

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Application for transfer of majority organizational control of Country Club of Sebring, Inc. in Highlands County and for name change on Certificate Nos. 540-W and 468-S to Country Club Utilities, Inc.

DOCKET NO. 060352-WS
ORDER NO. PSC-07-0121-FOF-WS
ISSUED: February 12, 2007

The following Commissioners participated in the disposition of this matter:

LISA POLAK EDGAR, Chairman
MATTHEW M. CARTER II
KATRINA J. TEW

ORDER AUTHORIZING UTILITY CORPORATE REORGANIZATION,
NAME CHANGE AND
TRANSFER OF MAJORITY OWNERSHIP CONTROL

BY THE COMMISSION:

Country Club of Sebring, Inc. (Country Club) is a Class C utility providing service to approximately 371 water and wastewater customers in Highlands County. Country Club is located in the Southwest Florida Water Management District in a water resource caution area. In 2005, the utility reported annual operating revenues of \$119,618 for water and \$78,349 for wastewater, with a net operating loss of \$19,930 for water and net operating income of \$12,731 for wastewater.

The utility was granted Certificate Nos. 540-W and 468-S in 1992 under the name of Country Club of Sebring, Inc.¹ In 2003, a golf facility was given a name similar to the utility's registered corporate name, which caused confusion for the customers of the utility. To alleviate the customer confusion, the utility changed its name to Country Club Utilities, Inc. Upon being informed that a change in name required Commission approval, the utility filed a request for a name change on April 20, 2006, pursuant to Section 367.1214, Florida Statutes.

Although the original application filed on April 20, 2006 was for a name change, during our staff's review of the application, staff learned two additional details. The vehicle the utility owner used to change the name was to allow the old corporation to dissolve and to create a new corporation with a different name. This corporate reorganization was technically a transfer. The staff also learned that in January, 2004, a transfer of stock between father and son occurred within this family run utility business. The son, Mr. R. Greg Harris, was given 100% of the stock in Country Club Utilities, Inc. The utility was advised that the transfer of stock without the

¹ Order No. 25788, issued February 24, 1992, in Docket No. 910792-WS, In Re: Application for water and sewer certificates in Highlands County by Country Club of Sebring, Inc.

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prior approval of the Commission or being contingent upon Commission approval was a violation of Section 367.071, Florida Statutes. In subsequent filings, the new owner included documentation showing that the transfer of stock from father to son was made contingent upon the approval of Commission. The utility completed the application process for the name change, corporate reorganization, and transfer of majority organizational control and our staff reviewed the application for compliance with Florida Statutes and our rules.

On January 23, 2007, at our regular agenda conference, we considered Country Club's requested authorization for name change, corporate reorganization, and transfer of majority organizational control. Country Club of Sebring, Inc. requested authorization to change its name to Country Club Utilities, Inc. The requested transfer was a transfer of the certificate and assets of Country Club of Sebring, Inc to the new corporation, Country Club Utilities, Inc. The transfer of majority organizational control was a transfer from Mr. R. A. Harris (Seller) to Mr. R. Greg Harris (Buyer). We have jurisdiction pursuant to Sections 367.071 and 367.1214, Florida Statutes.

Show Cause for Statutory Violations

Section 367.071, Florida Statutes, requires a utility to notify and to obtain approval of the Commission prior to a transfer of its certificates or facilities. Section 367.1214, Florida Statutes, requires that a water and wastewater utility notify the Commission and its customers before changing its name. Failure to comply with applicable laws may subject a utility to an order to show cause and subsequent penalties. In determining whether to hold a show cause proceeding and to impose penalties, we may consider mitigating circumstances. Mitigating circumstances include whether the utility has come into compliance with statutes and rules. We may also consider whether a show cause order is necessary to remedy or prevent harm to customers.

We find that although Country Club has admitted to violating Sections 367.071 and 367.1214, Florida Statutes, there are mitigating circumstances that negate the need to issue an order to show cause. First and foremost, with this application, the utility has complied with the statutes and rules in question. Secondly, the transfer and name change were made, not to hinder or harm customers or the commission, but to help avoid customer confusion. The utility was concerned that customers would become confused because a corporation owning the golf course in the community had a name similar to that of the utility. Even though we were not notified of the corporate change, the customers were. The name change occurred several years ago and apparently no customer has complained or been harmed by the utility owner's actions. The utility has continued to complete its Commission filings annually. The utility stated it was unaware of the requirement to notify us prior to transferring the facility and prior to changing its name, but upon becoming aware of its violation, the utility immediately took steps to file the necessary documents to request our approval of the transfer and name change. Upon consideration of the length of time the utility has operated under the changed name without problem, the fact that name change has prevented customer confusion, and the utility's willingness to immediately correct its error, we find that a show cause proceeding against Country Club for its apparent violations of Sections 367.071, and 367.1214, Florida Statutes is not warranted.

Corporate Reorganization and Name Change

The application filed on April 20, 2006 was filed pursuant to Rule 25-30.039, Florida Administrative Code, as a name change from Country Club of Sebring, Inc to Country Club Utilities, Inc. The utility subsequently filed additional information required by Sections 367.071 and 367.1214, Florida Statutes, and Rule 25-30.039, Florida Administrative Code, to obtain approval of the transfer and the transfer of majority organizational control. The application included documentation from the Florida Department of State, Division of Corporations, showing Country Club Utilities, Inc. as a registered corporation. The application included a copy of the utility's proposed water and wastewater tariffs showing the name change and a copy of the notice for the name change that was mailed to the customers. The purpose of the transfer and name change was to eliminate customer confusion with a golf facility with a name similar to the utility's former name. The rates and charges of the utility will not be affected by the reorganization, nor will the reorganization affect the utility's management, operations, or customer service. The utility has submitted tariff sheets reflecting the name change.

