

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for transfer of majority organizational control of HARBOUR OAKS UTILITIES, INC.'s Certificates Nos. 310-W and 258-S in Osceola County from Richard Sane to Charles W. Keller.)	DOCKET NO. 890313-WS
)	
)	ORDER NO. 21227
)	
)	ISSUED: 5-11-89
)	

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD
 BETTY EASLEY
 GERALD L. GUNTER
 JOHN T. HERNDON

NOTICE OF PROPOSED AGENCY ACTIONORDER DISMISSING OBJECTION AND APPROVING TRANSFER OF UTILITY

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for formal proceeding pursuant to Rule 25-22.029, Florida Administrative Code.

BACKGROUND

In 1981, Mr. and Mrs. Alonzo J. Logan installed a 2-inch water line allegedly encroaching on 30 inches of a lot owned by Mr. and Mrs. Arthur D. Alston in Osceola County. Subsequently, a tap was made on the Logan's line without their permission by an unknown party to provide water service to the Alstons and another neighbor, Mr. and Mrs. William Boyd.

In April, 1986, the Logans sued the Alstons and the Boyds for declaratory relief requesting that the court determine the rights of the parties, and for injunctive relief preventing the Alstons from removing the water line from the Alston's property, which would effectively leave the Boyds and Logans without water. On April 24, 1986, the Circuit Court of Osceola County issued the requested injunction and the Alstons were prohibited from removing the water line until further Order from the Court. In August, 1986, the Alstons filed a separate lawsuit against Harbour Oaks Utilities, Inc. alleging the inverse condemnation of their property by the utility.

On February 6, 1987, in Docket No. 870211-WU, the Alstons filed a formal complaint with the Commission against Harbour Oaks Utilities, Inc. alleging that the utility refused to provide the Alstons with water service from the disputed water line. The Commission, in its Order No. 17816, issued July 7, 1987, dismissed Mr. Alston's complaint without prejudice, finding that the complaint was premature in light of the pending Court cases.

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In February, 1988, the Circuit Court of Osceola County issued an Order which consolidated the Logan's and Alston's lawsuits, and added the Florida Public Service Commission as a party defendant. The Commission never received notice of being added as a party defendant. Thus, the Commission filed a motion with the Osceola County Circuit Court to have the February, 1988 Order adding the Commission as a party defendant set aside. The Circuit Court, in a hearing held on April 6, 1989, acknowledged that the Commission was not a proper party to the pending litigation, and ordered that the Commission be dropped as a party defendant.

On February 28, 1989, an application was filed with the Commission requesting the transfer of majority organizational control, and the certificate, of Harbour Oaks Utilities, Inc. from Richard Sane to Charles Keller by the transfer of 75 percent of Harbour Oaks' stock to Mr. Keller.

On March 16, 1989, the Commission received a timely formal objection to the transfer from Arthur Alston.

FORMAL OBJECTION

The formal objection filed on March 16, 1989, by Arthur D. Alston alleges that the application of the transferee, Charles W. Keller, is "inadequate, deficient, or fails to demonstrate Charles W. Keller's ability to successfully operate the utility". We find that Mr. Alston's arguments are without foundation. Our evaluation of Mr. Keller's technical and financial resources indicates that he has sufficient resources to operate the utility satisfactorily. If it is subsequently determined that the quality and quantity of service being provided by the transferee becomes inadequate or deficient, the Commission could direct the transferee to correct such deficiencies, or take other appropriate action. Based on the foregoing, we dismiss the formal objection filed herein by Arthur D. Alston for lack of substance.

