

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for approval of transfer of Keith & Clara Starkey d/b/a Heather Hills Estates' water and wastewater utility, holder of Certificates 577-W and 498-S, to Heather Hills Estates Utilities, LLC, in Manatee County.	DOCKET NO. 090093-WS ORDER NO. PSC-10-0519-FOF-WS ISSUED: August 16, 2010
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The following Commissioners participated in the disposition of this matter:

LISA POLAK EDGAR
NATHAN A. SKOP
ART GRAHAM
RONALD A. BRISÉ

ORDER APPROVING APPLICATION FOR TRANSFER OF UTILITY

BY THE COMMISSION:

Background

On February 27, 2009, an application was filed on behalf of Keith & Clara Starkey d/b/a Heather Hills Estates (Heather Hills, Utility, Seller) for the transfer of Certificate Nos. 577-W and 498-S to Heather Hills Estates Utilities, LLC (HHEU, Buyer). Heather Hills is a Class C utility which purchases water and wastewater treatment services from Manatee County. It is located in an area of Manatee County which is considered by the Southwest Florida Water Management District to be in one of the Southern Water Use Caution Area's most impacted areas. In its 2009 Annual Report, the Utility reported annual gross revenues of \$122,297 with a total net operating loss of (\$6,457).

Heather Hills was established in 1967 to serve water and wastewater customers within the Heather Hills Estates community in Manatee County, Florida. The Utility serves 353 single family residential customers, as well as a park clubhouse and a golf course clubhouse/restaurant. The golf course has a septic tank for wastewater service.

Pursuant to Manatee County declaring the privately owned water and wastewater utilities in Manatee County subject to the provisions of Chapter 367, Florida Statutes (F.S.) in 1995,¹ Certificate Nos. 577-W and 498-S were granted to the Utility in 1996.² There have been no

¹ Order No. PSC-95-1393-FOF-WS, issued November 9, 1995, in Docket No. 951235-WS, In re: Resolution of the Board of County Commissioners of Manatee County declaring Manatee County subject to the provisions of Chapter 367, F.S.

² See Order No. PSC-96-0434-FOF-WS, issued March 28, 1996, in Docket No. 951533-WS, In re: Application for certificates to provide water and wastewater service in Manatee County by Keith & Clara Starkey d/b/a Heather Hills Estates.

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FFSC-COMMISSIONER

further certification applications until the pending transfer in this docket was filed.³ The Utility's initial application was found to be deficient. However, these deficiencies were subsequently corrected and the filing was deemed complete on August 11, 2009.

Five customers initially protested the application to transfer. The primary concerns expressed were (1) the magnitude of the purchase price (in excess of \$123,000) versus net book value of the Utility (\$902 per the Utility's 2007 Annual Report), (2) the amount of debt and additional responsibility being incurred by the Buyer, and (3) the Buyer's reliance on the Seller for financial backing and technical training. On July 8, 2009, our staff sent letters to the customers who protested to determine if they wished to pursue a formal hearing. On August 7, 2009, one of the five customers filed a petition for formal hearing.⁴ Our staff conducted informal meetings with the parties on November 11, 2009 and March 17, 2010. On May 26, 2010, the customer filed a notice of the withdrawal of her petition for a formal hearing.

This recommendation concerns the application to transfer filed pursuant to Section 367.071, F.S., and Rule 25-30.037, Florida Administrative Code (F.A.C.). We have jurisdiction to consider this matter pursuant to Section 367.071, F.S.

Decision

As stated above, on February 27, 2009, an application was filed for the transfer of Certificate Nos. 577-W and 498-S from Keith and Clara Starkey to HHEU. The closing on the sale of assets took place on January 1, 2009, subject to approval by this Commission as provided in Section 367.071(1), F.S.

While the application was initially deficient, the deficiencies were resolved and the application is now in compliance with the governing statute, Section 367.071, F.S., and Rule 25-30.037, F.A.C., pertaining to an application for the sale, assignment, or transfer of certificates of authorization. The territory being transferred is described in Attachment A. Since the Utility purchases water and wastewater treatment services from Manatee County, it is not required to provide proof of ownership of the land under the treatment facilities, pursuant to Rule 25-30.037(2)(q), F.A.C. The application includes the required proof of noticing, pursuant to Rule 25-30.030, F.A.C.

Pursuant to Rule 25-30.037(2)(g) and (k), F.A.C., the application contains a copy of the Asset Purchase Agreement with an attached easement agreement which allows the Utility access to the distribution and collection systems. The purchase price for the Utility was approximately \$123,000, which will be financed by the Seller with quarterly repayments by the Buyer of \$3,750 at an annual interest rate of 3.520 percent. According to the application, there are no customer

³ Docket No. 080428-WS, In re: Joint application for transfer of water and wastewater systems from Keith & Clara Starkey d/b/a Heather Hills Estates to Ni Florida, Inc., in Manatee County, was withdrawn by request of the joint applicants on October 13, 2008, and the Docket voluntarily dismissed by the Commission on October 14, 2008.

