

FLORIDA PUBLIC SERVICE COMMISSION  
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MEMORANDUM

MARCH 26, 1998

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FPSC - Records/Reporting

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF WATER & WASTEWATER (JOHNSON, REDEMANN) *BSM*  
DIVISION OF LEGAL SERVICES (CROSBY, FLEMING) *RRR JMW*

RE: DOCKET NO. 971195-WS - RAINBOW SPRINGS UTILITIES L.C. -  
APPLICATION FOR TRANSFER OF MAJORITY ORGANIZATIONAL  
CONTROL OF RAINBOW SPRINGS UTILITIES, L.C., (HOLDER OF  
CERTIFICATES NOS. 311-S AND 355-W) IN MARION COUNTY, FROM  
RAINBOW SPRINGS LIMITED, A FLORIDA LIMITED PARTNERSHIP.  
TO THE INDIVIDUAL SHAREHOLDERS OF CHASE VENTURES, INC.

COUNTY: MARION

AGENDA: APRIL 9, 1998 - REGULAR AGENDA - INTERESTED PERSONS MAY  
PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: S:\PSC\WAW\WP\971195WS.RCM

DOCUMENT NUMBER DATE

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FPSC - RECORDS/REPORTING

DOCKET NO. 971195-WS  
DATE: MARCH 26, 1998

CASE BACKGROUND

Rainbow Springs Utilities, L.C. (Rainbow Springs, or utility) is a Class B utility which provides water and wastewater service in Marion County. According to the utility's 1996 Annual Report, it serves 1,223 water customers and 762 wastewater customers. In 1996, the utility had annual operating revenues of \$262,377 and \$226,322 for water and wastewater, respectively. Also, the utility had net operating losses of \$29,646 for water and \$112,101 for wastewater. The utility's facilities consist of one water treatment system, one water transmission and distribution systems, one wastewater treatment plant, and one wastewater collection system.

On September 12, 1997, Rainbow Springs Limited, a Florida limited partnership (Rainbow Springs, Limited's "parent" company or Assignor) filed an application for transfer of majority organizational control of the membership interest in Rainbow Springs Utilities, L.C. to the individual shareholders of Chase Ventures, Inc. (Assignees), pursuant to section 367.071, Florida Statute. The ownership interest in Rainbow Springs Utilities, L.C. is 99% held by Rainbow Springs, Limited, and one percent by Chase Ventures, Inc., a related corporate entity. Rainbow Springs, Limited is owned by Chase Ventures, Inc. and CVI Associates Limited Partnership, as General Partners, and Chase Ventures, Inc. and Steele LLC, as Limited Partners. The terms of this transfer of membership interest involves Rainbow Springs, Limited transferring all ownership interest in Rainbow Springs Utilities, L.C. to Chase Ventures, Inc. so that Chase Ventures, Inc., will have direct ownership interest in the utility. Chase Ventures, Inc., will transfer all interest in the utility to its corporate shareholders based upon each shareholder's prorata ownership interest in the corporate parent of the utility. The purpose of the transfer is to eliminate Rainbow Springs, Limited, and Chase Ventures, Inc. as intermediary owners of the utility from the chain of ownership. The utility's application was found to be deficient. The deficiencies were corrected on November 5, 1997.

Section 367.071, Florida Statutes, states in part that no utility shall transfer its majority organizational control without approval of the Commission. Staff has reviewed the assignment of membership interest agreement and has found that although the parties have come to an agreement on the assignment of the membership interest, the official closing is contingent upon the approval of the Commission. The following is staff's recommendation regarding the utility's request to transfer majority organizational control.

DOCKET NO. 971195-WS  
DATE: MARCH 26, 1998

DISCUSSION OF ISSUES

**ISSUE 1:** Should the transfer of Majority Organizational Control of Rainbow Springs Utilities, L.C. (Holder of Certificates No. 355-W and 311-S) from Rainbow Springs Limited to the individual shareholders of Chase Ventures, Inc. be approved?