TRANSFER OF MAJORITY ORGANIZATIONAL CONTROL

The application is in compliance with the governing statute, Section 367.071, Florida Statutes, and other pertinent statutes and administrative rules concerning transfer applications. In particular, the notarized application contains: 1) Two checks in the amount of \$150.00 each which, upon calculation, equates to the correct filing fee as prescribed by Section 367.141, Florida Statutes; 2) Adequate service territory description pursuant to Rule 25-30.035(3)(i), Florida Administrative Code; 3) Proof of notice to all customers of record pursuant to Rule 25-30.030(2)(g), Florida Administrative Code; 4) Proof of notice to all interested governmental/regulatory agencies, and all utilities within a 4 mile radius, and proof of advertisement in a newspaper of general circulation in the County, as prescribed by Rule 25-30.030, Florida Administrative Code; and, 5) The utility provided proof that it owns the land on which the utility plant facilities are located.

Mr. Charles Keller purchased seventy-five percent of the issued and outstanding shares of the common stock of Harbour

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Oaks Utilities, Inc. from Mr. Richard Sane for \$140,000. Mr. John Schell owns the remaining twenty-five percent of common stock. Mr. Keller states in the application that although he has limited experience in the operation of water and sewer systems, he has made a commitment to be actively involved in the management and operation of the utility. Further, Mr. Keller states that the services of Mr. Sane, previous owner of the utility, will be retained for at least one year.

Based on the foregoing, we find that Mr. Charles Keller does possess the necessary technical and financial resources to continue the provision of high quality service to the customers of Harbour Oaks Utilities, Inc. We further find that the requested transfer is in the public interest, and thus, is approved. Having approved the requested transfer we now turn to the question of whether we should establish a new rate base for Harbour Oaks Utilities, Inc.

ESTABLISHMENT OF NEW RATE BASE

The sale of common stock from Richard Sane to Charles Keller will not alter Harbour Oaks Utilities, Inc.'s assets and liability accounts. Accordingly, the transfer of stock ownership will not change the rate base balance. Also, the utility's records will remain available for inspection in any subsequent rate case proceeding. Therefore, we find that a new rate base shall not be established in this docket.

PROPER RATES

In accordance with Rule 25-9.044(1), Florida Administrative Code, the applicant, Mr. Charles Keller, shall be required to charge the customers of Harbour Oaks Utilities, Inc. the existing Commission approved rates.

REVISED TARIFF FILINGS

Harbour Oaks Utilities, Inc. is hereby directed to file revised tariffs reflecting the new issuing officer's name and title within thirty (30) days from the date of this Order.

Based upon our due consideration of the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that the formal objection to the application for transfer of majority organizational control of Harbour Oaks Utilities, Inc. filed by Arthur D. Alston is dismissed for lack of substance. It is further

ORDERED that the application to transfer majority organizational control of Harbour Oaks Utilities, Inc. from Richard Sane to Charles Keller is approved. It is further

ORDERED that a new rate base for Harbour Oaks Utilities, Inc. shall not be established upon transfer. It is further

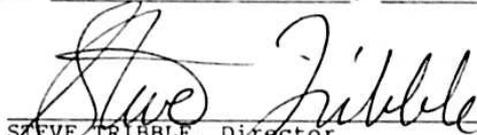
ORDERED that the transferee, Charles Keller, shall adopt and use the rates approved by this Commission for Harbour Oaks Utilities, Inc. It is further

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ORDERED that Harbour Oaks Utilities, Inc. shall file revised tariff sheets within thirty (30) days from the date of this Order reflecting the new issuing officer's name and title. It is further

ORDERED that the actions discussed herein are preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding in the form provided by Rule 25-22.036, Florida Administrative Code, with the Director, Division of Records and Reporting, 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on June 1, 1989.

By ORDER of the Florida Public Service Commission this 11th day of MAY, 1989.


STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

JRF

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), 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.

The action proposed herein is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on June 1, 1989. In the absence of such a petition, this order shall become effective June 2, 1989 as provided by Rule 25-22.029(6), Florida Administrative Code, and as reflected in a subsequent order.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If this order becomes final and effective on June 2, 1989, any party adversely affected may request judicial review by the

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Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or sewer 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 of the effective date 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.