

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for transfer  
of Certificate No. 369-S in Lee  
County from Eagle Ridge  
Utilities, Inc. to Utilities,  
Inc. of Eagle Ridge.

DOCKET NO. 951008-SU  
ORDER NO. PSC-98-0514-FOF-SU  
ISSUED: April 15, 1998

The following Commissioners participated in the disposition of  
this matter:

JULIA L. JOHNSON, Chairman  
J. TERRY DEASON  
SUSAN F. CLARK  
JOE GARCIA  
E. LEON JACOBS, JR.

ORDER APPROVING TRANSFER, DECLINING TO INITIATE SHOW CAUSE  
PROCEEDINGS, APPROVING CONTINUATION OF RATES  
AND  
NOTICE OF PROPOSED AGENCY ACTION ORDER ESTABLISHING  
RATE BASE FOR PURPOSES OF THE TRANSFER AND DECISION  
NOT TO INCLUDE A POSITIVE ACQUISITION ADJUSTMENT  
IN THE CALCULATION OF RATE BASE

BY THE COMMISSION:

NOTICE IS HEREBY GIVEN by the Florida Public Service  
Commission that the establishment of rate base for purposes of the  
transfer, and our decision not to include a positive acquisition  
adjustment in the calculation of rate base, are preliminary in  
nature and will become final unless a person whose interests are  
substantially affected files a petition for a formal hearing,  
pursuant to Rule 25-22.029, Florida Administrative Code.

BACKGROUND

Eagle Ridge Utilities, Inc. (Eagle Ridge or Utility), is a  
Class B wastewater utility which was organized in April of 1984 to  
provide wastewater service to a golf course and tennis club  
community near Fort Myers, Florida, known as the Eagle Ridge  
development. Water service is provided by Lee County. Eagle Ridge  
serves approximately 714 residential, 51 multifamily general

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FILED IN THE OFFICE OF THE CLERK

service and 12 commercial accounts. The utility's 1996 annual report on file with the Commission lists \$374,953 in operating revenues with a net operating income of \$15,030.

The utility was granted Certificate No. 369-S by Order No. 14133, issued February 27, 1985, in Docket No. 840320-SU. Until the instant docket, there have been no filings affecting Eagle Ridge's certificate or territory subsequent to the granting of the original certificate of authorization. On August 24, 1995, Mr. Lawrence N. Schumacher, President of Utilities, Inc. (UI), submitted an application for the transfer of Certificate No. 369-S from Eagle Ridge to Utilities Inc. of Eagle Ridge (UIER). UIER was incorporated on August 3, 1995, in the state of Florida and is a wholly-owned subsidiary of UI. UI, in turn, is an Illinois Corporation which owns and operates a number of utilities in Florida and throughout the rest of the United States.

On April 18, 1996, staff submitted a recommendation in this docket for our vote at the April 30, 1996, agenda conference. The item was deferred upon the request of the buyer due to a dispute between the buyer and the seller regarding an environmental concern. On December 9, 1997, we received a copy of the parties' Settlement Agreement in the matter which was executed on December 5, 1997. Pursuant to this Settlement Agreement, Eagle Ridge transferred operational control of its facilities to UIER as of December 8, 1997. This is an apparent violation of Section 367.071, Florida Statutes. However, according to the provisions of the Settlement Agreement, the transfer transaction is subject to approval by the Commission. The closing date is intended to take place within twenty (20) days from the date the transfer is approved by the Commission.

#### SHOW CAUSE

As stated above, Eagle Ridge is in apparent violation of Sections 367.071, Florida Statutes, which states, in part, "No utility shall . . . assign, or transfer its . . . facilities or any portion thereof . . . without determination and approval of the commission that the proposed sale, assignment, or transfer is in the public interest." Eagle Ridge and UIER entered into a Settlement Agreement on December 5, 1997, whereby UIER gained operational control of the facilities of the utility as of December 8, 1997. UIER has been operating the system providing water and wastewater service to customers of the utility since that time.

