

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Objection to notice by SEBRING) DOCKET NO. 880459-WU
COUNTRY ESTATES WATER COMPANY of)
application for transfer of certificate) ORDER NO. 22043
No. 420-W in Highlands County to)
HEARTLAND UTILITIES, INC.) ISSUED: 10-10-89
_____)

The following Commissioners participated in the disposition of this matter:

GERALD L. GUNTER
JOHN T. HERNDON

ORDER APPROVING TRANSFER

BY THE COMMISSION:

Sebring Country Estates Water Company (SCE) is a Class C utility which provides water service to approximately 450 customers, including six general service customers, in Highlands County. According to its annual report, SCE's annual revenues for 1987 were \$70,066.

By Order No. 18592, issued December 23, 1987, in Docket No. 871308-WU, this Commission required SCE to show cause why it should not be fined for a number of violations of Section 367.111, Florida Statutes. On January 12, 1988, SCE filed a written response to Order No. 18592, which raised a number of issues of disputed fact. Based upon these disputed issues of fact, SCE requested that this Commission either dismiss the show cause proceedings or provide it with a formal hearing pursuant to Section 120.57, Florida Statutes.

On March 13, 20 and 27, 1988, SCE and Heartland Utilities, Inc. (Heartland) published notice of their intent to apply for a transfer of Certificate No. 420-W from SCE to Heartland. On March 18, 1988, Sebring Utilities Commission (SUC) filed an objection to that notice. On May 24, 1988, notice of SCE's and Heartland's intent to apply for the transfer was furnished to SCE's customers. By letter dated May 31, 1988, Mr. Melvin E. Rhodes, Sr. objected to that notice.

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On June 6, 1988, SUC petitioned to intervene in Docket No. 871308-WU. SUC's petition was granted by Order No. 19443, issued June 6, 1988.

On June 10, 1988, SCE filed an application to transfer Certificate No. 420-W to Heartland. Docket No. 880459-WU was established in order to process the proposed transfer.

A formal hearing was held in Docket No. 871308-WU on July 15, 1988. By Order No. 20137, issued October 10, 1988, this Commission assessed a penalty against SCE, required SCE to submit legal descriptions of its service territories as of July 15, 1988, and required SCE to show cause why its certificate should not be revoked.

On December 22, 1988, SCE submitted a settlement offer for this Commission's consideration. SCE proposed that the fine be reduced from \$103,000 to \$3,000 and suggested that, if the fine was reduced as requested, it would submit a territorial description within thirty days and have a ground pressure tank installed and operating within sixty days. SCE's submittal failed to address the show cause provisions of Order No. 20137.

By Order No. 20781, this Commission rejected SCE's settlement proposal and revoked Certificate No. 420-W.

On April 12, 1989, by Order No. 21034, the Commission dismissed SUC's and Mr. Rhodes' objections to the proposed transfer. Docket No. 880459-WU was left open, however, in order to process the transfer.

APPLICATION FOR TRANSFER

The application is in compliance with Section 367.071, Florida Statutes, and Rules 25-30.020 through 25-30.040, Florida Administrative Code. In particular, the notarized application contains:

- a) A check in the amount of \$900 which, upon calculation, equates to the correct filing fee as prescribed by Section 367.141, Florida Statutes;

- b) An adequate legal description, pursuant to Rule 25-30.035(i), Florida Administrative Code, of the Sebring Country Estates service territory, appended hereto as Attachment A, and a letter of Heartland's intent to file a description of the DeSoto City service territory within a reasonable time following approval of the transfer;
- c) An affidavit stating that notice of the application has been furnished to all customers of record pursuant to Rule 25-30.030, Florida Administrative Code; and
- d) Proof of notice to all interested governmental and regulatory agencies, all utilities within a four-mile radius of the territory to be served and proof of notice in a newspaper of general circulation in Highlands County, as prescribed by Rule 25-30.030, Florida Administrative Code.

As mentioned in the background section of this Order, two objections to the transfer were filed but subsequently dismissed. No other objections were filed and the time for filing such has expired.

The application states that the transfer is in the public interest due to SCE's extensive history of non-compliance with regulatory agencies and because it has the financial and technical ability to bring the systems into compliance with standards of this Commission, the Department of Environmental Regulation and the Highlands County Health Department. Heartland is a corporation whose sole stockholders are Thomas Wohl and Howard Short. Mr. Wohl, the secretary-treasurer of Heartland, is also the President of Home Savings Bank of Florida, which is providing the funding for the purchase of the utility. Howard Short, the president of Heartland, holds Class A water and Class C sewer licenses. In addition, Mr. Short owns and manages Short Utility Services, Inc., which manages approximately ten water and/or sewer utilities in Highlands County.