**RECOMMENDATION:** Yes, the transfer of majority organizational control should be approved. (JOHNSON, REDEMANN)

**STAFF ANALYSIS:** The application is in compliance with the governing statute, Section 367.071, Florida Statutes, and other pertinent statutes and administrative rules concerning an application for transfer of majority organizational control. The application contains a check in the amount of \$3,000, which is the correct filing fee pursuant to Ru's 25-30.020, Florida Administrative Code. The applicant has provided evidence that the utility owns the land upon which the utility's facilities are located as required by Rule 25-30.037(2)(q), Florida Administrative Code.

As discussed in the case background, the application was deficient, but it was corrected in November, 1997. The deficiency involved the noticing not being dated and not clear as to who the property was being transferred to, and the description of territory was incorrect. This lack of clarity of pertinent information resulted in a customer of the utility inquiring about the notice. The customer made no formal objection, and Staff addressed the customer's concerns by correspondence. The utility re-noticed the customers to clarify what was occurring in the application. After the re-notice was issued the customer's concerns and the deficiency were both resolved. In addition, the application contains proof of compliance with the noticing provisions set forth in Rule 25-30.030, Florida Administrative Code, including notice to the customers of the system to be transferred. A description of the territory served by the utility is appended to this memorandum as Attachment A.

The applicant provided a copy of the warranty deeds as evidence that the utility owns the land upon which its facilities are located. The warranty deed for the utility was executed in May 1995, and it indicated that a transfer from a corporate entity to a limited liability corporation occurred in a reorganization, approved by the Commission in Order No. PSC-95-1305-POF-WS in Docket No. 950599-WS on October 24, 1995. This transfer from Rainbow Springs Utilities, Inc. to Rainbow Springs Utilities, L.C. was not a change in majority organizational control. However, the

DOCKET NO. 971195-WS  
DATE: MARCH 26, 1998

Agreement on the Assignment of membership interest in this docket is a transfer of majority organizational control. The official closing of the Agreement on the Assignment of membership interest is contingent upon the approval of the Commission.

Regarding the Assignee's financial and technical ability, the Assignees will continue with the practices of the Rainbow Springs, Limited and Chase Ventures, Inc. As discussed in the case background, this transfer has no real effect on the ownership of the utility, but simply eliminates two intermediary holding companies of the utility ownership interests. Therefore, the Assignees' financial and technical ability to provide service is identical to that of the existing ownership. The Assignees will fulfill the commitments obligations and representations of the Assignor with regard to all utility matters. The official closing of the agreement on the assignment of membership interest is contingent upon the approval of the Commission.

The application states that the systems are in satisfactory condition, and in compliance with all applicable standards set by the Department of Environmental Protection (DEP). Also, the systems are not in need of any repairs or improvements which are not already planned or under construction. Staff has contacted the DEP and learned that there are no outstanding notices of violation. Therefore, staff recommends the transfer of majority organizational control should be approved.

DOCKET NO. 971195-WS  
DATE: MARCH 26, 1998

ATTACHMENT A

RAINBOW SPRINGS UTILITIES, L.C.

MARION COUNTY

TERRITORY DESCRIPTION

WATER AND WASTEWATER TERRITORY DESCRIPTION

Township 16 South, Range 18 East

Section 12

The South 1/2 of the SW 1/4 lying East of U.S. Highway No. 41 as it is now constructed, less and except that portion lying East of SW 196th Avenue as it is now constructed and being a portion of Unit (Tract) 21 of the Village of Rainbow Springs Master Plan,

Also, that part of the S 1/2 of the SE 1/4 of the NE 1/4 of said Section 12, lying East of the abandoned A.C.L. Railroad, and that part of the NE 1/4 of the SE 1/4 of said Section 12, lying East of the abandoned A.C.L. Railroad and East of the existing A.C.L. Railroad, and that part of the NE 1/4 of the SE 1/4 of said Section 12, lying West of the existing A.C.L. Railroad and North and East of County Road No. 6.8-S, as it is now constructed.