Such action is "willful" in the sense intended by Section 367.161, Florida Statutes. Section 367.161, Florida Statutes, authorizes us 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., this 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.

Eagle Ridge failed to obtain our approval before entering into the Settlement Agreement and turning the system over to UIER to operate. However, the Settlement Agreement does make the closing of the sale contingent upon our approval of the sale and issuance of certificates to UIER. Failure of Eagle Ridge to obtain our prior approval appears to be due to its belief that because the sale had not closed, it was not in violation of Section 367.071, Florida Statutes.

Our staff has reviewed the application and the sales agreement and, although UIER has been operating the utility since December 8, 1997, closing of the sale is conditioned upon our approval. Therefore, we do not believe that the apparent violation of Section 367.071, Florida Statutes, rises in these circumstances to the level of warranting initiation of show cause proceedings. Therefore, Eagle Ridge shall not be ordered to show cause for failing to obtain our approval prior to the transfer of the facilities to UIER.

#### APPLICATION FOR TRANSFER OF CERTIFICATE

The application is in compliance with Section 367.071, Florida Statutes, regarding the sale, assignment, or transfer of a certificate of authorization. The application contained the appropriate filing fee pursuant to Rule 25-30.020, Florida Administrative Code, and evidence of compliance with the noticing provisions set forth in Rule 25-30.030, Florida Administrative Code. No objections to the notice of transfer have been received and the time for filing such has expired.

As required by Rule 25-30.037(2)(g), Florida Administrative Code, the application was accompanied by the original Purchase Agreement executed July 30, 1995. A copy of the later replacement Settlement Agreement, executed on December 5, 1997, was also furnished. According to the Settlement Agreement, the modified purchase price is \$450,000 of which \$50,000 was a prepaid down payment with the balance of \$400,000 being held in a jointly established, interest-bearing account until our approval of the transfer. The buyer is also required to reimburse the seller for \$25,000 in engineering fees incurred in the interim between the original Purchase Agreement and the final Settlement Agreement. Since the transfer is a cash transaction, the buyer is not relying on any entities, other than itself, to finance the purchase.

As further required by Rules 25-30.037(2)(g) and (h), Florida Administrative Code, exhibits to the Settlement Agreement contained an inventory of the assets purchased showing the installation or construction costs. The facilities acquired by the purchaser include all wastewater utility assets, public service certificates, licenses, easements, equipment, personal property and real estate owned by the seller as of July 30, 1995, together with all subsequently acquired real and personal property owned by the seller up to the closing date. The exhibits also contained a copy of all contracts or obligations of any nature made by the seller involving an expenditure in excess of \$10,000, including all developer agreements relating to the utility.

Pursuant to Rule 25-30.037(2)(g), Florida Administrative Code, the application must also provide evidence that the utility owns, or will continue to have use of, the land upon which the utility facilities are located. Since the closing is not intended to occur until after our approval, title to the land will not be conveyed until then. Customer deposits, together with any accrued interest, are also intended to be transferred from the seller to the buyer at the time of the closing.

The Settlement Agreement provided for the purchaser (UIER) to take possession and operating control of the utility facilities during the period after the execution of the Settlement Agreement until the final closing. The seller was to take all actions necessary to facilitate the changeover to UIER by December 8, 1997, including making available the seller's books and records and tax returns. During the interim operating period, the purchaser is to bear all expenses and realize all income associated with the operations of the utility facilities.

Although, Eagle Ridge ceased operating the utility facilities on December 8, 1997, pursuant to Section 367.071, Florida Statutes, the transferor remains liable for any outstanding regulatory assessment fees, fines, or refunds of the utility incurred through the date the transfer is approved. Also pursuant to Rule 25-30.110(3), Florida Administrative Code, the utility shall file annual reports through the date the transfer is approved. However, according to the provisions of the Settlement Agreement which transferred operational control of the utility facilities to UIER as of December 8, 1997, staff believes that Eagle Ridge should be responsible for regulatory assessment fees and the annual report up to December 8, 1997, and UIER should be responsible from that date forward. Our staff has verified that the utility's regulatory assessment fees are current and there are no outstanding assessment fees, fines or refunds owed.