Based upon the application and the discussion above, it appears that Heartland has the financial and technical ability

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to provide quality water service. It, therefore, appears that the transfer of SCE's systems to Heartland is in the public interest. Accordingly, Certificate No. 420-W is hereby revived and transferred from SCE to Heartland for the territory described in Attachment A and for the territory to be subsequently described as discussed above.

TRANSFER OF RATE BASE

Although we believe the transfer to be in the public interest, we are not prepared to propose a transfer rate base for the SCE systems at this time. We will address the appropriate rate base in a future order.

RATES AND CHARGES

Under Rule 25-9.044(1), Florida Administrative Code:

In cases of change of ownership or control of a utility which places the operation under a different or new utility . . . the company which will thereafter operate the utility business must adopt and use the rates, classification and regulations of the former operating company (unless authorized to change by the Commission) . . .

There does not appear to be any reason to change rates in this proceeding. Accordingly, Heartland shall continue operating under the existing rates, charges, classifications and regulations. Heartland shall, however, file a revised tariff reflecting the change in ownership within thirty (30) days of the date of this Order.

Upon consideration of the foregoing, it is

ORDERED by the Florida Public Service Commission that Certificate No. 420-W is hereby revived and transferred from Sebring Country Estates Water Company to Heartland Utilities, Inc., 10405 U.S. 27 South, Sebring, Florida 33870, for the territory described in Attachment A and for the territory to be described as discussed below. It is further

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ORDERED that Heartland Utilities, Inc. shall submit a territorial description for the DeSoto City service area on or before December 18, 1989. It is further

ORDERED that Heartland Utilities, Inc. shall adopt and use the rates, charges, classifications and regulations of Sebring Country Estates Water Company. It is further

ORDERED that Heartland Utilities, Inc. shall file a revised tariff to reflect the change in ownership within thirty (30) days of the date of this Order.

By ORDER of the Florida Public Service Commission this 10th day of October, 1989.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

RJP

by: Kay Flynn
Chief, Bureau of Records

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

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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.

The following is a description of the area presently served by Sebring Country Estates Water Company - Sebring Country Estates Water System. The service area includes all of GRAND PRIX HEIGHTS SUBDIVISION, the area lying between GRAND PRIX HEIGHTS SUBDIVISION and U.S. Highway 27, the westerly one-half of the North frontage of Grand Prix Drive, and approximately one-half of Sebring Country Estates Subdivision, all being more specifically described as follows:

