

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for transfer
of ownership of Meadow Wood in
Citrus County from Richard
Instine to Wanda McKeever.

DOCKET NO. 970758-WU
ORDER NO. PSC-98-0023-FOF-WU
ISSUED: January 5, 1998

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 APPROVING TRANSFER, DENYING REQUEST FOR
WAIVER OF APPLICATION FEE, AND CLOSING DOCKET

BY THE COMMISSION:

On June 9, 1997, Ms. Wanda McKeever filed an application for approval of the transfer of Meadow Wood in Citrus County from Richard Instine to Wanda McKeever. Meadow Wood is a Class C utility that provides water service to about 37 unmetered residential customers in Citrus County.

Meadow Wood's previous owner, Mr. Instine, passed away in 1996. Prior to his death, Mr. Instine transferred the utility system to Ms. McKeever so that his business affairs would be in order. By letter dated December 16, 1996, Ms. McKeever informed the Commission of Mr. Instine's death, and provided a copy of a warranty deed dated August 30, 1995, conveying ownership of the utility system to her. Section 367.071, Florida Statutes, states, in part, that "no utility shall sell, assign, or transfer its certificate of authorization, facilities, or any portions thereof . . . without approval of the Commission." Although the utility was transferred prior to Commission approval, we do not find it appropriate to initiate show cause proceedings in view of the circumstances surrounding this case.

DOCUMENT NUMBER-DATE

00047 JAN-5 98

FPSC-RECORDS/REPORTING

Application

The application is in compliance with Section 367.071, Florida Statutes, and other pertinent statutes and provisions of the Florida Administrative Code. In particular, the application contains a filing fee in the amount of \$750, pursuant to Rule 25-30.020, Florida Administrative Code. In the application, Ms. McKeever requested a waiver of the filing fee. The request for waiver is discussed later in this Order.

Ms. McKeever provided a copy of a warranty deed as proof of ownership of the land upon which the facilities are located, as prescribed by Rule 25-30.037(2)(q), Florida Administrative Code. Ms. McKeever also provided proof of compliance with the noticing provisions set forth in Rule 25-30.037(2)(g), Florida Administrative Code, including notice to the customers of the system being transferred. No objections to the application have been received and the time for filing such has expired.

The Commission staff contacted the Department of Environmental Protection (DEP) concerning Meadow Wood's status. According to DEP there no outstanding notices of violation or consent orders against the system.

According to the information provided by Ms. McKeever, she has been involved in the utility's daily operation for many years. Ms. McKeever has, however, retained the services of a licensed operator to take care of the utility. In addition, Ms. McKeever indicated that the utility has no liabilities, is in satisfactory condition, and is in compliance with DEP standards. Because Meadow Wood is a small system, it should only require modest technical and financial support.

Based on the foregoing, we find that the transfer of Meadow Wood from Mr. Richard Instine to Wanda McKeever is in the public interest and it is approved. Accordingly, Certificate No. 545-W, held by Meadow Wood, shall be reissued to reflect the change in ownership. The territory Meadow Wood is authorized to serve is shown on Attachment A of this Order, which by reference is incorporated herein.

Request for Waiver of Filing Fee

As mentioned previously, Ms. McKeever has asked that we waive payment of the \$750 filing fee in this proceeding due to the circumstances involved in the transfer. Meadow Wood was transferred to Ms. McKeever just prior to the death of the previous owner. Section 367.071(3), Florida Statutes, states, in part, "An application for proposed sale, assignment, or transfer shall be accompanied by a fee." (emphasis added) Although the circumstances in this transfer are unusual, we find that we do not have the statutory authority to waive Section 367.071(3), Florida Statutes.

Section 120.542, Florida Statutes, states, in part, "Agencies are authorized to grant variances and waivers to requirements of their rules . . . This section does not authorize agencies to grant variances or waivers to statutes." Therefore, because the filing fee is required by statute, it cannot be waived.

