

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for transfer of majority organizational Control of certificate No. 168-S held by K W Resort Utilities Corp. in Monroe County from K W Resort Holdings Corp. to WS Utility, Inc., with no change in name on certificate.

DOCKET NO. 980341-SU  
ORDER NO. PSC-98-1053-FOF-SU  
ISSUED: August 6, 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 APPLICATION FOR TRANSFER OF MAJORITY ORGANIZATION CONTROL WITH NO CHANGE IN CERTIFICATED NAME

BY THE COMMISSION:

BACKGROUND

On March 5, 1998, K W Resort Utilities Corp. (K W Resort Utilities or the utility) filed an application to transfer Certificate No. 168-S, through a sale of the utility's stock from K W Resort Holdings Corp. (K W Resort Holdings) to WS Utility, Inc. (WS Utility) with no change in name on the certificate. Upon review, it was determined that the application was more appropriately a transfer of majority organizational control.

K W Resort Utilities is a Class B wastewater utility providing service to approximately 817 residential connections, 3 general service connections, 9 private lift station operators and 1 reuse customer on Stock Island in Monroe County. Water service is provided by the Florida Keys Aqueduct Authority.

Certificate No. 168-S was originally granted to Nu-Age Utilities Division of Riviera Enterprises, Inc., by Order No. 6803, issued July 28, 1975, in Docket No. 750149-S. The assets of the

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utility were subsequently transferred to Stock Island Utility Company (Stock Island) by Order No. 11319, issued November 16, 1982, in Docket No. 820363-S. Additional territory was granted to Stock Island's certificate by Order No. 12618, issued October 18, 1983, in Docket No. 830390-S.

On January 1, 1985, Citicorp Real Estate, Inc. (Citicorp), filed a petition requesting that the Commission acknowledge that K W Resort Holdings, a subsidiary of Citicorp, had acquired Stock Island's assets, including Certificate No. 168-S, through foreclosure on Stock Island's mortgage. In Order No. 14010, issued January 18, 1985, in Docket No. 850009-SU, the Commission declined to recognize that a property interest in Certificate No. 168-S could be transferred without Commission approval of the public interest. Instead, the order treated Citicorp's petition as a request for transfer pursuant to Section 367.071, Florida Statutes, and, as such, it was approved.

A few months later, the transfer of the utility's assets from K W Resort Holdings to South Key Utility Company was approved by Order No. 14532, issued July 2, 1985, in Docket No. 850196-SU. In November of 1985, the Commission was officially notified that the proposed sale would not be consummated. By Order No. 15658, issued February 12, 1986, in Docket No. 850196-SU, Certificate 168-S was reissued to K W Resort Holdings. As stated previously, an application for the transfer of majority organizational control of the utility from K W Resort Holdings to WS Utility was filed on March 5, 1998.

#### THE APPLICATION

The application, as filed and amended, is in compliance with Section 367.071, Florida Statutes, and other pertinent statutes and provisions of the Florida Administrative Code. The application contained the correct filing fee pursuant to Rule 25-30.020, Florida Administrative Code. As proof of ownership, pursuant to Rule 25-30.037(3)(i), Florida Administrative Code, a title commitment by Lawyers Title Insurance Corporation was furnished as Exhibit C to the Stock Purchase Agreement submitted with the application.

According to its 1997 annual report, 100 percent of the utility's stock is held by K W Resort Holdings. After the exchange, 100 percent of the utility's stock will be held by WS Utility. The Stock Purchase Agreement states that WS Utility is,

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and at all times will be, 100 percent owned and/or controlled by William L. Smith, Jr., or an affiliate of William L. Smith, Jr. The consummation of the acquisition is intended to occur 15 days after the transfer of majority organizational control is approved by this Commission.

Pursuant to Rule 25-30.030, Florida Administrative Code, K W Resort Holdings furnished proof of compliance with the noticing requirements as an amendment to its application. However, K W Resort Holdings was required to renotice the filing because the application was originally filed as a transfer of certificate rather than a transfer of majority organizational control. In addition, the territory description provided with the application and in the original notice did not include the territory added to Certificate 168-S by Order No. 12618, issued October 18, 1983, in Docket No. 830390-S. The territory included in Certificate No. 168-S is in Attachment A of this Order, which by reference is incorporated herein.

