

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for transfer of majority organizational control of Colony Park Utilities, Inc. holder of Certificate No. 137-S in Brevard County, from Robert Warren, Lenore Warren, William Warren, and Carol Kendall to Eileen Rogow, Arthur Rogow, and Philip Young.

DOCKET NO. 020930-SU  
ORDER NO. PSC-03-0320-FOF-SU  
ISSUED: March 6, 2003

The following Commissioners participated in the disposition of this matter:

LILA A. JABER, Chairman  
J. TERRY DEASON  
BRAULIO L. BAEZ  
RUDOLPH "RUDY" BRADLEY  
CHARLES M. DAVIDSON

ORDER APPROVING TRANSFER OF MAJORITY  
ORGANIZATIONAL CONTROL OF COLONY PARK  
UTILITIES, INC. AND CLOSING DOCKET

BY THE COMMISSION:

Background

On August 29, 2002, Colony Park Utilities, Inc. (CPU or utility) filed an application for approval of transfer of majority organizational control of the utility from Robert Warren, Lenore Warren, William Warren, and Carol Kendall to Eileen G. Rogow, Arthur Rogow, and Philip Young. CPU is a Class C utility that provides wastewater service in Brevard County to approximately 300 customers in the Colony Park Mobile Home Park Community (Colony Park). Colony Park Mobile Village (Village) is a rental community within Colony Park. Water service and CPU's wastewater billings are provided by the City of Cocoa. CPU is located in the St. Johns

DOCUMENT NUMBER-DATE

02230 MAR-6 8

FPSC-COMMISSION CLERK

River Water Management District, all of which is considered a water use caution area.

On September 18, 2001, Robert Warren, Lenore Warren, William Warren, and Carol Kendall (Warrens or sellers) entered into contracts for sale and purchase of all the common stock in CPU and Village to Eileen G. Rogow, Arthur Rogow, and Philip Young (buyers). The actual closing took place on February 28, 2002. Pursuant to an addendum to the contract filed on January 31, 2003, and signed by both the buyers and the sellers, the sale was made contingent upon Commission approval. We have jurisdiction in this matter pursuant to Section 367.071, Florida Statutes.

#### Application

The application is 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 as prescribed by Rule 25-30.020, Florida Administrative Code. The utility also provided a copy of a recorded warranty deed as evidence that it owns the land upon which its facilities are located, pursuant to Rule 25-30.037(3)(i), 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.

The application contains a copy of the contract for sale and purchase of all the common stock in CPU and Village. The agreement was executed on September 18, 2001, and the closing occurred on February 28, 2002. As discussed previously, an addendum to the contract made the sale contingent upon Commission approval.

Pursuant to Rule 25-30.037(3)(e) and (g), Florida Administrative Code, the application contains a statement describing the financing of the purchase, the entities providing funding to the buyers, and an explanation of the manner and amount of such funding. According to the information provided, the sellers accepted a promissory note from the buyers to finance

ORDER NO. PSC-03-0320-FOF-SU  
DOCKET NO. 020930-SU  
PAGE 3

\$125,000 of the purchase at eight percent per annum. The principal and accrued interest is to be paid in full by February 28, 2005.

The application contains a statement that a reasonable investigation of the utility was performed, pursuant to Rule 25-30.037(3)(h), Florida Administrative Code. Further, we contacted the Florida Department of Environmental Protection (DEP) and confirmed that the utility's wastewater system is in compliance with DEP standards.

In addition, the application contains a statement of how the transfer is in the public interest, including a summary of the buyers' experience in wastewater operations and their financial ability to provide service, as required by Rule 25-30.037(3)(f), Florida Administrative Code.

Two of the buyers, Eileen G. Rogow and Arthur Rogow (Rogows), have had prior utility ownership experience with this Commission under the name EGR Enterprises, Inc. (EGR). EGR purchased Wildwood Estates on April 4, 1991, from the Resolution Trust Corporation (RTC). RTC acquired the assets from a failed Savings and Loan company which had foreclosed on the original certificate holder, Heritage Wood 'N Lakes Estates (Heritage). The transfer of the assets from Heritage through the foreclosure and subsequent sales to RTC and ERG were done without our prior approval. The transfer of the utility assets to EGR was approved by Order No. PSC-92-0335-FOF-WS, issued May 11, 1992 in Docket No. 911054-WS. In that Order, the Commission decided not to initiate show cause proceedings against the previous owner since EGR filed the application for transfer shortly after being advised of the statutory requirement.

