

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for transfer) DOCKET NO. 961015-WS
of Certificates Nos. 378-W and) ORDER NO. PSC-97-0583-FOF-WS
325-S in Marion County to Civic) ISSUED: May 21, 1997
Association of Rio Vista)
Utilities, Inc. by Astor West,)
Inc.)

The following Commissioners participated in the disposition of this matter:

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

ORDER FINDING NO SHOW CAUSE REQUIRED,
APPROVING TRANSFER, CANCELLING CERTIFICATES, AND
CLOSING DOCKET

BY THE COMMISSION:

Background

Astor West, Inc. (Astor West, Seller, or utility) is a Class C utility which provides water and wastewater service in Marion County. The utility provides service to the Rio Vista, Rio Vista First Edition, Rio Vista Estates, and Glenwood Subdivisions. According to the utility's 1995 Annual Report, it serves 201 water customers and 40 wastewater customers. In 1995, the utility had annual operating revenues of \$33,311 for water and \$12,082 for wastewater. The net operating income was \$1,219 and \$696 for water and wastewater, respectively.

On September 3, 1996, Astor West filed an application to transfer Certificates Nos. 378-W and 325-S from Astor West to Civic Association of Rio Vista Utilities, Inc. (Rio Vista or Buyer.) The utility's application was found to be deficient. The deficiencies were corrected on February 28, 1997.

Rio Vista is a non-profit corporation which was formed by the homeowners for the purpose of owning and operating the Astor West water and wastewater systems. Rio Vista plans to operate the utility as a non-profit association, exempt from Commission

DOCUMENT NUMBER-DATE

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regulation pursuant to Section 367.022(7), Florida Statutes. The application states that the transfer is in the public interest because the sole officer and shareholder of the utility no longer has the desire nor resources to operate the facility. The Buyer is eager and willing to assume all responsibility and operation of the utility. Further, the Buyer is committed to, and has the resources available, to make all necessary repairs to the system as may from time to time be required.

Show Cause

Section 367.031, Florida Statutes, requires each utility subject to the Commission's jurisdiction to obtain a certificate of authorization. Section 367.071(1), Florida Statutes, states, in part, that no utility may sell, assign, or transfer its certificate of authorization, facilities or any portion thereof, or majority organizational control without prior determination and approval of the Commission that the buyer will fulfill the commitments, obligations, and representations of the utility. Section 367.161(1), 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.

Upon review of the transfer application, we discovered that the transfer from Astor West to Rio Vista occurred on July 31, 1996 without prior approval of the Commission. The application for approval of the transfer was not filed until September 3, 1996. This is an apparent violation of Section 367.071, Florida Statutes.

Utilities are charged with the knowledge of the Commission's rules and statutes. Additionally, "[i]t is a common maxim, familiar to all minds that 'ignorance of the law' will not excuse any person, either civilly or criminally." Barlow v. United States, 32 U.S. 404, 411 (1833). Thus, any intentional act, such as the utility's failure to obtain antecedent Commission approval to transfer the majority organizational control of its corporate grandparent, would meet the standard for a "willful violation." 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 "'willful' implies an intent to do an act, and this is distinct from an intent to violate a statute or rule." Id. at 6.

There are, however, circumstances detailed in the application which appear to mitigate the utility's apparent violation of Section 367.071(1), Florida Statutes. The seller obtained ownership of the utility, effective September 30, 1994, through a court-mediated settlement agreement on the estate of the seller's husband. On July 3, 1996, the seller and buyer entered into a contract for sale and purchase of the utility. The utility continued to be operated through the estate of the seller's husband by persons unfamiliar with Chapter 367, Florida Statutes, and the requirement that the Commission must approve all transfers of regulated utilities prior to transfer. After being so informed by the Commission, the parties amended their contract to include a statement that the contract was subject to approval by the Commission pursuant to Section 367.071, Florida Statutes. The utility subsequently filed the appropriate application on September 3, 1996.

Although regulated utilities are charged with knowledge of Chapter 367, Florida Statutes, we do not believe that the violation of Section 367.071, Florida Statutes, in this circumstance, rises to the level of warranting initiation of show cause proceedings. First, the utility tried to comply with the statute by filing the appropriate application as soon as it was made aware of the need to do so. Second, since the transfer resulted in the utility being placed under the control of the customers, there was no harm to the customers as a result of the unauthorized transfer. Therefore, Astor West shall not be required to show cause for failing to obtain approval from the Commission prior to the transfer of the utility to Rio Vista.

