

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for transfer of majority organizational control of Morningside Utilities, Inc., holder of Certificate No. 595-W in Osceola County, from George DeVillers to Gary K. Turner.

DOCKET NO. 990248-WU
ORDER NO. PSC-99-1753-FOF-WU
ISSUED: September 7, 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 A SHOW CAUSE PROCEEDING, APPROVING APPLICATION FOR TRANSFER OF MAJORITY ORGANIZATIONAL CONTROL, AND CLOSING DOCKET

BY THE COMMISSION:

BACKGROUND

Morningside Utilities, Inc. (Morningside or utility) was granted Water Certificate No. 595-W by Order No. PSC-97-1211-FOF-WU, issued October 7, 1997, in Docket No. 970636-WU. On March 3, 1999, Morningside filed an application for transfer of majority organizational control, opening this docket, along with a separate application for territory extension which is being processed in Docket No. 990247-WU. Morningside is a Class C utility providing water service to approximately 175 residential customers in Morningside Village in Osceola County. Wastewater service is provided by septic tanks. The utility reported total revenues of \$62,802 with a net operating income of \$9,145 for 1998. For informational purposes, the utility's rate base was set at \$49,957 as of year-end 1997 pursuant to Order No. PSC-98-1585-FOF-WU, issued November 25, 1998, in Docket No. 980445-WU. For purposes of the transfer, the value placed upon utility stock was \$180,000.

DOCUMENT NUMBER-DATE

10681 SEP-7 99

PSC-RECORDS/REPORTING

NO SHOW CAUSE REQUIRED

On February 27, 1999, Mr. George DeVillers transferred majority organizational control of the utility to Mr. Gary K. Turner, the plant operator, before obtaining Commission approval. However, prior to the transfer, our staff was contacted for information and application forms, and, according to the utility, the parties had to close on the stock transfer due to a developer's need for service outside the utility's service territory. Although Morningside was the only provider in the area, the existing owner was trying to divest the utility business, not expand it. Absent the stock transfer, the buyer did not have the authority to enter into a developer agreement. The seller and buyer made the Stock Purchase Agreement contingent upon regulatory approval. Section 367.071(1), Florida Statutes, states, "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, 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. 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 "[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."

Although Morningside's failure to obtain our approval prior to transferring majority organizational control of its facilities from Mr. George DeVillers to Mr. Gary Turner is an apparent violation of Section 367.071(1), Florida Statutes, there are circumstances that mitigate the utility's apparent violation. Failure of Morningside to obtain this Commission's approval prior to the transfer appears to be due to the belief that the need for service was immediate. Customers requested service in the additional territory, and Mr. DeVillers, the previous owner, had no inclination to extend the utility's territory to serve those customers requesting service.

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Additionally, Mr. DeVillers and Mr. Turner modified the Stock Purchase Agreement to include a provision that states:

This contract is contingent upon the ability of the Purchaser and Seller working jointly to obtain all necessary documents, licenses, permits and any other form of authorization or certification required for the operation of the water plant located on the real property, which is owned by the Corporation, from any regulatory agencies regulating any aspects of the operation of that water plant known as Morningside Utilities and Water Treatment Plant on said property.

The Stock Purchase Agreement further defines "regulatory agencies" to include the Florida Public Service Commission. Additionally, Mr. Turner has been very cooperative in meeting the filing requirements for this docket, as well as the amendment application being handled in Docket No. 990247-WU.

Based on the foregoing, we do not find that the apparent violation of Section 367.071(1), Florida Statutes, rises in these circumstances to the level that warrants the initiation of a show cause proceeding. Therefore, Morningside shall not be required to show cause for its failure to obtain our approval prior to the transfer of majority organizational control of the utility from Mr. DeVillers to Mr. Turner.

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.

Pursuant to Rule 25-30.030, Florida Administrative Code, the application also contains evidence of compliance with the noticing requirements. No objections to the notice have been received, and the time for filing such has expired.

Pursuant to Rules 25-30.037(3)(e) and (g), Florida Administrative Code, the Stock Purchase Agreement furnished with the application indicates that the buyer purchased 100% of the utility shares for a total of \$180,000, of which \$30,000 was paid by cashiers check as a down payment at the time of the closing.

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The buyer intends to finance the remaining \$150,000 through a 15 year mortgage held by the seller at a 10% per annum interest rate and secured by the real property. The Mortgage Deed attached to the Stock Purchase Agreement was executed on February 27, 1999, making that the effective date of the transfer.

Pursuant to Rule 25.30-037(3)(I), Florida Administrative Code, the application also contains a Warranty Deed dated January 22, 1999, by which Mr. DeVillers transferred title from himself to Morningside. However, since the Warranty Deed was superseded by the Mortgage Deed which places a lien on the property in favor of Mr. DeVillers, Mr. DeVillers provided an affidavit attesting that legal title to the land continues to remain with the utility by evidence of the Warranty Deed. A description of the territory being transferred is described in Attachment A of this Order, which by reference is incorporated herein.