On November 30, 1993, a little over a year after the transfer was approved, EGR sold the mobile home development and the utility assets to LHTW Properties, Inc. d/b/a Wildwood Estates (LHTW) without prior Commission approval. Because LHTW continued to file annual reports and regulatory assessment fees (RAFs) for the utility under the same name (Wildwood Estates) and from the same address as EGR, we did not become aware that a transfer had occurred until March of 1996. The transfer was subsequently approved in Order No. PSC-98-1571-FOF-WS, issued November 23, 1998, in Docket No. 961444-WS. At that time, we considered a show cause

fine against EGR for transferring without prior Commission approval. However, EGR was administratively dissolved in 1994. Because the statute of limitations had run for the corporation and for the directors, we decided it would not be cost effective to levy a fine against an entity that no longer existed.

When the application for transfer was filed in the instant docket, our staff talked with Mr. Rogow concerning the Rogow's prior experience with this Commission. Mr. Rogow stated that he was not aware that there had been a problem with the sale of Wildwood Estates. Our staff informed Mr. Rogow of the problems and sent him a copy of Order No. PSC-98-1571-FOF-WS. Mr. Rogow was also reminded that he is responsible for operating his utility according to the Statutes and Rules.

With regard to financial ability, the buyers provided a financial statement as of September 30, 2002, which indicates a total net worth in excess of \$2 million. The buyers also provided a statement of intent to fulfill the commitments, obligations, and representations of the sellers with regard to utility matters.

The utility has paid regulatory assessment fees (RAFs) and filed an annual report through 2001. The buyers are responsible for filing the annual report and paying RAFs for 2002 and all future years.

Regarding rate base, rate base for CPU was last established at \$120,777, as of December 31, 1995, in Docket No. 951591-SU. It has been Commission practice not to establish rate base for transfers of majority organizational control because a stock transfer has no regulatory impact on rate base. Similarly it has been Commission practice that an acquisition adjustment is not made for a stock transfer. Therefore, rate base is not being established and no acquisition is being made in this docket.

#### Conclusion

We seriously considered whether to approve this transfer in light of our previous experience with the Rogows. However, upon talking to the sellers' representative, it was found that the previous manager of the utility died shortly after the 2002 transfer took place and the remaining sellers are unable to run the

utility. Additionally, it appears that the Rogows ran Wildwood Estates with few known problems, other than the sale without prior approval. We have discussed these issues with the Rogows, and we now believe that they are cognizant of our jurisdiction and their responsibility with respect to owning and operating a regulated utility.

Based on the foregoing, we find that the transfer of majority organizational control of CPU from the Warrens to the buyers is in the public interest and it is approved. The buyers are hereby reminded that the utility is subject to all of the provisions of Chapter 367, Florida Statutes, and Chapters 25-9, 25-22, and 25-30, Florida Administrative Code. Further, the buyers are hereby put on notice that should they transfer this or any other utility in the future without prior Commission approval, a show cause proceeding will be instituted against them.

Rates and Charges

CPU's current rates and charges were approved by Order No. PSC-96-1083-FOF-SU, issued August 22, 1996, in Docket No. 951591-SU. The utility's rates are set forth below.

Wastewater  
Monthly Rates

Residential and General Service

Base Facility Charge  
Meter Sizes:

5/8" x 3/4"	\$	6.14
1"	\$	15.36
1 1/2"	\$	30.71
2"	\$	49.14
3"	\$	98.26
4"	\$	154.53
6"	\$	309.07

Residential Gallonage Charge

Per 1,000 Gallons (10,000 Gallon Maximum)	\$	1.80
--	----	------

General Service Gallonage Charge

Per 1,000 Gallons  
(10,000 Gallon Maximum) \$ 2.16

Multi-Residential Service  
Colony Park Mobile Home Park

Base Facility Charge \$ 921.22

Gallonage Charge

Per 1,000 Gallons  
(1,500,000 Gallon Maximum) \$ 1.80

Service Availability Charges

CPU's territory is fully built out. The existing tariff includes the following service availability policy:

No specific charge is authorized. Future additions to the plant and collection system should be paid for by the developer requiring the additional capacity and connections.

