



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: AUGUST 20, 1998

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (810)

FROM: DIVISION OF LEGAL SERVICES (BRUBAKER) *SB*
DIVISION OF WATER AND WASTEWATER (REDMANN) *SB*

RE: DOCKET NO. 970381-SU - APPLICATION FOR TRANSFER OF
CERTIFICATE NO. 495-S FROM SANDALHAVEN UTILITY, INC. TO
CHP UTILITY, INC. IN CHARLOTTE COUNTY, CANCELLATION OF
CERTIFICATE NO. 495-S, AND EXEMPTION FROM FLORIDA PUBLIC
SERVICE COMMISSION REGULATION.
COUNTY: CHARLOTTE

AGENDA: SEPTEMBER 1, 1998 - REGULAR AGENDA - INTERESTED PERSONS
MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\WAW\WP\970381SU.RCM

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RECORDS AND REPORTING

CASE BACKGROUND

Sandalhaven Utility, Inc. (Sandalhaven or Utility) is a Class C utility which provides wastewater service to 623 residential, general service, and multi-family customers in Charlotte County. According to the 1996 annual report, the utility had annual operating revenues of \$161,918 and experienced an operating loss of \$41,249.

On March 26, 1997, the Commission received an application from CHP Utility, Inc. (CHP), a non-profit corporation, requesting transfer of Sandalhaven's assets and customer service area, and seeking exempt status from the Commission for provision of wastewater service as an exempt non-profit association.

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CHP is a non-profit corporation formed on April 10, 1996. The utility has filed with the Office of the Secretary of State as a non-profit entity and has fulfilled all of the criteria to be considered an exempt entity pursuant to Section 367.022(7), Florida Statutes. The CHP membership is comprised of utility customers receiving service from the utility and all members hold one vote as stated in the Articles of Incorporation. Only members of the non-profit corporation receive wastewater service.

Pursuant to Rule 25-30.030, Florida Administrative Code, on June 16, 1997, Sandalhaven mailed written notice to all customers, relevant utilities and government officials in the proposed service area. Sandalhaven also published a legal notice of its transfer application in a local newspaper in Charlotte County on June 14, 1997. Pursuant to Rule 25-30.030, Florida Administrative Code, all notices distributed by Sandalhaven stated that any objections to the application must be made in writing within 30 days from the date of notice to the Commission's Division of Records and Reporting. The last date on which notice was mailed or published was June 16, 1997. Therefore, the deadline for filing an objection to Sandalhaven's transfer application with the Division of Records and Reporting was July 16, 1997. No such objections were received by the Commission.

On August 28, 1997, Commission staff filed its recommendation that the Commission approve the transfer of the facilities and assets of Sandalhaven to CHP. As a result of action taken at the September 9, 1997 Agenda Conference, Order No. PSC-97-1150-FOF-SU was issued on September 30, 1997. Pursuant to that Order, the Commission found that the transfer application was in compliance with the governing statute, Section 367.071, Florida Statutes, and other pertinent statutes and administrative rules concerning an application for transfer of utility assets. The Commission further determined that CHP had demonstrated the financial and technical ability to provide quality utility service, and that CHP was capable of fulfilling the commitments, obligations and representations of the utilities. The Commission therefore approved the transfer, finding that the transfer was in the public interest. Further, because it appeared that CHP would satisfy the requirements for exemption pursuant to Section 367.022(7), Florida Statutes, Wastewater Certificate No. 495-S was thereby canceled.

On October 15, 1997, a Motion for Reconsideration and in the Alternative to Conduct an Administrative Hearing Pursuant to Chapter 120.57, Florida Statutes (motion for reconsideration) was filed by Fiddler's Green Condominium Association I; Fiddler's Green Condominium Association II; Shamrock Shores Property Association,

Inc.; Wildflower Property Association, Inc.; Sandalhaven Condominium Association I; Sandalhaven Condominium Association II; and Cape Haze Marina Village, Inc.; "on behalf of themselves and their respective lot owners, unit owners and association members" (movants). The utility did not file a response to the Motion for Reconsideration, and the time for filing such response has expired.

