

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for transfer
of majority organizational
control of Lake Groves
Utilities, Inc. in Lake County
to Utilities, Inc.

DOCKET NO. 980958-WS
ORDER NO. PSC-99-0164-FOF-WS
ISSUED: January 26, 1999

The following Commissioners participated in the disposition of
this matter:

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

ORDER DECLINING TO INITIATE SHOW CAUSE PROCEEDINGS, APPROVING
APPLICATION FOR TRANSFER OF MAJORITY ORGANIZATIONAL CONTROL,
AND CLOSING DOCKET

BY THE COMMISSION:

BACKGROUND

Lakes Groves Utilities, Inc. (Lake Groves or utility) is a Class C utility providing water and wastewater service to approximately 608 water and 604 wastewater customers in Lake County. According to its 1997 annual report, the utility's operating revenue was \$187,063 for water and \$151,481 for wastewater and the net operating income was \$82,887 for water and \$80,330 for wastewater.

On July 29, 1998, Utilities, Inc., filed an application for transfer of majority organizational control of Lake Groves from Lake Holding, Inc. (Lake Holding) to Utilities, Inc. The application was deficient, but these deficiencies were corrected on September 30, 1998.

Lake Groves closed on the transfer of majority organizational control of its facilities to Utilities, Inc., on July 2, 1998,

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prior to obtaining Commission approval. This will be discussed further in this Order.

Although Lake Groves was certificated pursuant to Order No. 24283, in Docket No. 900957-WS, issued March 25, 1991, it has never filed for a rate case. Therefore, rate base has never been established for this utility.

SHOW CAUSE

As noted above, Lake Groves closed on the transfer of majority organizational control of its facilities to Utilities, Inc., on July 2, 1998, prior to obtaining Commission approval. Section 367.071(1), Florida Statutes, states that:

No utility shall sell, assign, or transfer its certificate of authorization, facilities or any portion thereof..., without determination and approval of the commission that the proposed sale, assignment, or transfer is in the public interest...

Section 367.161(1), 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. While we have no reason to believe that the utility intended to violate Section 367.071(1), Florida Statutes, its act was "willful" in the sense intended by Section 367.161, Florida Statutes. See Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL.

Although Lake Groves' failure to obtain our approval prior to transferring majority organizational control of its facilities to Utilities, Inc., is an apparent violation of Section 367.071(1), Florida Statutes, there are circumstances which mitigate the utility's apparent violation. According to a letter dated December 8, 1998, Lake Groves is operated by the same personnel as Sanlando Utilities Corporation (Sanlando), which has an application for the transfer of majority organizational control of its facilities to Utilities, Inc., pending before this Commission in Docket No. 980957-WS. This letter also stated that Sanlando is involved in a number of matters which require immediate attention and substantial effort and financial commitment which the prior owners are not willing to make. Sanlando closed on the transfer of majority organizational control of its facilities to Utilities, Inc., on July 2, 1998. Because Sanlando and Lake Groves are operated by the

same personnel, the letter stated that it would not be possible to operate Lake Groves under the ownership of the prior shareholders while transferring ownership of the Sanlando system. Therefore, Lake Groves closed on the transfer of majority organizational control of its facilities on July 2, 1998, along with Sanlando. Furthermore, there is a provision in the contract between Lake Groves and Utilities, Inc., which states that the sale is subject to this Commission's jurisdiction and if we deny the application, the parties will "unwind" the transaction.

Based on the foregoing, we do not find that the utility's apparent violation of Section 367.071, Florida Statutes, rises in these circumstances to the level which warrants the initiation of a show cause proceeding. Therefore, Lake Groves shall not be required to show cause for failing to obtain Commission approval prior to transferring majority organizational control of its facilities to Utilities, Inc.

APPLICATION

Except as previously discussed, the application is in compliance with Section 367.071, Florida Statutes, and other pertinent statutes and provisions of the Florida Administrative Code. The application included the correct filing fee pursuant to Rule 25-30.020, Florida Administrative Code.

Rule 25-30.037(3)(i), Florida Administrative Code, requires a utility to provide proof of ownership of the land upon which its facilities are located. The application included a deed in the name of the utility which covers the entire Lake Groves development. A description of the territory served by the utility is in Attachment A of this Order, which by reference is incorporated herein.

Pursuant to Rule 25-30.030, Florida Administrative Code, the utility furnished proof of compliance with the noticing requirements. No objections to the notice of the application were received, and the time for filing such has expired.