One protest to the first notice was timely filed by Mr. Harry M. Goode; however, the concerns expressed in the protest were not within the jurisdiction of this Commission. No other objections to the renotice have been received and the time for filing such has expired.

At the time the application was filed, WS Utility had additional time remaining under the purchase agreement in which to accomplish environmental due diligence pursuant to Rule 25-30.037(3)(h), Florida Administrative Code. By supplemental statement filed June 22, 1998, it was established that WS Utility's consultants had completed Phase I of their environmental site assessment and WS Utility stated that the system appeared to be in satisfactory condition and in compliance with all applicable standards set by the Department of Environmental Protection (DEP). We have confirmed with the DEP that the utility is in environmental compliance.

Rules 25-30.037(3)(e) and (g), Florida Administrative Code, require a statement describing the financing of the utility purchase and a disclosure of all entities that have or will provide funding to the buyer of the utility. According to the Stock Purchase Agreement submitted with the application, the purchase price for all shares in the utility is \$810,000 of which \$50,000 was prepaid as a down payment. The application indicates that WS Utility will finance approximately \$600,000 of the total purchase

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price through Barnett Bank (or its successor in interest) with the remaining \$210,000 paid out of cash assets.

In regard to technical ability, WS Utility does not currently own any other water or wastewater utilities. However, WS Utility intends to retain Davis Water Analysis, which currently operates the utility, to perform the day to day operations of the utility system. The lead operator of Davis Water Analysis has a valid DEP license to operate a wastewater facility the size of K W Resort Utilities. In addition, Mr. Smith's brother is a Florida-licensed engineer who consults frequently on water and wastewater related matters.

K W Resort Holdings and WS Utility provided a statement that the transfer of majority organizational control is in the public interest pursuant to Rule 25-30.037(3)(f), Florida Administrative Code. The financial statements of WS Utility indicate sufficient resources to finance the acquisition and will allow WS Utility to retain adequate liquid reserves for utility emergencies. Moreover, WS Utility furnished a statement that it intends to fulfill the commitments, obligations and representations of the utility with regard to utility matters, and has expressed an interest in expanding the service territory to include adjacent properties not presently served.

Because the transfer of the wastewater system is being accomplished by means of a stock purchase, the name of the utility will remain as certificated, i.e., K W Resort Utilities Corp. Proof has been provided that the utility's name is active and current with the Florida Department of State, Division of Corporations.

According to Section 2.7 of the Stock Purchase Agreement, K W Resort Holdings will be responsible for the payment of all outstanding regulatory assessment fees for 1997 and regulatory assessment fees for 1998 will be prorated between WS Utility and K W Resort Holdings as of the date of the closing and treated as an adjustment to the purchase price. We have confirmed that K W Resort Holdings is current through 1997 with its regulatory assessment fees and that there are no outstanding penalties or interest owed.

Based on the foregoing, we find the transfer of majority organizational control of K W Resort Utilities Corp. from K W

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Resort Holdings Corp. to WS Utility, Inc., to be in the public interest, and it is approved.

#### RATE BASE

Section 367.071(5), Florida Statutes, authorizes us to establish the rate base for a utility when the sale, assignment, or transfer of the utility is approved. However, this transfer of majority organizational control from K W Resort Holdings to WS Utility will be accomplished by the acquisition of stock. Stock price has no regulatory relationship to a utility's established rate base. Therefore, we do not find it necessary in this docket to establish rate base.

#### RATES AND CHARGES

The utility's rates were last reviewed in Docket No. 830388-S and approved by stipulation in Order No. 14620, issued July 23, 1985. Docket No. 850370-SU approved the utility's service availability charges by Order No. 14756, issued August 22, 1985. The utility's current general service, residential, and private lift station rates were last indexed in 1997. A new class of reuse rates was established pursuant to Order No. PSC-95-0335-FOF-SU, issued March 10, 1995, in Docket No. 941323-SU.