In the course of negotiating settlement of this matter, on May 1, 1998, the movants and counsel for CHP filed a joint Motion To Rescind Order No. PSC-97-1150-FOF-SU (motion to rescind).

This recommendation addresses both the motion for reconsideration and the motion to rescind.

DISCUSSION OF ISSUES

ISSUE 1: Should the Motion to Rescind Order No. PSC-97-1150-FOF-SU be granted?

RECOMMENDATION: Yes, the Motion to Rescind should be granted, and Order No. PSC-97-1150-FOF-SU should be vacated. Within 45 days of the issuance of the Order, CHP should provide proof that all facilities and assets of Sandalhaven which had been transferred to CHP pursuant to Order No. PSC-97-1150-FOF-SU have been conveyed back to Sandalhaven. Upon receipt of such information, Certificate No. 495-S should be reinstated.

STAFF ANALYSIS: In their joint motion to rescind, the movants and CHP acknowledge that they have attempted to negotiate settlement of their dispute regarding the use of CHP, a member-owned not-for-profit corporation, to own and operate the Sandalhaven facilities. However, the movants and CHP have been unable to resolve the contested issues between them, and both parties wish to avoid further conflict and administrative proceedings. Therefore, CHP and the movants have jointly requested that the Commission rescind Order No. PSC-97-1150-FOF-SU. Furthermore, upon rescission of the Order and subject to the reconveyance of the Sandalhaven facilities, the movants have agreed to withdraw their motion for

reconsideration. Staff's recommendation with respect to the motion for reconsideration is addressed in Issue 2.

In previous instances, the Commission has vacated all or part of an order when the order is based on incorrect information, or where there has been a change in circumstances or public interest upon which the order was based. See Order No. PSC-94-0958-FOF-WU, issued on August 9, 1994, in Docket No. 940365-WU; Order No. PSC-96-1101-FOF-WU, issued August 28, 1996, in Docket No. 960394-WU; Order No. PSC-95-1319-FOF-WS, issued October 30, 1995, in Docket No. 921237-WS.

In this case, while notice of the transfer was provided in accordance with the pertinent statutes and Commission rules, and no allegations that notice was improper were made, the movants contend that they did not have an adequate opportunity to review the purchase and sale agreement which was executed between CHP and Sandalhaven on December 30, 1996. Pursuant to that agreement, the customers, as members of the CHP cooperative, would own and be responsible for the operation of the utility. Staff has been informed through conversations with the movants' counsel that the movants object to bearing direct financial and operational liability for the utility, as members of the CHP cooperative.

The movants and CHP have attempted to settle this matter, but no satisfactory resolution was reached between the parties. Instead, the parties have agreed, subject to Commission approval, to the rescission of the transfer Order, so that ownership of the utility assets and facilities are reconveyed to the original owner, Sandalhaven.

Sandalhaven was originally formed as a developer owned and operated utility. The developer wished to divest itself from operating the utility, and so initiated the transfer of Sandalhaven's assets and facilities to CHP, a member-owned cooperative. In light of the movants' objection to ownership of the utility, Sandalhaven's counsel has represented to staff that Sandalhaven agrees to the reconveyance of the utility assets and facilities.

As a point of information, staff has further been informed that negotiations have begun for the acquisition of the Sandalhaven facilities and assets by Utilities, Inc., a corporation which focuses on ownership and operation of small systems and provides centralized management, accounting and financial assistance to small utilities that were commonly built by development companies. Staff believes that customer concerns with respect to a subsequent

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transfer of the Sandalhaven facilities and assets may be adequately addressed in a separate transfer docket, should a subsequent transfer application be filed with the commission.