Section 13

The North 1/2 of the NW 1/4 lying East of U.S. Highway No. 41 as it is now constructed, less and except that portion lying East of S.W. 196th Avenue as it is now constructed.

And, the South 1/2 of the NW 1/4 lying East of U.S. Highway No. 41 as it is now constructed, less and except the East 1/2 of the SE 1/4 of the NW 1/4,

And, a portion of the North 1/2 of the SW 1/4 lying East of U.S. Highway No. 41 as it is now constructed. All foregoing described parcels being a part of Unit (Tract) 21 of the Village of Rainbow Springs Master Plan.

Township 16 South, Range 19 East

Section 7

The N 1/2 of the SW 1/4 of said Section 7.

DOCKET NO. 971195-WS  
DATE: MARCH 26, 1998

ISSUE 2: Should rate base be established?

RECOMMENDATION: No, the change in stock ownership does not require the establishment of rate base. (JOHNSON)

STAFF ANALYSIS: The transfer of ownership interest from a subsidiary through its parent to the existing shareholders, will not alter the utility's asset and liability accounts. Accordingly, this transfer of ownership interest will not change the rate base balance. This change in ownership simply eliminates the intermediary owners of the utility. Therefore, staff recommends that rate base not be established in this docket. The rate base for this utility was established November 26, 1996, in Order No. PSC-96-1229-POP-WS issued in Docket No. 950828-WS, which was a rate case proceeding.

DOCKET NO. 971195-WS  
DATE: MARCH 26, 1998

ISSUE 3: Should an acquisition adjustment be approved?

RECOMMENDATION: No, an acquisition adjustment should not be included in the calculation of rate base for transfer purposes.  
(JOHNSON)

STAFF ANALYSIS: An acquisition adjustment results when the purchase price differs from the original cost calculation. The Commission routinely makes determinations regarding acquisition adjustments in cases involving the transfer of certificates, assets, or facilities because the purchase price is considered when determining whether the transfer is in the public interest. Conversely, it is Commission practice that acquisition adjustments are generally not considered in stock transfers because the price of stock has no regulatory relationship to a utility's established rate base. Further, the change in ownership at issue in this recommendation only results in the elimination of intermediary owners of the utility interest.

The ownership and control of the assets will be the same both before and after the transfer. Because the assets are not actually being sold and the value will remain the same after the transfer, staff believes that an acquisition adjustment does not result from this asset transfer. Therefore, staff recommends that an acquisition adjustment should not be included in the calculation of rate base.

DOCKET NO. 971195-WS  
DATE: MARCH 26, 1998

ISSUE 4: Should the rates and charges approved for this utility be continued?

RECOMMENDATION: Yes, the rates and charges approved for this utility system should be continued. (JOHNSON)

STAFF ANALYSIS: The utility's approved water and wastewater rates were effective November 26, 1996, pursuant to Order No. PSC-96-1229-FOF-WS issued in Docket No. 950828-WS, which was a rate case proceeding.

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

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)...

The assignees have not requested a change in the rates and charges of the utility, and staff sees no reason to change them at this time. Accordingly, staff recommends that the utility continue operations under the existing tariff and apply the approved rates and charges. Ordinarily in a transfer of majority organizational control, the issuing officer of the utility changes, and the utility is required to file a new tariff reflecting that change. However, because this change in ownership is the elimination of intermediary owners of the utility interest no changes to the tariff are necessary at this time.



DOCKET NO. 971195-WS  
DATE: MARCH 26, 1998

ISSUE 5: Should this docket be closed?

RECOMMENDATION: Yes, this docket should be closed. (FLEMING)

STAFF ANALYSIS: No further action is required in this docket. Therefore, staff recommends that this docket be closed upon the issuance of the final order.