

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for transfer of Certificate No. 495-S from Sandalhaven Utility, Inc. to CHP Utility, Inc. in Charlotte County, cancellation of Certificate No. 495-S, and exemption from Florida Public Service Commission regulation.

DOCKET NO. 970381-SU
ORDER NO. PSC-98-1248-FOF-SU
ISSUED: September 21, 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 GRANTING MOTION TO RESCIND ORDER
NO. PSC-97-1150-FOF-SU AND ACKNOWLEDGING
WITHDRAWAL OF MOTION FOR RECONSIDERATION

BY THE COMMISSION:

BACKGROUND

Sandalhaven Utility, Inc. (Sandalhaven or Utility) is a Class C utility which provides wastewater service to 623 residential, general service, and multi-family customers in Charlotte County. According to the 1996 annual report, the utility had annual operating revenues of \$161,918 and experienced an operating loss of \$41,249.

On March 26, 1997, we received an application from CHP Utility, Inc. (CHP), a non-profit corporation, requesting transfer of Sandalhaven's assets and customer service area, and seeking exempt status from the Commission for provision of wastewater service as an exempt non-profit association. CHP is a non-profit corporation formed on April 10, 1996. The utility has filed with the Office of the Secretary of State as a non-profit entity and has fulfilled all of the criteria to be considered an exempt entity pursuant to Section 367.022(7), Florida Statutes. The CHP

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membership is comprised of utility customers receiving service from the utility and all members hold one vote as stated in the Articles of Incorporation. Only members of the non-profit corporation receive wastewater service.

Pursuant to Rule 25-30.030, Florida Administrative Code, on June 16, 1997, Sandalhaven mailed written notice to all customers, relevant utilities and government officials in the proposed service area. Sandalhaven also published a legal notice of its transfer application in a local newspaper in Charlotte County on June 14, 1997. Pursuant to Rule 25-30.030, Florida Administrative Code, all notices distributed by Sandalhaven stated that any objections to the application must be made in writing within 30 days from the date of notice to the Commission's Division of Records and Reporting. The last date on which notice was mailed or published was June 16, 1997. Therefore, the deadline for filing an objection to Sandalhaven's transfer application with the Division of Records and Reporting was July 16, 1997. No such objections were received.

By Order No. PSC-97-1150-FOF-SU, issued September 30, 1997, we found that the transfer application was in compliance with the governing statute, Section 367.071, Florida Statutes, and other pertinent statutes and administrative rules concerning an application for transfer of utility assets. We further determined that CHP had demonstrated the financial and technical ability to provide quality utility service, and that CHP was capable of fulfilling the commitments, obligations and representations of the utilities. We therefore found that it was in the public interest to approve the transfer. Further, because it appeared that CHP would satisfy the requirements for exemption pursuant to Section 367.022(7), Florida Statutes, Wastewater Certificate No. 495-S was canceled.

On October 15, 1997, a Motion for Reconsideration and in the Alternative to Conduct an Administrative Hearing Pursuant to Chapter 120.57, Florida Statutes (motion for reconsideration) was filed by Fiddler's Green Condominium Association I; Fiddler's Green Condominium Association II; Shamrock Shores Property Association, Inc.; Wildflower Property Association, Inc.; Sandalhaven Condominium Association I; Sandalhaven Condominium Association II; and Cape Haze Marina Village, Inc.; "on behalf of themselves and their respective lot owners, unit owners and association members" (movants). The utility did not file a response to the Motion for Reconsideration, and the time for filing such response has expired.

In the course of negotiating settlement of this matter, on May 1, 1998, the movants and counsel for CHP filed a joint Motion To Rescind Order No. PSC-97-1150-FOF-SU (motion to rescind).

Motion to Rescind

In their joint motion to rescind, the movants and CHP acknowledge that they have attempted to negotiate settlement of their dispute regarding the use of CHP, a member-owned not-for-profit corporation, to own and operate the Sandalhaven facilities. However, the movants and CHP have been unable to resolve the contested issues between them, and both parties wish to avoid further conflict and administrative proceedings. Therefore, CHP and the movants have jointly requested that we rescind Order No. PSC-97-1150-FOF-SU. Furthermore, upon rescission of the Order and subject to the reconveyance of the Sandalhaven facilities, the movants have agreed to withdraw their motion for reconsideration.

