

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for transfer
of facilities of Gem Estates
Utilities, Inc. in Pasco County
to Gem Estates Mobile Home
Village Association, Inc., and
cancellation of Certificate No.
563-W.

DOCKET NO. 990256-WU
ORDER NO. PSC-01-1241-FOF-WU
ISSUED: June 4, 2001

The following Commissioners participated in the disposition of
this matter:

J. TERRY DEASON
BRAULIO L. BAEZ
MICHAEL A. PALECKI

ORDER APPROVING TRANSFER,
CANCELLING CERTIFICATE NO. 563-W,
AND CLOSING DOCKET

BY THE COMMISSION:

Background

On March 4, 1999, an application was filed with this
Commission seeking approval of the transfer of water facilities
from Gem Estates Utilities, Inc. (GEU or utility) to Gem Estates
Mobile Home Village Association, Inc. (GEMHVA) in Pasco County.
GEU is a Class C utility which provides water service to 224
unmetered lots and a clubhouse in the subdivision known as Gem
Estates Mobile Home Park. Wastewater service is provided by a
septic system.

GEMHVA was incorporated by the mobile home park lot owners on
April 10, 1984, as a non-profit association. The Articles and By-
Laws reflect that each member or owner of a lot has one vote. In
addition, GEMHVA provided its attorney's opinion that all lot
owners are members of GEMHVA in the "strictest sense." Therefore,
GEMHVA is exempt from Commission regulation pursuant to Section

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367.022(7), Florida Statutes, which exempts nonprofit associations providing service solely to members who own and control it.

GEU was formed in 1974 by Marjorie and Lawrence Cahill. Their daughter, Ms. Hollis Malberg, assumed operations of GEU in 1989 as one of two trustees of the Marjorie Ruth Cahill Trust (Cahill Trust). The other trustee was her sister, Ms. Jacqueline Cahill.

We first became aware of the utility's existence in 1992 as a result of a complaint filed by a customer due to a rate increase. At that time, GEU filed a request for recognition as an exempt entity pursuant to Section 367.022(5), Florida Statutes. The request was denied by Order No. PSC-92-0746-FOF-WU, issued August 4, 1992, in Docket No. 920281-WU, and the utility was required to file for a water certificate. GEU was granted Certificate No. 563-W by Order No. PSC-94-1472-FOF-WU, issued November 30, 1994, in Docket No. 921206-WU. At the time of certification, Ms. Malberg was still the controlling trustee. However, on October 27, 1995, the co-trustees signed an agreement leaving Ms. Cahill with full responsibility for the utility.

On December 24, 1996, the Division of Consumer Affairs received a complaint from GEMHVA regarding the utility's failure to pay its electric bill which caused electric service to be disconnected and water service disrupted for several hours. GEMHVA paid the electric bill and many subsequent bills on behalf of the utility in order to maintain water operations.

The Commission received additional complaints concerning the utility's failure to bill customers and respond to customers' calls and letters. The utility also failed to file its 1995 and 1996 annual reports and pay regulatory assessment fees.

On September 10, 1996, the Florida Department of Environmental Protection (FDEP) initiated an enforcement action against the utility for failure to correct deficiencies noted in its October 2, 1995, inspection. On September 24, 1997, a joint inspection was performed by FDEP, the utility's plant operator, GEMHVA, and Commission staff. Although deficiencies were noted, the utility did not appear to be either a health hazard or in immediate danger of being abandoned.

On October 19, 1998, the FDEP served GEU with a final "Notice of Violation and Orders for Corrective Action" (NOV). At that time we were informed that if the utility failed to respond to the final NOV, the FDEP would file a motion for default final judgment in Circuit Court which would likely result in the Circuit Court appointing a receiver to ensure environmental compliance.

With an interest in acquiring the utility, GEMHVA hired an engineering firm to establish the estimated value for the utility and the other property in the Cahill Trust. On January 14, 1999, GEMHVA held its first vote on the acquisition to which an overwhelming number of members concurred. Pursuant to Section 367.071, Florida Statutes, GEMHVA filed an application for transfer on March 4, 1999, opening this docket.

Meanwhile, on January 5, 1999, the FDEP filed a petition in Circuit Court for an emergency injunction against Ms. Cahill's continued operation of the utility, and requested the Circuit Court to find that the utility had been constructively abandoned by Ms. Cahill. FDEP further requested that GEMHVA be appointed receiver or that the Circuit Court issue an order forcing the sale of the utility. Action on the motion was held in abeyance by the Circuit Court when Ms. Malberg contacted the FDEP and the Commission staff offering to bring the utility into compliance.