In light of the joint request by CHP and the movants, and in consideration of the change in circumstances as discussed above, staff recommends that it is in the public interest that the Commission grant the motion to rescind, and vacate its Order No. PSC-97-1150-FOF-SU. Within 45 days of the issuance of the Order, CHP should provide proof that all facilities and assets of Sandalhaven which had been transferred to CHP pursuant to that Order have been conveyed back to Sandalhaven. Upon receipt of such proof, Certificate No. 495-S should be reinstated.

As a matter of information, by letter received by the Commission on May 11, 1998, CHP's counsel stated that, upon Commission approval, it intended to transfer the assets of CHP to Cape Haze Utility, Inc. (Cape Haze). Cape Haze is a for-profit corporation formed on March 31, 1998. CHP's counsel stated that the reason for the requested transfer of assets from CHP to Cape Haze, rather than from CHP to Sandalhaven, was counsel's understanding that Sandalhaven had been dissolved and no longer existed as a corporate entity. However, upon contacting the Department of State, Division of Corporations, staff learned that this understanding was in error, and that Sandalhaven had not been corporately dissolved. After a subsequent conversation with CHP's counsel, the request that the utility assets be conveyed to Cape Haze was withdrawn, in favor of the reconveyance of assets from CHP to Sandalhaven, upon Commission approval.

ISSUE 2: Should the Motion for Reconsideration and in the Alternative to Conduct an Administrative Hearing Pursuant to Chapter 120.57, Florida Statutes, filed by Fiddler's Green Condominium Association I, et al., be deemed withdrawn?

RECOMMENDATION: Yes. If the Commission votes in favor of staff's recommendation in Issue 1, the Motion for Reconsideration and in the Alternative to Conduct an Administrative Hearing Pursuant to Chapter 120.57, Florida Statutes, filed by Fiddler's Green Condominium Association I, et al., should be deemed withdrawn.

STAFF ANALYSIS: In their motion for reconsideration, the movants request that the Commission reconsider Order No. PSC-97-1150-FOF-SU, and allege that the customers became members of CHP without their knowledge or consent, and that they did not have an opportunity to review the purchase and sale agreement which was executed between CHP and Sandalhaven on December 30, 1996. Although no allegation was made that notice was improper in this case, the movants argue that their interest has not been presented to the Commission because they had not been adequately informed and afforded an opportunity to address their concerns. The utility did not file a response to the customers' motion, and the time for filing such response has expired.

As discussed in Issue 1, in the motion to rescind, the movants provided that, subject to the vacation of Order No. PSC-97-1150-FOF-SU and the reconveyance of the Sandalhaven facilities, the movants have agreed to withdraw their motion for reconsideration. Subject to the Commission's approval of staff's recommendation in Issue 1, staff therefore recommends that the motion for reconsideration should be deemed withdrawn.

As discussed previously in Issue 1, staff has been informed that negotiations have begun for the acquisition of the Sandalhaven facilities and assets by Utilities, Inc. Staff believes that any customer concerns with respect to a subsequent transfer of the Sandalhaven facilities and assets may be adequately addressed in a separate transfer docket, should a subsequent transfer application be filed with the Commission.

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ISSUE 3: Should this docket be closed?

RECOMMENDATION: Yes. If the Commission approves staff's recommendation in Issues 1 and 2, nothing will remain to be done in this docket. The docket should therefore be closed administratively upon proof that all facilities and assets of Sandalhaven which had been transferred to CHP pursuant to Order No. PSC-97-1150-FOF-SU have been conveyed back to Sandalhaven, and the reinstatement of Certificate No. 495-S.

STAFF ANALYSIS: If the Commission approves staff's recommendation in Issues 1 and 2, nothing will remain to be done in this docket. The docket should therefore be closed administratively upon proof that all facilities and assets of Sandalhaven which had been transferred to CHP pursuant to Order No. PSC-97-1150-FOF-SU have been conveyed back to Sandalhaven, and the reinstatement of Certificate No. 495-S.