau also provided evidence that the utility owns the land upon which its facilities are located, as required by Rule 25-30.037(3)(i), Florida Administrative Code.

Chateau provided proof of compliance with the noticing provisions of Rule 25-30.030, Florida Administrative Code, with the exception of the notice to the customers. Rule 25-30.030(6), Florida Administrative Code, requires notice to be given to the customers no more than 21 days before or 7 days after the application is filed. Notice to the customers was mailed 22 days prior to the filing of the application. Failure of Chateau to timely notice the customers is discussed later in this order.

According to the application, Chateau was reorganized and incorporated in Maryland in 1993 as a result of the merger of three companies. The largest of these companies was the original Chateau, a Michigan co-partnership formed in 1966. At the time of the filing, Chateau operated eight other systems in Florida and Michigan. Sun Coast is the only system in Florida holding a certificate from the Commission.

Sun Coast is a limited partnership formed to develop and manage Phase I of Del Tura Country Club, which is a manufactured housing community. The general partners of Sun Coast were also the general partners of Euromerican Investment Group, Ltd., which was formed to develop Phase II of Del Tura Country Club. Chateau and CP Ltd. purchased control of both phases of Del Tura Country Club.

The purchase price of Del Tura Country Club was \$49,500,000, less certain liabilities. Up to two-thirds of the purchase was financed by the issuance of OP Units; the balance was paid for in cash. OP Units are units of partnership interest, which are the equivalent of stock shares in a corporation.

Based on the foregoing, we find the transfer of majority organizational control from Sun Coast to Chateau is in the public interest and it is approved. Chateau has returned Certificate No. 298-S to the Commission for entry reflecting the change in ownership.

Rule Waiver

Pursuant to Rule 25-30.030, Florida Administrative Code, a utility applying for a certificate, extension or deletion of service area, or transfer must provide notice of the action to other utilities in the county, governmental entities and the customers, if any. Notice must also be given in a newspaper of general circulation within the territory. Publication of the notice was timely and notice to governmental agencies and other utilities in the county was appropriately given. However, notice to the customers was not given in compliance with the requirements set forth in Rule 25-30.030(6), Florida Administrative Code.

Rule 25-30.030(6), Florida Administrative Code, requires that notice be given to the customers of the utility no more than 21 days before the application is filed and no later than 7 days after. Chateau notified the customers on or about June 15, 1995, 22 days prior to the filing of the application on July 7, 1995. By sending the notice on the 15th, the customers received adequate notice; however, as a result, the application was filed one day late.

Because the utility's actions constituted harmless error and no customers were harmed, we find it appropriate to grant Chateau's request for waiver of the requirements of Rule 25-30.030(6), Florida Administrative Code.

Rate Base

The Commission has traditionally established rate base at the time of a sale, assignment, or transfer of certificate because the purchase price of the utility is part of determining whether the transfer is in the public interest. The Commission has not, however, traditionally established rate base for transfers of majority control because the purchase is usually accomplished by the transfer of stock. North Trail's last rate base, \$595,190, was established by Order No. 18132, issued on September 8, 1987, in Docket No. 861643-SU.

Since the application was filed in the instant docket as a transfer of ownership, the Commission staff requested and received an evaluation of rate base pursuant to Audit Service Request (ASR) No. 95-226-4-1. Because an audit has been conducted and since the transfer has proven to be complex, we will establish rate base as of the date of transfer.

Using only the utility's books, the utility's adjusted rate base would be \$851,546. However, the audit found that the utility's books did not reconcile with the annual reports and there was a duplicate entry in the 1988 books. In addition, the utility could not provide invoices to support the addition of \$237,647 in new collection lines. These entries caused an additional \$673,173 in accumulated depreciation to be booked. Removing \$237,647 in unsupported plant and adding back \$673,173 in accumulated depreciation results in a combined rate base adjustment of \$435,526.

It should be noted that no contributions-in-aid-of-construction (CIAC) is included in rate base because the lot sites are leased to the residents of Del Tura. All land development, including wastewater costs, are capitalized as assets.

Based on the foregoing, rate base for the utility is found to be \$1,287,072, as of October 31, 1994, the date of transfer. Our calculation of rate base is shown on Attachment A of this order, which by reference is incorporated herein.

The calculation of rate base is used purely to establish the net book value of the property being transferred. The calculations

do not include the normal ratemaking adjustments of working capital calculations and used and useful adjustments.