In regard to Utilities, Inc.'s technical ability to provide service, it is a holding company which, as of December 31, 1997, owned and operated approximately 350 water and wastewater utility systems through sixty-three subsidiary operating companies. Utilities, Inc., has approximately thirty-one years of experience in the water and wastewater utility industry and twenty-two years

of experience operating water and wastewater utilities under our jurisdiction. At present, Utilities, Inc., provides safe and reliable water and wastewater service to approximately 165,000 customers in fifteen states.

As to its financial ability to provide service, Utilities, Inc., submitted its consolidated financial statement, along with additional information regarding its sources of annual income. Utilities, Inc., of Florida is a wholly-owned subsidiary of Utilities, Inc., which has approximately \$265,563,000 in assets and total capitalization of approximately \$84,000,000. Utilities, Inc., has the capability to provide investment capital at reasonable rates to Lake Groves. Moreover, Utilities, Inc., has the financial resources to make any necessary future improvements to the utility and to ensure consistent compliance with environmental regulations.

Rule 25-30.037(3)(e), Florida Administrative Code, requires a statement describing the financing of the utility purchase. Utilities, Inc., stated that it obtained a two year loan for \$2,086,771 with an interest rate of 6.94% from First Union Bank to finance the stock purchase, which can be renegotiated at the end of the two year term.

The application stated that the transfer is in the public interest because Utilities, Inc.'s primary business is operating water and wastewater utilities. Additionally, the application contained a statement, pursuant to Rule 25-30.037(3)(f), Florida Administrative Code, that Utilities, Inc., will fulfill the commitments, obligations and representations of Lake Holding with regard to utility matters. In contrast, the application stated that Lake Holding is no longer interested in continuing to own and operate the utility.

According to the application, Utilities, Inc.'s representative performed a reasonable investigation of the Lake Groves system pursuant to Rule 25-30.037(3)(h), Florida Administrative Code. Utilities, Inc., stated that the plant facilities appear to be in satisfactory condition and in compliance with all applicable standards set by the Florida Department of Environmental Protection (DEP). Our staff contacted the DEP and confirmed that there are no outstanding notices of violation.

The utility is current on its regulatory assessment fees and has a 1997 annual report on file with this Commission. The

application stated that Utilities, Inc., will be responsible for filing the utility's annual report and regulatory assessment fees for 1998 and all subsequent years.

Based on the foregoing, we find the transfer of majority organizational control of Lake Groves to Utilities, 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 Lake Holding to Utilities, Inc., was 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.

ACQUISITION ADJUSTMENT

An acquisition adjustment results when the purchase price differs from the original cost calculation. We routinely make determinations regarding acquisition adjustments in cases involving the transfer of certificates, assets, or facilities because the purchase price is considered when determining whether the transfer is in the public interest. Conversely, acquisition adjustments are generally not considered in stock transfers because the price of stock has no regulatory relationship to a utility's established rate base. Because the assets are not actually being sold and the value will remain the same after the transfer of majority organizational control, we find that an acquisition adjustment shall not be calculated in this docket.

RATES AND CHARGES

Order No. 24283, in Docket No. 900957-WS, issued March 25, 1991, established the utility's current rates and charges. 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)." Accordingly, we find that Utilities, Inc., must adopt and use the rates, classification and regulations of Lake Groves.

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The utility filed a revised 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.

No further action is required, and this docket shall be closed.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that a show cause proceeding shall not be initiated against Lake Groves Utilities, Inc., for apparently violating Section 367.071(1), Florida Statutes, by failing to obtain the Commission's approval prior to the transfer of majority organizational control of its facilities to Utilities, Inc. It is further

ORDERED that the transfer of majority organizational control of Lake Groves Utilities, Inc., 1105 Kensington Park Drive, Altamonte Springs, Florida 32714, from Lake Holding, Inc., P.O. Box 915505, Longwood, Florida 32791-5505, to Utilities, Inc., 2335 Sanders Road, Northbrook, Illinois 60062-6196, is hereby approved. It is further

ORDERED that Utilities, Inc., shall file a 1998 annual report and remit 1998 regulatory assessment fees for Lake Groves Utilities, Inc. It is further

ORDERED that rate base for Lake Groves Utilities, Inc., shall not be established at this time. It is further

ORDERED that an acquisition adjustment for Lake Groves Utilities, Inc., shall not be calculated at this time. It is further

ORDERED that Utilities, Inc., shall continue to charge the rates and charges approved in Lake Groves Utilities, Inc.'s tariff. It is further

ORDERED that the tariff reflecting the transfer of majority organizational control 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 be closed.