This is consistent with previous Commission decisions. See, Order No. PSC-97-0522-FOF-TI, issued May 7, 1997, in Docket No. 961143-TI (In Re: Request for Waiver of Penalty Related to Late Payment of Regulatory Assessment Fees, by Excel Telecommunications, Inc.), wherein the Commission found that neither the Florida Statutes nor the Commission Rules provide the Commission with the discretion to waive statutorily required fees, penalties and interest. See also Order No. PSC-94-1235-FOF-WS, issued October 11, 1994, in Docket No. 940743-WS (In Re: Joint Application for Transfer of Majority Organizational Control of Jacksonville Suburban Utilities Corporation in Duval County from MWC Corporation to United Water Resources, Inc.) wherein the Commission found that it lacks the authority to waive or temporarily exempt utilities from compliance with statutory law.

In In re: Petition for waiver of penalty for late payment of regulatory assessment fees pursuant to Rule 25-7.0131, Florida Administrative Code, by City Gas Company of Florida, Order No. PSC-97-0767-FOF-FU, Docket No. 970360-GU, June 30, 1997, the Commission discussed its lack of authority to waive the statutory penalty and interest assessments on late regulatory assessment fee payments.

Constitutional law requires that only the legislature can repeal, amend or modify an unambiguous statute. The principle of separation of powers of government in the Florida Constitution, which divides powers among the

legislative, executive and judicial branches, confines each branch to its own proper function and prohibits encroachment by one branch of government upon another. The right to pass statutes includes the power to repeal or modify them, provided no right secured by constitutional provisions is thereby violated. Ponder v. Graham, 4 Fla. 23 (Fla. 1951). It is the function of the legislature and not the courts or administrative agencies to change the law. 1 Fla. Jur. 2d, Administrative Law, Section 32. The grant of a waiver of the regulatory assessment fee penalty statute, in the absence of any waiver provisions, express or implied, contained in the statute, would be a modification of the statute. This is a function reserved solely for the legislature. In addition, there is no basis for interpretation of Section 350.113(4), Florida Statutes. The statute is clear and unambiguous on its face. If the terms and provisions of a statute are plain, there is no room for administrative interpretation. Southeastern Utilities service Co. v. Redding, 131 So.2d 1 (Fla. 1950).

It should also be noted that even in uncomplicated proceedings, costs are incurred by the Commission which are offset by the filing fee. Therefore, based on the foregoing, we find it appropriate to deny Ms. McKeever's request for waiver of the filing fee required by Section 367.071(3), Florida Statutes.

Rate Base

Pursuant to Section 367.071, Florida Statutes, the Commission may establish rate base for a utility that is being transferred. In this proceeding, the transfer is a result of a bequest to Ms. McKeever by Mr. Instine.

Rate base was not established when the original certificate was granted in 1992. At that time, the system was about 20 years old and had been operated by Mr. Instine for 10 years. The annual reports do not reveal the investment amount since the balance sheet information was omitted. Therefore, an engineer's assessment of original cost will be needed to determine rate base. In addition, due to the circumstances of the transfer, no money is involved (purchase price) in the transfer, and an acquisition adjustment is not an issue. Therefore, we do not find it appropriate to establish rate base at this time.

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Rates and Charges

Meadow Wood's current rates and charges became effective on October 5, 1992, pursuant to order No. PSC-92-1114-FOF-WU, issued in Docket No. 920674-WU. Rule 25-9.044, Florida Administrative Code, requires the new owner of a system to adopt and use the rates, classification and regulations of the former owner unless authorized to change by the Commission.

Ms. McKeever has not requested to change the rates and we see no reason to change them at this time. Ms. McKeever shall continue to charge the rates and charges approved in Meadow Wood's tariff until authorized to change by the Commission in a subsequent proceeding. Meadow Wood has filed tariff sheets reflecting the change in ownership. The tariff sheet shall be effective for service provided and connections made on or after the stamped approval date on the tariff sheets.

It is, therefore,

ORDERED by the Florida Public Service Commission that the transfer of Meadow Wood, 1820 North Cherry Terrace, Crystal River, Florida 34429, from Mr. Richard Instine to Ms. Wanda McKeever is hereby approved. It is further

ORDERED that Ms. McKeever's request that the filing fee be waived is hereby denied. It is further

ORDERED that Ms. McKeever shall continue to charge the rates and charges approved in Meadow Wood's tariff until authorized to change by this Commission in a subsequent proceeding. The tariff shall be effective for service rendered or connections made on or after the stamped approval date on the tariff sheets. It is further

ORDERED that Docket No. 970758-WU is hereby closed.

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By ORDER of the Florida Public Service Commission, this 5th
day of January, 1998.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

ALC

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

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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.