Rule 25-9.044(1), Florida Administrative Code, states that the company which operates the utility business after a change of ownership or control "must adopt and use the rates, classification and regulations of the former operating company (unless authorized to change by the Commission)." Therefore, we find that WS Utility must adopt and use the rates, classification and regulations of K W Resort Utilities until we authorize WS Utility to change the rates, classification and regulations.

The application contained a wastewater tariff reflecting the transfer of majority organizational control. The tariff filing shall be effective for services rendered or connections made on or after the stamped approval date on the tariff sheets.

The docket shall remain open pending receipt of written confirmation of closing of the transfer. Once the written confirmation is received, this docket shall be administratively closed.

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Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the transfer of majority organizational control of K W Resort Utilities Corp., 6630 Front Street, Stock Island, Florida 33040-6050, from K W Resort Holdings Corp., 599 Lexington Avenue, 26th Floor, New York, New York 10043, to WS Utility, Inc., 6450 Junior College Road, Key West, Florida 33040, is hereby approved. It is further

ORDERED that regulatory assessment fees for 1998 shall be prorated between WS Utility, Inc., and K W Resort Holdings Corp. as of the date of closing of the transfer of majority organizational control. It is further

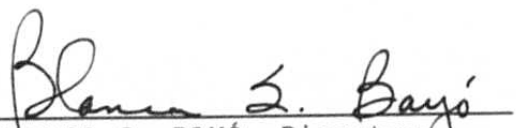
ORDERED that rate base for K W Resort Utilities Corp. shall not be established at the time of transfer. It is further

ORDERED that WS Utility, Inc., shall continue to charge the rates and charges approved in K W Resort Utilities Corp.'s tariff until authorized to change by this Commission in a subsequent proceeding. It is further

ORDERED that the tariff shall be effective for services rendered or connections made on or after the stamped approval date on the tariff sheets. It is further

ORDERED that this docket shall remain open pending receipt of written confirmation of closing of the transfer, at which time, the docket shall be administratively closed.

By ORDER of the Florida Public Service Commission this 6th day of August, 1998.

  
BLANCA S. BAYÓ, Director  
Division of Records and Reporting

( S E A L )

SAM

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.

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**ATTACHMENT A**

**TERRITORY  
K W RESORT UTILITIES CORP.  
MONROE COUNTY**

**Docket No. 750149-S (AP), Order No. 6803, issued July 28, 1975**  
**and**  
**Docket No. 820363-S (TC), Order No. 11319, issued November 16, 1982**

Township 67 South, Range 25 East  
Section 35

A parcel of land as delineated on Maloney's plat of Stock Island as recorded in plat book 1, page 55 of official records of Monroe County, Florida and more particularly described as follows.

BEGINNING at the intersection of the Easterly abutment of the North-bound lane of the Stock Island-Key West Bridge and the Southerly right-of-way line of Highway U.S. No. 1 (State Road No. 5), run in Northeasterly direction along the Southerly right-of-way line of Highway U.S. No. 1 to a point which is the intersection of said Southerly right-of-way line of U.S. No. 1 and the Southerly right-of-way line of McDonald Avenue; thence in an Easterly direction along the Southerly right-of-way line of McDonald Avenue to a point which is the intersection of the Southerly right-of-way line of McDonald Avenue and the Southeasterly right-of-way line of Maloney Avenue; thence in a Southeasterly direction along the Southerly right-of-way line of Maloney Avenue to the shores of the Atlantic Ocean; thence meander the shoreline of Stock Island in Westerly, Southerly and Northerly direction back to the POINT OF BEGINNING.

**Docket No. 830390-S (EX), Order No. 12618, issued October 18, 1983**

Township 67 South, Range 25 East  
Sections 26 and 35

All that area of said sections bounded on the North, East and West by the centerline of Jr. College road as now constructed and on the South by the centerline of U.S. Highway No. 1 (State Road No. 5) as now constructed.



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One protest to the first notice was timely filed by Mr. Harry M. Goode; however, the concerns expressed in the protest were not within the jurisdiction of this Commission. No other objections to the renotice have been received and the time for filing such has expired.