Application

As stated previously, Rio Vista is a non-profit corporation that was formed by the homeowners for the purpose of owning and operating the Astor West utility facilities. Section 367.022(7), Florida Statutes, requires that a non-profit entity, to meet the requirements for exemption, provide service solely to its members who own and control it. The Commission, however, no longer makes determinations of exemption because Section 367.022(7), Florida Statutes, is now self-executing. After review of Rio Vista's Articles of Incorporation and By-Laws, we are satisfied that Rio Vista would meet the requirements of Section 367.022(7), Florida Statutes.

The application is in compliance with the governing statute, Section 367.071, Florida Statutes, and other pertinent statutes and administrative rules concerning an application for transfer of certificates. The application contains a check in the amount of

\$1,500, which is the correct filing fee pursuant to Rule 25-30.020, Florida Administrative Code. Also, the applicant has provided evidence that the utility owns the land upon which the utility's facilities are located as required by Rule 25-30.037(2)(q), Florida Administrative Code.

The application contains proof of compliance with the noticing provisions set forth in Rule 25-30.030, Florida Administrative Code, including notice to the customers of the system to be transferred. No objections to the notice of application have been received and the time for filing such has expired.

Regarding the buyer's technical ability to operate the system, the application states that although the buyer has minimal experience in water and/or wastewater utility operations, the buyer intends to continue using the services of Enviro-Masters Water and Wastewater Services, Inc. to manage the overall operation of the utility. Enviro-Masters owns several utilities, and has been responsible for the operation of Astor West's facilities since 1994. The application states that the facilities appear to be in satisfactory condition and in compliance with all applicable standards set by the Florida Department of Environmental Protection (DEP), with the exception of three needed repairs listed in a DEP letter dated June 21, 1996. However, we have been subsequently informed that the repairs have been made by the buyer.

Regarding the buyer's financial ability, the application states that the buyer is committed to, and has the resources available, to make all necessary repairs to the system as may from time to time be required. We have reviewed the financial statements of the buyer, and we believe the buyer has the overall financial ability to continue operating the utility.

The application contains a copy of the contract for sale and purchase, which includes the purchase price and a list of the assets purchased. According to the contract, the purchase price for the utility land and facilities is \$60,000. According to a utility representative, there were no customer deposits at the time of transfer. Also, the seller will be responsible for any regulatory assessment fees owed through July 31, 1996, and the buyer will be responsible from August 1, 1996 through the date the certificates are cancelled.

Rate base for transfer purposes is not generally set in a case where the transfer is to an entity which will not be regulated by the Commission. However, for informational purposes, the Commission last established the utility's rate base in Docket No. 931056-WS, which was a staff-assisted rate case. By Order No. PSC-

ORDER NO. PSC-97-0583-FOF-WS
DOCKET NO. 961015-WS
PAGE 5

94-0744-FOF-WS, issued June 16, 1994, rate base was established as \$34,530 for water and \$30,662 for wastewater, as of December 31, 1993.

Similarly, we do not generally make a determination regarding the rates and charges of the utility in cases where the transfer is to a non-regulated entity. However, for informational purposes, we were informed that Rio Vista plans to continue charging the approved rates and charges of Astor West at this time.

Based on the above, we believe the transfer of Water Certificate No. 378-W and Wastewater Certificate No. 325-S from Astor West, Inc. to Civic Association of Rio Vista, Inc. is in the public interest and is hereby approved. Further, since it appears that Rio Vista would satisfy the requirements for exemption pursuant to Section 367.022(7), Florida Statutes, Water Certificate No. 378-W and Wastewater Certificate No. 325-S are hereby cancelled.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Astor West, Inc. shall not be required to show cause for failing to obtain prior Commission approval of the transfer. It is further

ORDERED that the transfer of Astor West, Inc., 613 SE Fort King Street, Ocala, Florida 34471 to the Civic Association of Rio Vista Utilities, Inc., 18721 SW 108th Street, Dunnellon, Florida 34432, is hereby approved. It is further

ORDERED that Water Certificate No. 378-W and Wastewater Certificate No. 325-S are hereby cancelled. It is further

ORDERED that this docket is hereby closed.

ORDER NO. PSC-97-0583-FOF-WS
DOCKET NO. 961015-WS
PAGE 6

By ORDER of the Florida Public Service Commission, this 21st
day of May, 1997.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

by: Kay Hegan
Chief, Bureau of Records

(S E A L)

DCW

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), 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, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, 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 and/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.