

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for transfer of Emerald Lake Utilities, Inc. To the City of St. Cloud and cancellation of Certificate No. 221-W in Osceola County.

DOCKET NO. 760620-WU
ORDER NO. PSC-97-1259-FOF-WU
ISSUED: October 14, 1997

The following Commissioners participated in the disposition of this matter:

JULIA L. JOHNSON, Chairman
J. TERRY DEASON
SUSAN F. CLARK
DIANE K. KIESLING
JOE GARCIA

ORDER ACKNOWLEDGING TRANSFER,
REQUIRING FILING OF ANNUAL REPORT AND
REMITTANCE OF REGULATORY ASSESSMENT FEES,
CANCELING CERTIFICATE, AND CLOSING DOCKET

BY THE COMMISSION:

Background

This docket was originally opened on September 30, 1976, when Emerald Lake Utilities, Inc. (Emerald Lake or utility) submitted an application for a rate increase. By Order No. 7656, issued February 23, 1977, the Commission denied the utility's request for a rate increase because of the lack of supporting documentation. By the same Order, the Commission required the utility to submit maps of all lines, provide a telephone number for emergency service, and provide a timetable for the corrective action necessary to ensure adequate water and wastewater service. By Order No. 8449, issued August 29, 1978, the Commission found that Emerald Lake had not complied with Order No. 7656 and a \$1,000 per day fine was imposed on the utility until it made the necessary improvements. The owner, Mr. Edward Tietig, refused to pay the fine and gave notice of his intention to abandon the system. On November 1, 1978, the Court appointed Mr. Donald Brown receiver for the utility. On August 22, 1986, the City of St. Cloud (City) became the substitute receiver.

RECEIVED

OCT 22 1997

DOCUMENT NUMBER-DATE

10525 OCT 14 97

FPSC-RECORDS/REPORTING

By Final Order dated August 11, 1986, the Court ordered Mr. Tietig to convey utility assets to the City in a manner acceptable to the City. Mr. Tietig did not comply with the Court's Order for years. After much litigation, the Department of Environmental Protection filed a Motion to Enforce the Final Order, which was granted by the Court on March 28, 1994. That decision was appealed by Mr. Tietig. On June 20, 1995, the First District Court of Appeal per curiam affirmed the Court's March 28, 1994 Order.

In an effort to finalize the transfer, on July 22, 1996, the Court appointed a receiver, Mr. Usher Brown, solely for the purpose of effectuating the transfer.

Transfer of Utility

On June 13, 1997, this Commission received an application from the City for transfer of the Emerald Lake facilities to the City and for cancellation of Certificate No. 221-W in Osceola County, pursuant to Section 367.071(4)(a), Florida Statutes, and Rule 25-30.037(4), Florida Administrative Code. According to the application, the transfer occurred on September 1, 1997. The application is in compliance with Section 367.071, Florida Statutes, and provisions of the Florida Administrative Code concerning the transfer of the utility system and the cancellation of Certificate No. 221-W.

Rule 25-30.037(4)(g), Florida Administrative Code, requires a utility to submit a statement regarding disposition of customer deposits when a utility is transferred. According to the application, customer deposits were returned to customers. In addition, the City has obtained the most recent available income and expense statement, balance sheet, statement of rate base for regulatory purposes, and CIAC from the utility. Therefore, no refunds are outstanding. There are no other dockets pending involving this utility.

The provisions of Section 367.071, Florida Statutes, require an application for approval of sale or transfer of water and/or wastewater utilities to governmental agencies. Pursuant to Section 367.071(4)(a), Florida Statutes, however, the sale/transfer of facilities to a governmental authority is approved as a matter of right. Accordingly, we acknowledge the transfer of Emerald Lake to the City. Pursuant to Section 367.022, Florida Statutes, the City

is exempt from the Commission's regulation. Therefore, Certificate No. 221-W is hereby canceled.

Annual Reports and Regulatory Assessment Fees

Pursuant to Rule 25-30.110(3), Florida Administrative Code, "[t]he obligation to file an annual report for any year shall apply to any utility which is subject to this Commission's jurisdiction as of December 31 of that year, whether or not the utility has actually applied for or has been issued a certificate." Emerald Lake has filed its annual reports through 1996, but has not filed an annual report for 1997.

Section 367.145, Florida Statutes, provides that a regulatory assessment fee (4.5% of gross revenues) must be paid once a year. Additionally, Rule 25-30.120(2), Florida Administrative Code, states that "any utility which is subject to this Commission's jurisdiction on or before December 31 of that year or for any part of that year, whether or not the utility has actually applied for or has been issued a certificate" is required to pay regulatory assessment fees on or before March 31st of each year. Emerald Lake has paid regulatory assessment fees through 1996. However, regulatory assessment fees have not been paid from January, 1997 through the date of the transfer. Therefore, the utility shall file a 1997 annual report and remit regulatory assessment fees from January 1, 1997 to September 1, 1997, the date of transfer to the City.

No further action is required and this docket shall be closed.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the application for transfer of Emerald Lakes Utilities, Inc.'s facilities to the City of St. Cloud is hereby acknowledged. It is further

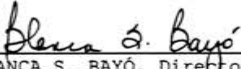
ORDERED that Emerald Lakes Utilities, Inc., shall file a 1997 annual report and remit regulatory assessment fees from January 1, 1997 to September 1, 1997, the date of transfer to the City of St. Cloud. It is further

ORDERED that Certificate No. 221-W is hereby canceled. It is further

ORDER NO. PSC-97-1259-FOF-WU
DOCKET NO. 760620-WU
PAGE 4

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission this 14th
day of October, 1997.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

LAJ

ORDER NO. PSC-97-1259-FOF-WU
DOCKET NO. 760620-WU
PAGE 5

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 Records and Reporting, 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 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.