At the time the application was filed, WS Utility had additional time remaining under the purchase agreement in which to accomplish environmental due diligence pursuant to Rule 25-30.037(3)(h), Florida Administrative Code. By supplemental statement filed June 22, 1998, it was established that WS Utility's consultants had completed Phase I of their environmental site assessment and WS Utility stated that the system appeared to be in satisfactory condition and in compliance with all applicable standards set by the Department of Environmental Protection (DEP). We have confirmed with the DEP that the utility is in environmental compliance.

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#### RATE BASE

Section 367.071(5), Florida Statutes, authorizes us to establish the rate base for a utility when the sale, assignment, or transfer of the utility is approved. However, this transfer of majority organizational control from K W Resort Holdings to WS Utility will be accomplished by the acquisition of stock. Stock price has no regulatory relationship to a utility's established rate base. Therefore, we do not find it necessary in this docket to establish rate base.

#### RATES AND CHARGES

The utility's rates were last reviewed in Docket No. 830388-S and approved by stipulation in Order No. 14620, issued July 23, 1985. Docket No. 850370-SU approved the utility's service availability charges by Order No. 14756, issued August 22, 1985. The utility's current general service, residential, and private lift station rates were last indexed in 1997. A new class of reuse rates was established pursuant to Order No. PSC-95-0335-FOF-SU, issued March 10, 1995, in Docket No. 941323-SU.

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The application contained a wastewater tariff reflecting the transfer of majority organizational control. The tariff filing shall be effective for services rendered or connections made on or after the stamped approval date on the tariff sheets.

The docket shall remain open pending receipt of written confirmation of closing of the transfer. Once the written confirmation is received, this docket shall be administratively closed.

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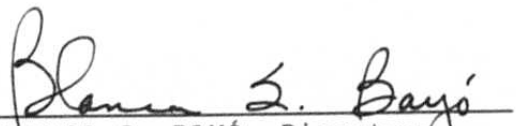
ORDERED that rate base for K W Resort Utilities Corp. shall not be established at the time of transfer. It is further

ORDERED that WS Utility, Inc., shall continue to charge the rates and charges approved in K W Resort Utilities Corp.'s tariff until authorized to change by this Commission in a subsequent proceeding. It is further

ORDERED that the tariff shall be effective for services rendered or connections made on or after the stamped approval date on the tariff sheets. It is further

ORDERED that this docket shall remain open pending receipt of written confirmation of closing of the transfer, at which time, the docket shall be administratively closed.

By ORDER of the Florida Public Service Commission this 6th day of August, 1998.

  
BLANCA S. BAYÓ, Director  
Division of Records and Reporting

( S E A L )

SAM

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.

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**ATTACHMENT A**

**TERRITORY  
K W RESORT UTILITIES CORP.  
MONROE COUNTY**

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Township 67 South, Range 25 East  
Section 35

A parcel of land as delineated on Maloney's plat of Stock Island as recorded in plat book 1, page 55 of official records of Monroe County, Florida and more particularly described as follows.

BEGINNING at the intersection of the Easterly abutment of the North-bound lane of the Stock Island-Key West Bridge and the Southerly right-of-way line of Highway U.S. No. 1 (State Road No. 5), run in Northeasterly direction along the Southerly right-of-way line of Highway U.S. No. 1 to a point which is the intersection of said Southerly right-of-way line of U.S. No. 1 and the Southerly right-of-way line of McDonald Avenue; thence in an Easterly direction along the Southerly right-of-way line of McDonald Avenue to a point which is the intersection of the Southerly right-of-way line of McDonald Avenue and the Southeasterly right-of-way line of Maloney Avenue; thence in a Southeasterly direction along the Southerly right-of-way line of Maloney Avenue to the shores of the Atlantic Ocean; thence meander the shoreline of Stock Island in Westerly, Southerly and Northerly direction back to the POINT OF BEGINNING.

**Docket No. 830390-S (EX), Order No. 12618, issued October 18, 1983**

Township 67 South, Range 25 East  
Sections 26 and 35

All that area of said sections bounded on the North, East and West by the centerline of Jr. College road as now constructed and on the South by the centerline of U.S. Highway No. 1 (State Road No. 5) as now constructed.