Upon consideration, we find that the transfer and name change of Country Club of Sebring, Inc. to Country Club Utilities, Inc. is approved effective January 23, 2007. This order will serve as the utility's water and wastewater certificates and should be retained by the utility.

Transfer of Majority Organizational Control

Country Club's application for authority to transfer majority organizational control from Mr. R. A. Harris to Mr. R. Greg Harris is in compliance with the governing statute, Section 367.071, Florida Statutes, and the requirements of Rule 25-30.037, Florida Administrative Code, pertaining to an application for transfer of majority organizational control. Country Club provided us with a description of the territory which is appended to this order as Attachment A. The application contains proof of compliance with the noticing provisions set forth in Rule 25-30.030, Florida Administrative Code, and no objections were received. The application contained a statement that, after reasonable investigation, the utility systems appear to be in satisfactory condition and in compliance with all applicable standards set by the Florida Department of Environmental Protection (DEP). Our staff has confirmed with the DEP that the utility's water and wastewater systems are currently in environmental compliance with respect to DEP standards. The application contains a statement describing how the transfer is in the public interest, including a summary of the buyer's experience in water and wastewater operations and a showing of the buyer's financial ability. Mr. R. Greg Harris provided documentation of a line of credit with a local bank as evidence of his financial ability to operate and maintain the utility. In addition, Mr. R. Greg Harris, the President of Country Club, has been instrumental in managing and directing the operations of the utility for many years. Mr. R. Greg Harris provided a statement that he will fulfill all of the utility's commitments, obligations, and representations with regard to utility matters. Proof of ownership of the land upon which the facilities are located in the form of a recorded warranty deed was provided. We find that the acquisition of majority control of the utility by Mr. R. Greg Harris will not result in any change in the management of the utility. Country Club will continue to have the ability to provide consistent and uninterrupted service to its customers.

Our staff has verified that the utility is current on annual reports and regulatory assessment fees (RAFs) through 2005. The utility will continue to be responsible for filing the annual report and RAFs for 2006 and future years. Country Club's rates and charges were established pursuant to Order No. 25788. There has been several subsequent price indexes to the rates. Rule 25-9.044(1), Florida Administrative Code, provides that in the case of change of ownership or control of a utility, the rates, classification, and regulations of the former owner must continue unless authorized to change by the Commission. The new owner has not requested a change; therefore, the existing rates and charges will continue until authorized to change by the Commission in a subsequent proceeding.

Upon consideration, we find the transfer of majority organizational control of Country Club from Mr. R. A. Harris to Mr. R. Greg Harris is in the public interest and accordingly approve the transfer, effective January 23, 2006. This order will serve as the utility's water and wastewater certificates and shall be retained by the utility. Pursuant to Rule 25-9.044(1), Florida Administrative Code, the rates and charges approved for Country Club shall continue until authorized to change by the Commission in a subsequent proceeding. Country Club is responsible for all regulatory assessment fees and annual reports for 2006 and into the future. A description of the territory being transferred is appended to this order as Attachment A.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the corporate reorganization and name change of Country Club of Sebring, Inc to Country Club Utilities, Inc is approved. It is further

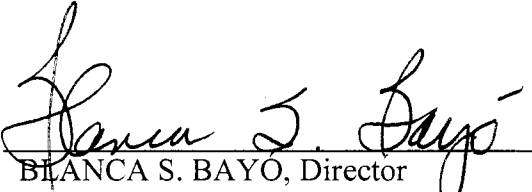
ORDERED that the transfer of majority organizational control from Mr. R. A. Harris to Mr. R. Greg Harris is approved. It is further

ORDERED that the rates and charges approved for Country Club of Sebring, Inc. shall continue for Country Club Utilities, Inc until authorized to change by the Commission in a subsequent proceeding. It is further

ORDERED that this Order will serve as the utility's water and wastewater certificates and shall be retained by the utility. It is further

ORDERED that this docket be closed.

By ORDER of the Florida Public Service Commission this 12th day of February, 2007.


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

(S E A L)

LCB

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.

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Country Club Utilities, Inc.

TERRITORY DESCRIPTION

The North $\frac{3}{4}$ of Section 9, Township 35 South, Range 28 East, Highlands County,
Florida.

FLORIDA PUBLIC SERVICE COMMISSION

Authorizes

Country Club Utilities, Inc.
pursuant to
Certificate Number 540-W

to provide water service in Highlands County in accordance with the provisions of Chapter 367, Florida Statutes, and the Rules, Regulations, and Orders of this Commission in the territory described by the Orders of this Commission. This authorization shall remain in force and effect until superseded, suspended, cancelled or revoked by Order of this Commission.

Order Number	Date Issued	Docket Number	Filing Type
25788	02/24/92	910792-WS	Original Certificate
PSC-07-0121-FOF-WS	02/12/07	060352-WS	Name Change and Transfer of Majority Organizational Control

FLORIDA PUBLIC SERVICE COMMISSION

Authorizes

Country Club Utilities, Inc.

pursuant to

Certificate Number 468-S

to provide wastewater service in Highlands County in accordance with the provisions of Chapter 367, Florida Statutes, and the Rules, Regulations, and Orders of this Commission in the territory described by the Orders of this Commission. This authorization shall remain in force and effect until superseded, suspended, cancelled or revoked by Order of this Commission.

Order Number	Date Issued	Docket Number	Filing Type
25788	02/24/92	910792-WS	Original Certificate
PSC-07-0121-FOF-WS	02/12/07	060352-WS	Name Change and Transfer of Majority Organizational Control