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By ORDER of the Florida Public Service Commission this 26th
day of January, 1999.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records

(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.

Attachment A

LAKE GROVES UTILITIES, INC.

WATER AND SEWER SERVICE AREA

LAKE COUNTY

Per Order No. 24283 in Docket No. 900957-WS

The following described lands located in portions of sections 22, 23 and 27, Township 24 South, Range 26 East, Lake County, Florida:

Beginning at a point that is 12.51 feet S and 298.75 feet E of the SE corner of the NE 1/4 of Section 22, TWP 24 S, Range 26 E, of the Tallahassee Meridian, on the West right of way line of State Road 25; run thence N 21 deg. 18 min. 45 sec. W along said right of way line 655.45 feet, said line being parallel to and 80 feet Southwesterly from the center line of pavement; thence S 89 deg.-06 min. 20 sec. W 3363.71 feet to the West line of the E 1/4 of the NW 1/4 of said Section; thence S 0 deg. 01. min. 55 sec. W along said line 614.27 feet; thence N 89 deg. 06. min. 20 sec. E 3602.31 feet to point of beginning.

AND

Commence at a point 652.17 feet South and 548.33 feet East of the Northeast corner of the SE 1/4 of Section 22, Township 24 South, Range 26 East on the West right-of-way of State Road No. 25, run thence N. 21 deg. 18 min. 45 sec. W. along said right-of-way, 686.70 feet, said line being parallel with and 80 feet Southwesterly from the center line of pavement; thence S. 89 deg. 06 min. 20 sec. W., 550.39 feet to the Point of Beginning; thence continue S. 89 deg. 06 min. 20 sec. W., 3051.92 feet to the West line of the NE 1/4 of the NE 1/4 of the SW 1/4 of said Section 22; thence S. 00 deg. 01 min., 55 sec. W. along said line, 631.12 feet to the Southwest corner of the NE 1/4 of the NE 1/4 of the SW 1/4 of said Section; thence N. 89 deg. 21 min. 30 sec. E., 3051.92 feet; thence N. 00 deg. 01 min. 55 sec. E., 664.57 feet to the Point of Beginning, containing 44.68 acres, more or less.

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AND

TRACT 1:

The South 3/4 of the West 1/2 of the Southwest 1/4 of Section 23, Township 24 South, Range 26 East, Lake County, Florida, lying West of U.S. Highway No. 27.

AND

TRACT 2:

The South 3/4 of the Southeast 1/4 of section 22, Township 24 South, Range 26 East, Lake County, Florida.

AND

TRACT 3:

The Northeast 1/4 of the Northeast 1/4 and the East 1/2 of the Northwest 1/4 of the Northeast 1/4 of Section 27, Township-24 South, Range 26 East, Lake County, Florida.

Containing 223.33 acres, more or less.

The bearings on this plat are based on an assumed bearing of S. 89 deg. 34 min. 36 sec. W. along the South boundary of Section 23-24-26. There are no easements or encroachments visible on the ground. Other than shown.

Per Order No. PSC-92-1328-FOF-WS in Docket No. 920900-WS

The following described lands located in portions of sections 14 and 15, Township 24 South, Range 26 East, Lake County, Florida:

All that portion of the Northeast 1/4 of Section 15, Township 24 south, Range 26 East, lying East of the Easterly right-of-way of U.S. Highway 27, Lake County, Florida.

AND

All of the Northeast 1/4 and the Northwest 1/4 of Section 14, Township 24 South, Range 26 East, Lake County, Florida.

Per Order No. PSC-94-0116-FOF-WS in Docket No. 931000-WS

That part of Section 23, Township 24 South, Range 26 East, Lake County, Florida, described as follows: The South 3/4 of the West 1/2 of the West 1/2 of the Southeast 1/4 of Section 23, Township 24 South, Range 26 East, Lake County, Florida, less the South 100.00 feet thereof; that part of the South 3/4 of the East 1/2 of the Southwest 1/4 lying East of the Northeasterly right-of-way line of U.S. Highway 27, less the South 100.00 feet thereof; that part of the West 1/2 of said Section 23, lying East of the Northeasterly line of U.S. Highway 27 and lying South and Southeasterly of the following-described line: From the Northwest corner of the Southwest 1/4 of said Section 23, run North $89\sqrt{42}'$ East along the North line of the said Southwest 1/4 a distance of 502.64 feet, more or less, to the Easterly right-of-way line of U.S. Highway 27, thence South $20\sqrt{23}'20''$ East along said right-of-way line 94.17 feet to a Point of Beginning. Thence North $83\sqrt{50}'40''$ East 375.55 feet, thence North $39\sqrt{19}'10''$ East 229.10 feet; thence North $47\sqrt{37}'10''$ East 363.28 feet to a point on the East line of the West 1/4 of said Section 23 for a Point of Terminus.