Pursuant to Rule 25-30.037(2)(p), Florida Administrative Code, exhibits to the Settlement Agreement also included all correspondence and documents with regard to environmental compliance and permits. Our staff has confirmed with the Florida Department of Environmental Protection (FDEP) that the utility is currently in satisfactory environmental condition and in compliance with all applicable departmental standards. The FDEP issued the utility a new wastewater permit on January 15, 1998.

As required by Rule 25-30.037(2)(j), Florida Administrative Code, the buyer furnished a statement indicating how the transfer is in the public interest, including a summary of its experience with wastewater utility operations and its financial ability to provide service. According to the statement, UI has 30 years of experience in the water and wastewater utility industry. UI was first formed in 1965 to acquire small water and wastewater companies which are typically troubled and undercapitalized. UI states it focuses solely on the ownership, operation and improvement of such small utility systems. By centralizing management, accounting, billing and data processing functions, UI claims it is able to achieve economies of scale unattainable on a stand-alone basis. UI currently provides water and wastewater service to approximately 140,000 customers in 13 states including several utilities under our regulation. UI claims its technical and financial ability are demonstrated by the fact that its existing Florida subsidiaries are all in good standing with the Commission. Finally, the provisions explicit in the Settlement Agreement attest that UI intends to fulfill the commitments,

obligations and representations of the seller with regard to utility matters.

For all of the above reasons, we find that the transfer of Certificate No. 369-S from Eagle Ridge Utilities, Inc., to Utilities, Inc. of Eagle Ridge is in the public interest and shall be approved. The territory to be transferred is appended to this Order as Attachment A. Further, pursuant to the Settlement Agreement, Eagle Ridge shall be responsible for paying the regulatory assessment fees and filing of the annual report up to December 8, 1997, and UIER should be responsible from that date forward.

#### RATE BASE

Rate base for the utility was originally established by Order No. 14133, issued February 27, 1985, in Docket No. 840320-SU. After receiving the application for transfer in August of 1995, staff requested an audit of the utility's books and records to determine rate base at the time of the transfer. Our auditors analyzed plant through December 31, 1994, and determined that the utility's books and records were being maintained in substantial compliance with Commission directives.

As stated above, at the request of UIER, we deferred consideration of our staff's recommendation on the transfer from the April 30, 1996, agenda conference, until notification of the final Settlement Agreement in December of 1997. In considering whether or not to incur the additional delay and cost of another audit of the utility's books, our staff examined the additions to utility plant in service listed in the utility's 1995 and 1996 annual reports. The reports identified a cumulative \$221,030 increase in utility plant account number 101-105 from the utility's unadjusted 1994 annual report. The resulting change to the utility's rate base is a negative \$2,736 due to accumulated depreciation and contributions-in-aid-of-construction (CIAC).

Since changes to utility plant are identified in the utility's annual reports and do not have an appreciable net effect on its rate base, our staff did not initiate a second audit. The determination of rate base at the time of transfer is used as a tool in the calculation of any potential acquisition adjustment. It is not used in the calculation of rates, as is a rate base established in a rate case, because it does not include used and

useful adjustments or net working capital. In this case, UIER did not request an acquisition adjustment in its original petition.

In the audit conducted in 1995, there were four disclosures but no exceptions. Three of the disclosures were considered to be for information purposes and did not impact on rate base or the transfer of the utility. However, Audit Disclosure Four does have a slight impact on rate base. The audit stated that, in addition to CIAC, the company had included cash advances totaling \$3,286 in the calculation of amortization of CIAC. The utility responded that, since 1988, it has not classified advance developer agreements in the calculation of amortization of CIAC. Instead, the utility holds cash advances in a "wash" account that is trued up as the developer performs the agreed-upon work. Consequently, the utility believes the audit incorrectly included three advances in the amount of \$3,286 in the calculation of amortization of CIAC and that net book value of the utility as of December 31, 1994, is \$142,329. Our audit staff responded that they merely reflected what was found on the utility books. For purposes of setting rate base at the time of transfer, staff has followed the audit report and included the cash advances in the calculation of amortization of CIAC.