In previous instances, we have vacated all or part of an order when the order is based on incorrect information, or where there has been a change in circumstances or public interest upon which the order was based. See Order No. PSC-94-0958-FOF-WU, issued August 9, 1994, in Docket No. 940365-WU; Order No. PSC-96-1101-FOF-WU, issued August 28, 1996, in Docket No. 960394-WU; and Order No. PSC-95-1319-FOF-WS, issued October 30, 1995, in Docket No. 921237-WS.

In this case, while notice of the transfer was provided in accordance with the pertinent statutes and Commission rules, and no allegations that notice was improper were made, the movants contend that they did not have an adequate opportunity to review the purchase and sale agreement which was executed between CHP and Sandalhaven on December 30, 1996. Pursuant to that agreement, the customers, as members of the CHP cooperative, would own and be responsible for the operation of the utility. We were informed through conversations with the movants' counsel that the movants object to bearing direct financial and operational liability for the utility, as members of the CHP cooperative.

The movants and CHP have attempted to settle this matter, but no satisfactory resolution was reached between the parties. Instead, the parties have agreed, subject to our approval, to the rescission of the transfer Order, so that ownership of the utility assets and facilities are reconveyed to the original owner, Sandalhaven.

Sandalhaven was originally formed as a developer owned and operated utility. The developer wished to divest itself from operating the utility, and so initiated the transfer of Sandalhaven's assets and facilities to CHP, a member-owned cooperative. In light of the movants' objection to ownership of the utility, Sandalhaven's counsel has represented that Sandalhaven agrees to the reconveyance of the utility assets and facilities.

As a point of information, we have also been informed that negotiations have begun for the acquisition of the Sandalhaven facilities and assets by Utilities, Inc., a corporation which focuses on ownership and operation of small systems and provides centralized management, accounting and financial assistance to small utilities that were commonly built by development companies. We believe that customer concerns with respect to a subsequent transfer of the Sandalhaven facilities and assets may be adequately addressed in a separate transfer docket, should a subsequent transfer application be filed.

In light of the joint request by CHP and the movants, and in consideration of the change in circumstances as discussed above, we find that it is in the public interest to grant the motion to rescind, and vacate Order No. PSC-97-1150-FOF-SU. Within 45 days of the issuance of this Order, CHP shall provide proof that all facilities and assets of Sandalhaven which had been transferred to CHP pursuant to that Order have been conveyed back to Sandalhaven. Upon receipt of such proof, Certificate No. 495-S shall be reinstated.

Motion for Reconsideration

As discussed previously, the movants provide in the motion to rescind that, subject to the vacation of Order No. PSC-97-1150-FOF-SU and the reconveyance of the Sandalhaven facilities, the movants have agreed to withdraw their motion for reconsideration. In consideration of the foregoing, we therefore acknowledge the withdrawal of the motion for reconsideration.

Closing Docket

The docket shall be closed administratively upon proof that all facilities and assets of Sandalhaven which had been transferred to CHP pursuant to Order No. PSC-97-1150-FOF-SU have been reconveyed to Sandalhaven, and upon the reinstatement of Certificate No. 495-S.

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Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Motion to Rescind Order No. PSC-97-1150-FOF-SU is hereby granted, and Order No. PSC-97-1150-FOF-SU is hereby vacated. It is further

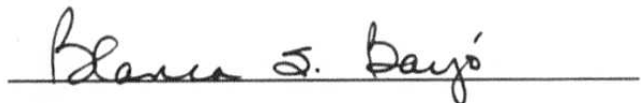
ORDERED that we hereby acknowledge the withdrawal of the Motion for Reconsideration filed by Fiddler's Green Condominium Association I, et al. It is further

ORDERED that within 45 days of the issuance of this Order, CHP Utility, Inc. shall provide proof that all facilities and assets of Sandalhaven Utility, Inc. which had been transferred to CHP Utility, Inc. pursuant to that Order have been conveyed back to Sandalhaven Utility, Inc.. It is further

ORDERED that upon receipt of proof of the reconveyance of the utility assets and facilities to Sandalhaven Utility, Inc., Certificate No. 495-S shall be reinstated. It is further

ORDERED that upon proof of the reconveyance of the utility assets and facilities to Sandalhaven Utility, Inc., and the reinstatement of Certificate No. 495-S, this docket shall be closed.

By ORDER of the Florida Public Service Commission this 21st day of September, 1998.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

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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.