Pursuant to Rule 25-30.037(3)(h), Florida Administrative Code, the buyer provided a statement that, upon reasonable investigation, the systems being acquired appear to be in satisfactory condition and in compliance with all applicable standards set by the Florida Department of Environmental Protection (FDEP). Staff has confirmed with the FDEP that the utility has been inspected recently and was found to be in satisfactory working condition and in compliance with environmental rules.

According to Section 5 of the Stock Purchase Agreement, the seller is solely and exclusively responsible for all outstanding utility debt due until closing. However, the buyer agreed to be responsible for utility operations from January 1, 1999, forward and will therefore file the utility's 1999 Annual Report and resulting Regulatory Assessment Fees (RAFs). The utility is current through 1998 on its RAFs; however, because the utility paid the 1998 RAFs late, penalties and interest will apply. The former owner, Mr. DeVillers, is responsible for payment of penalties and interest.

Pursuant to Rule 25-30.037(3)(f), Florida Administrative Code, the buyer submitted financial statements with the application. Such statements appear to indicate there are resources sufficient to finance the acquisition, along with sufficient reserves for utility emergencies.

As for technical ability, Mr. Gary Turner, the buyer, currently holds a Florida "B" Drinking Water License as well as a

Florida "C" Wastewater License. He has been the operator for Morningside for one year, with a total of nine years experience working with water treatment plants.

The application indicates that the transfer of majority organizational control is in the public interest because of Mr. Gary Turner's knowledge of the operations of water treatment plants and his previous experience operating the utility. Mr. Turner also furnished a statement that he intends to fulfill the commitments, obligations and representations of the utility with regard to utility matters.

Based on the foregoing, we find the transfer to be in the public interest and it is hereby approved.

RATE BASE

Section 367.071(5), Florida Statutes, states in part, "The commission by order may establish the rate base for a utility or its facilities or property when the commission approves a sale, assignment, or transfer thereof." This provision authorizes us to establish the rate base for a utility when a sale, assignment, or transfer of a utility is approved. However, in this instance, the transfer of majority organizational control from Mr. George DeVillers to Mr. Gary Turner was accomplished through a Stock Purchase Agreement between the two parties. Therefore, we do not find it necessary in this docket to establish rate base.

RATES AND CHARGES

The utility's current rates and service availability charges became effective February 1, 1999, pursuant to the staff-assisted rate case in Docket No. 980445-WU, as approved by Order No. PSC-98-1585-FOF-WU. Rule 25-9.044(1), Florida Administrative Code, provides that:

In case of change of ownership or control of a utility which places the operation under a different or new utility, or when its name is changed, 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).

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The Buyer has not requested a change in rates and charges of the utility. Accordingly, we find that the buyer, Mr. Turner, must adopt and use the rates, classifications, and regulations contained in the existing tariff for Morningside.

The utility filed a revised tariff reflecting the change in issuing officer due to 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.

Because no further action is necessary, this docket shall be closed.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the transfer of majority organizational control of Morningside Utilities, Inc., 4144 Oakwood Drive, St. Cloud, Florida 34772, from Mr. George DeVillers to Mr. Gary Turner is hereby approved. It is further

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

ORDERED that the utility shall remit any penalties and interest assessed for late payment of 1998 RAFs. It is further

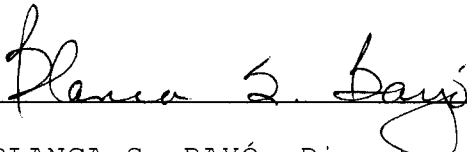
ORDERED that Mr. Gary Turner shall continue to charge the rates and charges approved in Morningside Utilities, Inc.'s tariff. It is further

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 7th
day of September, 1999.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

SAC/ALC

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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.

MORNINGSIDE UTILITIES, INC.
WATER TERRITORY DESCRIPTION
OSCEOLA COUNTY

Township 25 South, Range 30 East
Section 3

Beginning at the NE corner of Section 3, Township 25 South, Range 30 East, Osceola County, Florida, also being the NE corner of Lot 124, Morningside Village, Unit Four, as filed and recorded in Plat Book 5, Page 185 of the Public Records of Osceola County, Florida, run

North 88° 57' 45" West, along the North line of said Section 3, 1,991.94 feet to the NW corner of Lot 163, Morningside Village, Unit Five, as filed and recorded in Plat Book 6, Page 1 of the Public Records of Osceola County, Florida; run thence

South 00° 58' 04" West, along the West line of aforesaid Morningside Village, Unit Five, 655.51 feet to the SW corner of Lot 159 of aforesaid Morningside Village, Unit Five; run thence