In summary, the company's records are being maintained in a manner consistent with our directives. Based on the above, rate base for transfer purposes shall be set as of December 31, 1994, at \$139,043, as shown on Schedule No. 1. Again, this rate base calculation is used purely to establish the approximate net book value of the system being transferred for the purpose of a potential acquisition adjustment and does not include the normal ratemaking calculations of working capital and used and useful adjustments.

ACQUISITION ADJUSTMENT

An acquisition adjustment results when the purchase price differs from the original cost calculation. The acquisition adjustment resulting from this transfer is calculated as follows:

Purchase Price	\$450,000
Staff Calculated Rate Base	<u>\$139,043</u>
Positive Acquisition Adjustment	<u>\$310,957</u>

It should be noted that rate base was calculated only up to December 31, 1994. We are aware that the utility has made additional plant investments since then, but they do not appear to appreciably affect the magnitude of the positive adjustment. In any case, in the absence of extraordinary circumstances, a subsequent purchase of a utility system at a premium or discount should not affect the rate base calculation. The circumstances in this exchange do not appear to be extraordinary and UIER has not requested a positive adjustment. UIER states that it anticipates that growth in the utility will eventually ameliorate the impact of the difference between the purchase price and rate base. Therefore, we find that no acquisition adjustment is warranted and no acquisition is approved.

RATES AND CHARGES

The utility's rates and charges were approved pursuant to Order No. 14133, issued February 27, 1985, in Docket No. 840320-SU when the utility was granted its original certificate. The rates have been most recently indexed in 1997. Rule 25-9.044(1), F.A.C., provides that:

In case of change of ownership or control of a utility which places the operation under a different or new utility . . . the company which will thereafter operate the utility business must adopt and use the rates, classification and regulations of the former operating company (unless authorized to change by the Commission). . . .



In addition, UIER has not requested a change in the utility's existing rates. Therefore, UIER shall continue utility operations charging the existing tariff rates and charges. UIER has filed a tariff reflecting the transfer of ownership. Our staff will approve the tariff effective for services provided or connections made on or after the stamped approval date. The existing rates and charges that apply are listed on Schedule No. 2.

CLOSING OF DOCKET

If a timely protest is not received from a substantially affected person to the Proposed Agency Action PORTIONS OF THIS order, the docket shall remain open until receipt of written confirmation of the closing and verification that the deed for the land upon which the utility facilities are located has been transferred, after which the docket may then be administratively closed.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the transfer of Certificate No. 369-S from Eagle Ridge Utilities, Inc., to Utilities, Inc. of Eagle Ridge, 200 Weathersfield Avenue, Altamont Springs, Florida 32714, is hereby approved. It is further

ORDERED that, pursuant to our interpretation of the settlement agreement, Eagle Ridge Utilities, Inc., shall be responsible for the timely filing of annual report data and payment of regulatory assessment fees up to December 8, 1997, and Utilities, Inc. of Eagle Ridge shall be responsible from that date forward. It is further

ORDERED that a show cause proceeding shall not be initiated against Eagle Ridge Utilities, Inc., for violation of Section 367.071(1), Florida Statutes. It is further

ORDERED that each of the findings made in the body of this Order is hereby approved in every respect. It is further

ORDERED that all matters contained in the schedules and attachment attached hereto are by reference incorporated herein. It is further

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ORDERED that rate base as of December 31, 1994, which for transfer purposes reflects the net book value of the system, is \$139,043 for the wastewater system. It is further