Acquisition Adjustment

An acquisition adjustment results when the purchase price differs from the original cost calculation. An acquisition adjustment cannot be calculated in this instance because the purchase price of the utility cannot be distinguished from the total acquisition of the withdrawing partners' interest in the Del Tura community development. In addition, the value placed on OP units by the partners for purposes of the transfer has no regulatory relationship to the utility's rate base. Therefore, no acquisition adjustment is included in the rate base calculation.

Rates and Charges

The utility's rates and charges were last reviewed in a staff assisted rate case, Docket No. 861643-SU. At that time, the wastewater rates were increased and miscellaneous service charges were set by Order No. 18132, issued on September 8, 1987. The utility's current rates and charges became effective July 31, 1995, pursuant to a 1995 price index rate adjustment.

Rule 25-9.044(1), Florida Administrative Code, requires the new owner to adopt and use the rates, classification and regulations of the former operating company unless authorized to change by this Commission. Chateau has not requested to change the rates and charges and we see no reason to change them at this time. Chateau 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. Chateau has filed a tariff reflecting the change in ownership. The tariff shall be effective for services rendered or connections made on or after the stamped approval date on the tariff sheets.

Name Change

Originally, the application requested that the name on Certificate No. 298-S remain unchanged. During the discovery process, Chateau was informed that North Trail was not recorded with the Secretary of State as a fictitious name. On March 27, 1996, a supplemental motion was filed to change the name on the certificate to Chateau Properties, Inc. However, the name, Chateau Properties, Inc., was already taken by another entity in the State of Florida. On May 3, 1996, Chateau filed an amended supplemental motion to change the name of the utility to Chateau Communities, Inc. This is the name under which the general partner, Chateau

Properties, Inc., is now recorded to do business in the State of Florida.

Chateau has provided a copy of its proposed notice to be sent to the customers of the utility informing them of the change in the utility name. The proposed notice is approved, and it shall be provided to the customers upon receipt of this order.

Based on the foregoing, we find that the request to change the name of the utility from North Trail to Chateau is in the public interest and it is approved. Chateau has provided a revised tariff reflecting the new name of the utility. The name shall be effective for service rendered and 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 majority organizational control of Sun Coast Investment Group, Ltd., to Chateau Communities, Inc., 14205 East Colonial Drive, Orlando, Florida 32826, is hereby approved. It is further

ORDERED that Chateau Properties, Inc.'s request to waive the provisions of Rule 25-30.030(6), Florida Administrative Code, is hereby granted. It is further

ORDERED that rate base for North Trail Utilities is \$1,287,072 as of October 31, 1994, the date of transfer. It is further

ORDERED that Chateau Communities, Inc. shall continue to charge the rates and charges approved in North Trail Utilities' tariff until authorized to change by this Commission in a subsequent proceeding. It is further

ORDERED that Chateau Properties, Inc.'s request to change the name on Certificate No. 298-S from North Trail Utilities to Chateau Communities, Inc. is hereby granted. The name change shall be effective for service rendered or connections made on or after the stamped approval date on the tariff sheets. It is further

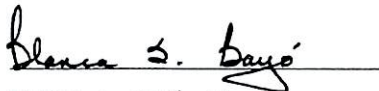
ORDERED that the proposed notice of the name change to be sent the customers is hereby approved. The notice shall be sent to the customers upon receipt of this Order. It is further

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, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, 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 shall be closed.

By ORDER of the Florida Public Service Commission, this 17th day of June, 1996.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

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ALC

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 setting rate base 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 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on July 8, 1996. 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.

ATTACHMENT A

NORTH TRAIL UTILITIES

SCHEDULE OF WASTEWATER RATE BASE

As of October 31, 1994

<u>DESCRIPTION</u>	<u>BALANCE PER UTILITY BOOKS</u>	<u>COMMISSION ADJUSTMENTS</u>	<u>BALANCE PER COMMISSION</u>
Utility Plant in Service	\$ 1,997,837	\$ (237,647)	\$ 1,760,190
Land	16,685		16,685
Accumulated Depreciation	(1,162,976)	637,173	(489,803)
Contributions-in- aid-of-construction	0	0	0
CICA Amortization	<u>0</u>	<u>0</u>	<u>0</u>
TOTAL	<u>\$ 851,546</u>	<u>\$ 435,526</u>	<u>\$ 1,287,072</u>