South 88° 46' 09" East, along the South line of said Morningside Village, Unit Five, 662.73 feet to the NW corner of Lot 10, Morningside Village, Unit One, as filed and recorded in Plat Book 4, Page 84 of the Public Records of Osceola County, Florida; run thence

South 00° 58' 29" West, along the West line of aforesaid Morningside Village, Unit One, 1,337.02 feet to the SW corner of Lot 1 of aforesaid Morningside Village, Unit One; run thence along the South line of said Morningside Village, Unit One, the following:

ATTACHMENT A, continued:

South 89° 01' 31" East, 175.00 feet;

North 25° 05' 45" East, 73.41 feet to a point on a 50.00 feet radius curve, concave Northwesterly; run thence

Northeasterly along said 50.00 feet radius curve, through a central angle of 98° 02' 52", an arc distance of 85.56 feet (Chord bearing North 41° 57' 03" East, Chord = 75.50 feet) to the SW corner of Lot 19 of said Morningside Village, Unit One; run thence

South 89° 01' 31" East, along the South line of said Lot 19, 155.49 feet to the SE corner of said Morningside Village, Unit One, said point being a point on the West line of Morningside Village, Unit Two, as filed and recorded in Plat Book 4, Page 85 of the Public Records of Osceola County, Florida; run thence

South 00° 58' 29" West, along said West line of Morningside Village, Unit Two, 37.00 feet to the SW corner of said Morningside Village, Unit Two; run thence

South 89° 01' 31" East, along the South line of said Morningside Village, Unit Two, 126.01 feet to a point on a 50.00 feet radius, concave Northwesterly; run thence

Southeasterly along said 50.00 feet radius, through a central angle of 101° 32' 13", an arc distance of 88.61 feet (Chord bearing South 38° 15' 24" East) to a point on the West line of Lot 44 of said Morningside Village, Unit Two; run thence

South 00° 58' 29" West, 35.00 feet; continue thence along aforesaid South line of Morningside Village, Unit Two, the following:

South 89° 01' 31" East, 145.00 feet;

South 00° 58' 29" West, 100.00 feet;

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ATTACHMENT A, continued:

South 89° 01' 13" East, 290.00 feet to the SW corner of Lot 73, Morningside Village, Unit Three, as filed and recorded in Plat Book 5, Page 84 of the Public Records of Osceola County, Florida; run thence along the South line of said Morningside Village, Unit Three, the following:

South 89° 01' 31" West, 63.00 feet;

South 00° 58' 29" West, 133.00 feet;

South 89° 01' 31" East, 237.83 feet to the SE corner of said Morningside Village, Unit Three, said corner being on the East line of aforesaid Section 3; run thence

North 01° 11' 59" East, along said East line, 2,234.32 feet to the Point of Beginning.

Requisition for Photocopying and Mailing

Date 9 / 1 / 99

Number of Originals 11

Copies Per Original 19

Requested By [Signature]

Item Presented

Agenda For (Date) _____ Order No. 99-1753 In Docket No. 990248

Notice of _____ For (Date) _____ In Docket No. _____

Other _____

Special Handling Instructions

Distribution/Mailing

Number	Distributed/Mailed To	Number	Distribution/Mailed To
<u>9</u>	Commission Offices		
	Docket Mailing List - Mailed <u>NA</u>		
	Docket Mailing List - Faxed		

Note: Items must be mailed and/or returned within one working day after issue unless specified here:

Print Shop Verification

Job Number 140 Verified By W.S

Date and Time Completed 9/6/99 Job Checked For Correctness and Quality (Initial) _____

Mail Room Verification

Date Mailed _____ Verified By _____

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MEMORANDUM RECORDED 1780

September 7, 1999

SEP -7 PM 12:44

RECORDS AND REPORTING

TO: DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (CROSSMAN) *me pg*

RE: DOCKET NO. 990248-WU - APPLICATION FOR TRANSFER OF MAJORITY ORGANIZATIONAL CONTROL OF MORNINGSIDE UTILITIES, INC., HOLDER OF CERTIFICATE NO. 595-W IN OSCEOLA COUNTY, FROM GEORGE DEVILLERS TO GARY K. TURNER.

FOF -1753

Attached is an ORDER DECLINING TO INITIATE A SHOW CAUSE PROCEEDING, APPROVING APPLICATION FOR TRANSFER OF MAJORITY ORGANIZATIONAL CONTROL, AND CLOSING DOCKET to be issued in the above-referenced docket.

(Number of pages in order - 11)

attach are online

1- RTR.

SAC/ALC/dr

Attachment

cc: Division of Water and Wastewater (Brady)

I:\990248-O.SAC

Check - YD.