ORDERED that no positive acquisition adjustment shall be approved. It is further

ORDERED that Utilities, Inc. of Eagle Ridge, shall continue charging the rates and charges in the tariff until authorized to change by this Commission. The tariff reflecting the change in ownership shall become effective for services provided or connections made on or after the stamped approval date. It is further

ORDERED that the tariff sheets will be approved upon staff's verification that the tariff is consistent with our decision. It is further

ORDERED that the provisions of this Order regarding the establishment of rate base for purposes of the transfer, and our decision not to include a positive acquisition adjustment in the calculation of rate base, are issued as proposed agency action and 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, and our staff receives written confirmation of the closing and verifies that the deed for the land upon which the utility facilities are located has been transferred, this docket may then be administratively closed.

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By ORDER of the Florida Public Service Commission this 15th  
day of April, 1998.

BLANCA S. BAYÓ, Director  
Division of Records and Reporting

By: Kay Flynn  
Kay Flynn, Chief  
Bureau of Records

( S E A L )

RRJ

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.

As identified in the body of this order, the establishment of rate base for purposes of the transfer, and our decision not to include a positive acquisition adjustment in the calculation of rate base are 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 May 6, 1998. If such a petition is filed, mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing. In the absence of such a petition,

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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, 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.

SCHEDULE NO. 1

Eagle Ridge Utilities, Inc.

SCHEDULE OF WASTEWATER RATE BASE

As of December 31, 1994

<u>DESCRIPTION</u>	<u>BALANCE PER UTILITY</u>	<u>ADJUSTMENTS</u>	<u>BALANCE PER COMMISSION</u>
Utility Plant in Service	\$2,627,374	0	\$2,627,374
Land	28,500	0	28,500
Accumulated Depreciation	(674,871)	0	(674,871)
Contributions-in-aid-of-Construction	(2,406,355)	0	(2,406,355)
CIAC Amortization	567,681	0	567,681
Cash Advance	0	(1,145)	(1,145)
Cash Advance	0	(2,732)	(2,732)
Cash Advance	<u>0</u>	<u>591</u>	<u>591</u>
TOTAL	<u>\$ 142,329</u>	<u>(\$3,286)</u>	<u>\$ 139,043</u>

SCHEDULE NO. 2

EAGLE RIDGE UTILITIES, INC. -- CURRENT RATES AND CHARGES

<b>Monthly Rates</b>	<u>Meter Size</u>	<u>Base Facility Charge</u>	<u>Gallonge Charge (per 1,000 gallons)</u>
Residential	All Sizes	\$ 13.52	\$3.33 (Maximum charge at 10,000 gallons)
General	5/8 x 3/4"	\$ 13.52	\$3.33
	3/4"	20.29	3.33
	1"	33.80	3.33
	1-1/2"	67.58	3.33
	2"	108.13	3.33
	3"	216.27	3.33
	4"	337.94	3.33
	6"	675.89	3.33
			(No Maximum)

**Connection Charges**

Plant Capacity Charge	
Residential Service	\$692.00 per ERC (225 gpd)
General Service	\$3.07 per gallon of estimated daily demand but not less than \$692.00 minimum.

**Meter Deposits**

Residential	\$ 50.00
5/8" x 3/4"	\$ 50.00
Other meters	Actual Cost

**Miscellaneous Service Charges**

Initial Connection	\$ 15.00
Normal Reconnection	\$ 15.00
Violation Reconnection	Actual Cost
Premises Visit	\$ 10.00

ATTACHMENT A

TERRITORY DESCRIPTION

Eagle Ridge Utilities, Inc.

The following described lands located in portions of Lee County, Florida.

Township 45 South, Range 25 East

Section 20

That portion of the South 1/2 of said Section 20 lying easterly of the East line of Six Mile Cypress Slough as it now runs.

Section 29

All of Section 29 lying East of the East line of Six Mile Cypress Slough as it now runs.

Section 30

That portion of the Southeast 1/4 of said Section 30 lying East of the East line of Six Mile Cypress Slough as it now runs.