⁴ Although the Office of the Public Counsel (OPC) did not formally intervene in the docket, it assisted the customer in filing her petition. OPC also worked with our staff, the customer, and the Buyer and Seller to find a non-hearing resolution to the customer's issues.

deposits, guaranteed revenue contracts, developer agreements, customer advances, or utility debt or leases to be disposed of as part of the transfer.

Pursuant to Rule 25-30.037(2)(j), F.A.C., HHEU's application includes a statement that the transfer is in the public interest because the owners of HHEU are the owners of the clubhouse and amenities that serve the residents of Heather Hills Estates. The application also contains the Buyer's personal financial statements and other information to support its financial ability. In addition to the financial statements, we believe that the Buyer's ownership interest in the community will be added incentive for properly maintaining the utility facilities.

With regard to Rule 25-30.037(2)(j), F.A.C.'s, requirement for technical ability, we note that water distribution and wastewater collection lines do not require a licensed operator. However, the application contains statements that the Buyer has retained a consulting firm to assist in Utility operations on an as-needed basis and that a plumbing company has been retained for emergencies. Pursuant to Rule 25-30.037(2)(p), F.A.C., the application also includes a statement that, after reasonable inspection, the system appears to be in satisfactory condition and is in compliance with all related governmental agencies. The Manatee County Health Department, which is responsible for environmental water compliance in Manatee County, provided a letter indicating that the public water system is currently in compliance with all required testing.

As also required by Rule 25-30.037(2)(j), F.A.C., the Buyer stated that it intends to fulfill the commitments, obligations, and representations of the Seller with regard to utility matters. In this respect, we note that the Buyer has successfully operated the utility systems for over a year and a half during which time the remaining work on the Seller's prior commitment to install new water valves and replace existing meters is almost complete. Based on all the above, the Buyer appears to have demonstrated that it has the technical and financial ability to continue to operate and maintain Heather Hills water distribution and wastewater collection systems in addition to its other responsibilities.

Pursuant to Section 367.071, F.S., we may set rate base in transfer dockets. We have not previously established rate base for the Heather Hills systems. However, the Utility's 2008 Annual Report reflects a combined net book value at the time of the purchase of \$23,536. Without a rate proceeding, we cannot be certain of the net book value of the Utility, but it appears that it would be considerably less than the purchase price of slightly more than \$123,000. The application does not include a request for a positive acquisition adjustment; therefore, no acquisition adjustment shall be made pursuant to Rule 25-30.0371, F.A.C. According to the application, the Buyer has obtained the books and records as well as the tax returns of the Seller, pursuant to Rule 25-30.037(2)(o), F.A.C. The Buyer understands the need to maintain such records for inspection by us.

The Utility has no unpaid RAFs and no fines or refunds are owed. Heather Hills timely paid 2009 RAFs and filed its 2009 Annual Report for the water and wastewater systems. HHEU shall be responsible for filing a 2010 Annual Report and all future annual reports and remitting 2010 RAFs and all future RAFs for the utility systems.

Heather Hills' existing rates and charges were established in 1997 resulting from an overearnings investigation.⁵ Those rates have been indexed annually. In addition, the Utility was recently granted a late payment fee.⁶ Rule 25-9.044(1), F.A.C., provides that, in the case of a change of ownership or control of a utility, the rates, classifications, and regulations of the former owner must continue unless authorized to change by this Commission. The Utility's existing rates, as shown on Schedule 1, shall continue to be in effect until authorized to change by this Commission in a subsequent proceeding.

Based on the above, we determine that the transfer of Certificate Nos. 577-W and 498-S from Keith & Clara Starkey d/b/a Heather Hills Estates to Heather Hills Estates Utilities, LLC is in the public interest and shall be approved effective August 3, 2010. No acquisition adjustment shall be made pursuant to Rule 25-30.0371, F.A.C. The territory being transferred is described in Attachment A. The resultant order shall serve as HHEU's water and wastewater certificates and shall be retained by HHEU. The Utility's existing rates and charges, as shown on Schedule 1, shall continue to be in effect until authorized to change by this Commission in a subsequent proceeding. The tariff pages reflecting the transfer shall be effective for services provided or connections made on or after the stamped approval date on the tariff sheets pursuant to Rule 25-30.475, F.A.C. HHEU shall be responsible for filing a 2010 Annual Report and all future annual reports and remitting 2010 RAFs and all future RAFs for the utility systems.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the transfer of Certificate Nos. 577-W and 498-S from Keith & Clara Starkey d/b/a Heather Hills Estates to Heather Hills Estates Utilities, LLC, is in the public interest and shall be approved, effective August 3, 2010. It is further