On April 16, 1999, the Circuit Court of the Sixth Judicial Circuit removed Ms. Cahill as co-trustee and appointed Ms. Malberg as sole trustee of the Cahill Trust. On June 1, 1999, Ms. Malberg entered into a stipulated consent order with the FDEP and the case was closed without the need to appoint a receiver or force a sale.

Also in June of 1999, Ms. Malberg and GEMHVA entered into an informal agreement to wait until GEMHVA could reconvene its membership in 2000 to finalize discussions on the acquisition of the utility facilities. On March 22, 2000, Ms. Malberg and GEMHVA executed an "Offer to Purchase and Contract For Sale" (sales agreement) in which both parties agreed to wait until January of 2001 to close.

On April 20, 2000, Ms. Malberg filed for a staff-assisted rate case (Docket No. 000467-WU). By Order No. PSC-00-0916-FOF-WU, issued May 8, 2000, in Docket No. 980678-WU, this Commission

granted a waiver of 1995, 1996, and 1997 annual reports, referred the annual report penalty to the Comptroller's Office for permission to write off the account, discharged the lien against the utility, and closed the show cause docket. The closing of the transfer took place on January 23, 2001, at which time Ms. Malberg withdrew her petition for a staff-assisted rate case and Docket No. 000467-WU was closed. According to an addendum to the sales agreement, the transfer is contingent upon Commission approval.

Application

As filed, the application was incomplete. However, on April 2, 2001, GEMHVA completed the filing requirements and the application is now in compliance with Section 367.071, Florida Statutes, and other pertinent statutes and provisions of the Florida Administrative Code. In particular, the application contains the correct filing fee, pursuant to Rule 25-30.020, Florida Administrative Code. The application also contains proof of compliance with the noticing provisions set forth in Rule 25-30.030, Florida Administrative Code. No objections to the application have been received and the time for filing such has expired.

Pursuant to Rule 25-30.037(2) (g), Florida Administrative Code, evidence in the form of a recorded warranty deed has been provided as proof that the land upon which the utility facilities are located has been transferred to GEMHVA.

Pursuant to Rules 25-30.037(2) (g), (h), (i) and (k), Florida Administrative Code, a copy of the sales agreement and an explanation of the financing has also been provided. The purchase price of \$287,000 included the utility and all other property in the Cahill Trust. Less the cash deposit of \$1,000 and cash at closing in the amount of \$12,000, the balance of the purchase price will be financed by the seller in ten annual payments of \$27,400 beginning at closing and interest free for two years. Thereafter, interest will accrue at the rate of 7.9% per annum.

Since the entity to which the facilities are being transferred is exempt from Commission regulation, it is unnecessary to establish rate base, to consider the appropriateness of an acquisition adjustment, or to set rates and charges. According to

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Commission records, the utility is current on regulatory assessment fees through 2000. In addition, the utility furnished a statement that it did not collect any revenues for the period January 1 through 23, 2001.

According to Commission records, the utility is current on annual reports through 1999. Rule 25-30.110(3), Florida Administrative Code, requires an annual report to be filed for any year a utility is jurisdictional as of December 31st. Since the utility transferred to an exempt entity on January 23, 2001, an annual report is not required for 2001. GEU has filed a petition for a waiver of its 2000 annual report, which will be considered in Docket No. 010385-WU.

Pursuant to Rule 25-30.037(j), Florida Administrative Code, by its continued commitment to the utility throughout the transfer process, GEMHVA has demonstrated its technical and financial ability to provide utility service to its customers. Further, because the customers are all members of the Association, GEMHVA has a vested interest in ensuring that adequate service continues to be provided.

Based on the foregoing, we find the transfer of water facilities from GEU to GEMHVA Inc., to be in the public interest and it is approved. Further, Certificate No. 563-W is hereby canceled.

It is, therefore,

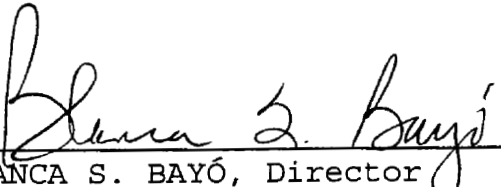
ORDERED by the Florida Public Service Commission that the transfer of water facilities from Gem Estates Utilities, Inc., Post Office Box 2016, Zephyrhills, Florida 33539-2016, to Gem Estates Mobile Home Village Association, Inc., 39407 Rockford Avenue, Zephyrhills, Florida 33540, is hereby approved. It is further

ORDERED that Certificate No. 563-W is hereby cancelled. It is further

ORDERED that Docket No. 990256-WU is hereby closed.

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By ORDER of the Florida Public Service Commission this 4th day of June, 2001.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

ALC

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

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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.