Commence at the Northeast corner of Section 22, Township 34 South, Range 28 East as a point of reference; thence traverse South 0°04'59" West, along the East line of said Section 22, 663.93 feet to a Point of Beginning, said point being the intersection of the centerline of Peugeot Street with the East line of said Section 22; thence South 89°52'50" West, along the centerline of Peugeot Street, 2,491.83 feet to its intersection with Porsche Avenue; thence South 0°03'03" East, along the centerline of said Porsche Avenue, 1,574.96 feet to its intersection with Alpine Street; thence North 89°56'57" East, 50.00 feet to a point; thence continue along the arc of a curve to the right with a radius of 1,225.00 feet, arc length of 622.07 feet and a degree of curvature of 29°05'44" to the intersection of the centerline of Grand Prix Drive; thence continue Southwesterly along the arc of a curve to the left with a radius of 886.86 feet, an arc length of 233.92 feet, and a degree of curvature of 15°06'44", to a point; thence continue South 0°03'03" East, 469.21 feet to the intersection of the centerline of Mercedes Street; thence North 89°56'57" East, 915.00 feet to the intersection with the centerline of Citroen Drive; thence South 0°03'03" East, along the centerline of Citroen Drive, 50.00 feet, to a point; thence Southwesterly along the arc of a curve to the right, with a radius of 2,069.17 feet, an arc length of 1,083.41 feet and a degree of curvature of 30°0'0", to a point; thence South 29°56'57" West, 316.78 feet to the intersection of the centerline of Comet Terrace; thence North 89°56'57" East, along the centerline of Comet Terrace, 333.37 feet to the Southerly extension of the Easterly boundary of Lot 39, Block 44 of Sebring Country Estates; thence Northerly along the Easterly line of said Lot 39 to its Northerly boundary; thence Westerly 17.73 feet, to the intersection of the East boundary of Lot 6, Block 44; thence Northerly along the Easterly boundary of said Lot 6, 150.00 feet to the centerline of Bolide Street; thence East-Southeasterly along the arc of a curve to the right, with a radius of 775.00 feet, an arc length of 453.42 feet, more or less, and a degree of curvature of 36°23'02", to a point; thence South 53°40'01" East, 221.04 feet to the intersection of the centerline of Corvette Avenue; thence Easterly, 25.00 feet to the Southwest corner of Lot 22, Block 38 of Sebring Country Estates; thence continue South 89°49'19" East, along the Southerly boundaries of Lots 22 and 6 of said subdivision, a distance of 354.19 feet to the centerline of Fiat Avenue; thence North 0°02'02" East, along the centerline of Fiat Avenue 310.00 feet to the intersection of Bristol Street; thence South 89°35'24" West, along the centerline of said Bristol Street, 227.64 feet, more or less, to its intersection with the East line of Section 22 aforesaid; thence North 0°04'59" West, 1,860.49 feet to an intersection with the South line of the North three-quarters of the Southwest one-quarter of the Northwest one-quarter of Section 22, Township 34 South, Range 28 East; thence North 88°51'19" East, 1,737 feet, more or less, to the intersection of the Westerly right-of-way line of U.S. Highway 27; thence North 18°14'57" West, along the Westerly right-of-way line of U.S. Highway 27, 1,550 feet, more or less, to the intersection of the centerline of Grand Prix Drive; thence South 71°45'03" West, 300.00 feet; thence along the curve to the left with a radius of 650.00 feet, an arc length of 448.11 feet and a degree of curvature of 39°30'00", to a point; thence South 32°15'03" West, 75.00 feet, to a point; thence Northwesterly, 250.00 feet; thence Southwesterly, 450.00 feet, more or less, to the intersection with the East line of Section 22, Township 34 South, Range 28 East; thence North 0°04'59" West, along said East line, 745.00, more or less, to the Point of Beginning; plus Lot 1, Block 20, Lots 5, 6, 7, & 8, Block 32; Lot 1, Block 48; and Lot 1, Block 47, Sebring Country Estates Subdivision.

AQUARINA DEVELOPMENT, INC.
BREVARD COUNTY
SERVICE DESCRIPTION FOR
THE HAMMOCK CONDOMINIUM

Township 29 South, Range 38 East

Section 36

From the Northwest corner of Section 36 run East along the North Section line 2,900 feet to the East right-of-way line of State Road No. A1A; thence run S 26°51'00"E 1980 feet along the East right-of-way line of State Road No. A1A. This point also known as the Southeast corner of said lot 1. From the Southeast corner of said lot 1; thence run S 68°33'54" W along the southerly boundary of said lot 1 for 917.97 feet to the point of beginning of the following described parcel; thence continue S 68°33'54" W a distance of 224.55 feet; thence run N 26°09'57" W a distance of 233.68 feet; thence run N 63°50'03" E a distance of 127.83 feet to a point of curvature of a circular curve, concave to the Southeast and having a radius of 118.0 feet; thence run Northeasterly along the arc of said curve through a central angle of 06°34'42" an arc distance of 13.44 feet to a point of tangency; thence run N 70°21'45" E a distance of 110.59 feet; thence run S 19°38'45" E a distance of 240.42 feet to the point of beginning.

Also, from the Northwest corner of Section 36 run East along the North section line 2,900 feet to the East right-of-way line of State Road No. A1A; thence run S 26°51'00" E 1980 feet along the East right-of-way line of State Road No. A1A. This point also known as the Southeast corner of said Lot 1. Commence at the Southeast corner of said Lot 1; thence S 68°33'54" W a distance of 1482.99 feet, thence run N 01°38'06" E a distance of 295.81 feet to the point of beginning of the following described parcel; thence continue N 01°38'06" E a distance of 187.16 feet, thence run S 83°21'54" E a distance of 235.37 feet to a point of curvature of a circular curve, concave to the East and having a

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radius of 120.0 feet bearing N 67°46'27" W from the center of the next described curve; thence Southerly along the arc of said curve through a central angle of 48°23'30" an arc distance of 101.35 feet to a point of tangency, thence run S 26°09'57" E a distance of 22.12 feet; thence run S 63°50'03" W a distance of 155.27 feet to a point of curvature of a circular curve concave to the North and having a radius of 112.0 feet; thence run Westerly along the arc of said curve through a central angle of 48°45'15" an arc distance of 95.30 feet to a point of tangency; thence run N 67°24'43" W a distance of 23.81 feet to the point of beginning.

The service description is also described as follows:
Phase I of the Hammock Condominium, units 101 thru 309.