

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for transfer of majority organizational control and Certificate No. 114-S from LAZY DAYS MOBILE VILLAGE to SUN UP SOUTH, INC. IN Lee County.)	DOCKET NO. 890445-SU
)	ORDER NO. 21615
)	ISSUED: 7-28-89

The following Commissioners participated in the disposition of this matter:

MICHAEL McK. WILSON, CHAIRMAN
 BETTY EASLEY
 GERALD L. GUNTER
 JOHN T. HERNDON

ORDER ACKNOWLEDGING TRANSFER OF MAJORITY ORGANIZATIONAL CONTROL

BY THE COMMISSION:

On March 28, 1989, this Commission received an application requesting approval of the sale and transfer of Sun Up South, Inc. (Sun Up) stock from William and Janie Endress to Thomas and Elaine Collins. A transfer of majority organizational control is subject to approval by this Commission pursuant to Section 367.071, Florida Statutes. Prior to the transfer, Lazy Days Mobile Village (Lazy Days Village) owned Lazy Days Subdivision, the real property consisting of a mobile home subdivision and a sewer facility in Fort Myers, as well as some Sun Up stock. Lazy Days Village provided sewer service to approximately 418 customers in the Lazy Days Subdivision. The Endress' owned a majority interest in Sun Up and Lazy Days Village, both of which are Florida Corporations. Sun Up was commonly known as Lazy Days Mobile Village.

On November 29, 1988, the Endress' entered into an agreement with the Collins' involving the sale of stock and assets of the foregoing corporations. The Collins' purchased all the Sun Up stock held by the Endress'. The Collins' purchased from Lazy Days Village all the remaining outstanding shares of Sun Up and the real property known as Lazy Days Subdivision. The Collins executed a mortgage on the Lazy Days Subdivision real property in favor of Lazy Days Village, still held by the Endress'. The transaction was closed in January,

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

ORDER NO. 21615
DOCKET NO. 890445-SU
PAGE 2

1989. On June 14, 1989, the Collins deeded title to the Lazy Days Subdivision real property to Sun Up, which the Collins' then owned.

The Endress' are now left with Lazy Days Village, which holds a mortgage on the Lazy Days Subdivision real property. The Collins own all the stock of Sun Up. Sun Up now owns Lazy Days Subdivision, consisting of mobile home lots and a sewer facility. Sun Up, on March 28, 1989, applied for approval of the transfer of majority organizational control of Sun Up from the Endress' to the Collins, and for a transfer of the sewer certificate from Lazy Days Village to Sun Up.

Sun Up's application is in compliance with Section 367.071, Florida Statutes, Rule 25-30.040, Florida Administrative Code, and other applicable statutes and rules. The application included adequate territory and system maps, proof that the utility owns the land on which the sewer facility is located, proof of notice, and a check for the correct filing fee. Sun Up has retained the services of Floyd Enterprises, which has operated and maintained the sewer system for many years. The applicant has demonstrated the financial ability to continue providing service to the customers. The Collins' are the owners of the utility's major service area, in addition to the utility, thus providing further assurance of continued high quality service. Accordingly, we find this transfer to be in the public interest and thereby approve the application for transfer of majority organizational control.

As the sale of Sun Up stock will not alter the utility's assets or liabilities, there will be no effect on rate base. Pursuant to Rule 25-9.044(1), Florida Administrative Code, Sun Up is required to charge its customers the existing Commission-approved rates of Lazy Days Village. Further, we find it appropriate to require Sun Up to file an original tariff with the Commission by August 10, 1989.

The utility, formerly owned by the Endress' through Lazy Days Village, is now owned by the Collins through Sun Up. Therefore, we find it appropriate to require Certificate No. 114-S to be returned to the Commission by August 11, 1989, for entry indicating Sun Up as the name of the utility.

Since the Endress' transferred majority organizational control of the utility prior to this Commission's approval, Lazy

ORDER NO. 21615
DOCKET NO. 890445-SU
PAGE 3

Days Village was in violation of Section 367.071(1), Florida Statutes, and Rule 25-30.040(1), Florida Administrative Code. However, it appeared that the parties to the transaction intended to make the contract subject to our approval, but failed to clearly express such intent in the contract. Further, the application was made within two months of the close of the transfer. Therefore, we find that the violations were not willful and, accordingly, we will not penalize Lazy Days Village for such violations.

It is, therefore,

ORDERED by the Florida Public Service Commission that the application for transfer of majority organizational control of Sun Up South, Inc. from William and Janie Endress to Thomas and Elaine Collins is hereby approved. It is further

ORDERED that Sun Up South, Inc. shall continue to charge the existing Commission-approved rates of Lazy Days Mobile Village. It is further

ORDERED that Sun Up South, Inc. shall file with the Commission an original tariff by the close of business on August 10, 1989. It is further

ORDERED that Certificate No. 114-S shall be returned to the Commission by the close of business on August 11, 1989, for entry indicating Sun Up South, Inc. as name of the utility. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission
this 28th day of JULY, 1989.


STEVE TRIBBLE, Director
Division of Records and Reporting

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ORDER NO. 21615
DOCKET NO. 890445-SU
PAGE 4

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.

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 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 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 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.