Rule 25-9.044(1), Florida Administrative Code, requires the new owner of a utility to adopt and use the rates, classifications and regulations of the former operating company unless authorized to change by this Commission. CPU has not requested a change in the rates and charges and we see no reason to change them at this time. CPU shall continue to charge the rates and charges approved in its tariff until authorized to change by this Commission in a subsequent proceeding.

It is, therefore,

ORDERED by the Florida Public Service Commission that the transfer of majority organizational control of Colony Park Utilities, Inc., 6710 Orleans Court, Merritt Island, Florida 32953, from Robert Warren, Lenore Warren, William Warren and Carol Kendall, 6710 Orleans Court, Merritt Island, Florida 32953, to Eileen G. Rogow, Arthur Rogow, and Philip Young, 8116 Hibiscus Circle, Tamarac, Florida 33321, is hereby approved. The territory Colony Park Utilities, Inc. is authorized to serve is shown on

ORDER NO. PSC-03-0320-FOF-SU  
DOCKET NO. 020930-SU  
PAGE 7

Attachment A of this Order, which by reference is incorporated herein. It is further

ORDERED that Eileen G. Rogow, Arthur Rogow, and Philip Young are hereby reminded that Colony Park Utilities, Inc. is subject to all of the provisions of Chapter 367, Florida Statutes, and Chapters 25-9, 25-22, and 25-30, Florida Public Service Commission. It is further

ORDERED that Colony Park Utilities, Inc. shall continue to charge the rates and charges approved in its tariff until authorized to change by this Commission in a subsequent proceeding. It is further

ORDERED that docket is hereby closed.

By ORDER of the Florida Public Service Commission this 6th day of March, 2003.

BLANCA S. BAYÓ, Director  
Division of the Commission Clerk  
and Administrative Services

By: \_\_\_\_\_

*Kay Flynn*  
Kay Flynn, Chief  
Bureau of Records and Hearing  
Services

( 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 the Commission Clerk and Administrative Services, 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 the Commission Clerk and Administrative Services 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.

**COLONY PARK UTILITIES, INC.  
WASTEWATER TERRITORY  
BREVARD COUNTY**

Order No. 6365

In Township 23 South, Range 36 East, Brevard County, Florida

Section 15

Commence at the Southeast corner of said Section 15 for a Point of Beginning. Thence run North 0°39'04" West along the East line of said Section 15, 1236.97 feet; thence North 89°35'04" West, 477.46 feet; thence South 00°38'31" West, 25.00 feet; thence South 68°21'32" West, 84.30 feet; thence South 76°38'12" West, 83.63 feet; thence South 89°20'56" West, 234.00 feet; thence South 00°39'04" East, 150.00 feet; thence North 89°20'56" East, 5.00 feet; thence South 00°39'04" West, 489.79 feet; thence South 87°45'45" West, 358.30 feet; thence South 2°14'15" East, 150 feet to a point on the South boundary of St. Charles Avenue; thence Westerly 30 feet, more or less; thence South 2°14'15" East, 400 feet, more or less, to a point on the South boundary of said Section 15, thence North 87°45'45" East along the South boundary of said Section 15, 1250 feet, more or less, to the Point of Beginning.

Section 14

Commence at the Southwest corner of said Section 14; thence run North 0°39'04" West along the West boundary of Section 14, 320 feet, more or less, to the Point of Beginning which is also the Southwest corner of the aforesaid parcel; thence North 0°39'04" West along the West line of said parcel, a distance of 947.98 feet; thence North 87°05'16" East, a distance of 710.58 feet; thence North 0°48'54" West, a distance of 10 feet to the North line of

ORDER NO. PSC-03-0320-FOF-SU  
DOCKET NO. 020930-SU  
PAGE 10

said parcel; thence North  $89^{\circ}11'06''$  East along the North line of said parcel, a distance of 569.57 feet; thence South  $2^{\circ}00'25''$  East, a distance of 985.11 feet to a point on the South line of said parcel; thence South  $89^{\circ}13'32''$  West along the South line of said parcel, a distance of 1302.88 feet to the Point of Beginning.