ORDERED that no acquisition adjustment shall be made pursuant to Rule 25-30.0371, Florida Administrative Code. It is further

ORDERED that the resultant order shall serve as Heather Hills Estates Utilities, LLC's water and wastewater Certificate Nos. 577-W and 498-S and shall be retained by Heather Hills Estates Utilities, LLC. It is further

ORDERED that the existing rates and charges, as shown on Schedule 1, shall continue to be in effect until authorized to change by this Commission in a subsequent proceeding. It is further

ORDERED that the tariff pages reflecting the transfer shall be effective for services provided or connections made on or after the stamped approval date on the tariff sheets, pursuant to Rule 25-30.475, Florida Administrative Code. It is further

⁵ Order No. PSC-97-0233-FOF-WS, issued February 26, 1997, in Docket No. 960814-WS, In re: Investigation of possible overearnings in Manatee County by Keith & Clara Starkey d/a Heather Hills Estates.

⁶ Order No. PSC-10-0014-TRF-WS, issued January 4, 2010, in Docket No. 090500-WS, In re: Request for approval of late payment charge by Heather Hills Estates Utilities, LLC, in Manatee County.

ORDERED that Heather Hills Estates Utilities, LLC shall be responsible for filing a 2010 Annual Report and all future annual reports and remitting 2010 Regulatory Assessment Fees and all future Regulatory Assessment Fees for the utility systems. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission this 16th day of August, 2010.



ANN COLE
Commission Clerk

(S E A L)

ELS

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 Office of Commission Clerk, 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 Office of Commission Clerk, 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.

TERRITORY DESCRIPTION
Heather Hills Estates Utilities, LLC
Manatee County
Water and Wastewater Service

Township 35 South, Range 17 East
Section 11

The NE 1/4 of the SE 1/4 and the South 1/2 of the SE 1/4 of the NE 1/4.

Also

Township 35 South, Range 17 East
Section 12

From the NW corner of the SW 1/4 of the SW 1/4 of the NW 1/4 run due East 170.0 feet to the Point of Beginning; thence due North 50.0 feet; thence due East 100.0 feet; thence due South 100.0 feet; thence due West 100.0 feet; thence due North 50.0 feet to the Point of Beginning.

FLORIDA PUBLIC SERVICE COMMISSION
authorizes
Heather Hills Estates Utilities, LLC
pursuant to
Certificate Number 577-W

to provide water service in Manatee 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.

<u>Order Number</u>	<u>Date Issued</u>	<u>Docket Number</u>	<u>Filing Type</u>
PSC-96-0434-FOF-WU	04/29/97	951533-WS	Grandfather Certificate
PSC-10-0519-FOF-WS	08/16/10	090093-WS	Transfer of Certificates

FLORIDA PUBLIC SERVICE COMMISSION
authorizes
Heather Hills Estates Utilities, LLC
pursuant to
Certificate Number 498-S

to provide wastewater service in Manatee 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.

<u>Order Number</u>	<u>Date Issued</u>	<u>Docket Number</u>	<u>Filing Type</u>
PSC-96-0434-FOF-WU	04/29/97	951533-WS	Grandfather Certificate
PSC-10-0519-FOF-WS	08/16/10	090093-WS	Transfer of Certificates

HEATHER HILLS ESTATES UTILITIES, LLC

Quarterly Service Rates

Water Residential and General Service

Meter Size:		
5/8" x 3/4"		\$ 22.85
3/4"		34.29
1"		57.15
1 1/2"		114.23
2"		182.78
3"		365.87
4"		571.17
6"		1,142.33
Gallonage Charge per 1,000 gallons		\$ 2.46

Wastewater Residential and General Service

Meter Size:	Residential Service	General Service
5/8" x 3/4"	\$ 29.27	\$ 29.27
3/4"		43.90
1"		73.16
1 1/2"		146.37
2"		234.16
3"		468.33
4"		713.76
6"		1,463.52
Gallonage Charge*	\$ 6.02	\$ 6.02

* Per 1,000 gallons based on 85% of water use.

Miscellaneous Service Charges

	Water Service	Wastewater Service
Initial Connection Fee	\$10.00	\$10.00
Normal Reconnection Fee	10.00	10.00
Violation Reconnection Fee	15.00	Actual Cost
Premises Visit Fee (in lieu of disconnection)	5.00	5.00
Late Payment Fee	\$ 5.00	\$ 5.00