AND TOGETHER WITH

The North 1/2 of the Northwest 1/4 lying West of U.S. Highway 27 in Section 26, Township 24 South, Range 26 East.

AND TOGETHER WITH

In Township 24 South, Range 26 East, Lake County, Florida:

Section 14: The West 1/2 of the Southwest 1/4.

Section 15: That part of the Southeast 1/4 lying East of U.S. Highway 27; LESS begin where the North boundary of said Southeast 1/4 intersects the East boundary of U.S. Highway 27 right-of-way (as it existed in 1978), thence run East along said North boundary 225 feet, thence South $00\sqrt{05}'39''$ East 117.23 feet, thence West parallel with said North boundary 181.60 feet, more or less, to the U.S. Highway 27 right-of-way, thence Northwesterly along said right-of-way 125.00 feet to the Point of Beginning.

Section 22: That part of the Northeast 1/4 lying East of U.S. Highway 27.

Section 23: That part of the Northwest 1/4 of the Northwest 1/4 and that part of the North 1/2 of the Northwest 1/4 of the Southwest 1/4 of the Northwest 1/4 lying East of U.S. Highway 27; LESS begin

where the South boundary of said North 1/2 of the Northwest 1/4 of the Southwest 1/4 of the Northwest 1/4 intersects the East boundary of U.S Highway 27 right-of-way (as it existed in 1975), thence run North $89^{\circ}46'29''$ East along said South boundary 230.00 feet, thence North $00^{\circ}00'28''$ East 117.32 feet, thence South $89^{\circ}46'29''$ West 273.61 feet, more or less, to the U.S. Highway 27 right-of-way, thence South $20^{\circ}24'30''$ East along said right-of-way 125.00 feet to the Point of Beginning.

AND TOGETHER WITH

The North 2025.73 feet of the Northeast 1/4, West of right-of-way of U.S. Highway 27 and the North 2025.73 feet of the East 1/4 of the Northwest 1/4, all in Section 22, Township 24 South, Range 26 East (less and except 30 feet along the North boundary of all of the foregoing which is reserved for right-of-way), and all that portion of the North 705.73 feet of the Southwest 1/4 of the Northwest 1/4 West of right-of-way of U.S. Highway 27, Section 23, Township 24 South, Range 26 East, all in Lake County, Florida.-

AND TOGETHER WITH

The South 1/2 of Section 11, Township 24 South, Range 26 East, and the South 1/2 of Section 10, Township 24 South, Range 26 East, lying East of U.S. Highway 27, all being in Lake County, Florida.

AND TOGETHER WITH

That part of the Northwest 1/4 which lies East of State Road 25 (U.S. Highway 27), and the Northwest 1/4 of the Northeast 1/4, all in Section 10, Township 24 South, Range 26 East, Lake County, Florida.

AND TOGETHER WITH

All lands described below are situated in Township 24 South, Range 26 East, Lake County, Florida:

Section 3:

The Southwest 1/4 of the Northwest 1/4 of Section 3; and

The North 1/2 of the Northwest 1/4 of the Southwest 1/4 of Section 3; and

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That part of the Southwest 1/4 of the Southwest 1/4 of Section 3 lying South and West of the Westerly line of the right-of-way of U.S. Highway 27; and

Section 4. less and except:

That part of a) the Southeast 1/4 of the Northeast 1/4 of the Southeast 1/4, and b) the Southeast 1/4 of the Southeast 1/4 of said Section 4 lying East of the West line of the right-of-way of U.S. Highway 27; and

Less and except that part of Section 4 described as: begin at the Northeast corner of Section 4, thence South along the East boundary line of Section 4 a distance of 240.00 feet, thence West 195.00 feet, thence Northwesterly 404.00 feet, more or less, to a point on the North boundary of Section 4 a distance of 520.00 feet from the Northeast corner of Section 4, thence East to the Point of Beginning; and

Section 8. less and except:

The Northeast 1/4 of the Northeast 1/4 of the Northwest 1/4 of Said Section 8; and

Section 9, and

Section 10:

That part of the West 1/2 of Section 10 lying West of the right-of-way U.S. Highway 27.