

State of Florida



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: DECEMBER 22, 1998

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

FROM: DIVISION OF WATER AND WASTEWATER (JOHNSON, BEDEMANN) *PAR b5m jmw*
DIVISION OF LEGAL SERVICES (MCRAE) *S.M. JH*

RE: DOCKET NO. 980958-WS - APPLICATION FOR TRANSFER OF
MAJORITY ORGANIZATIONAL CONTROL OF LAKE GROVES UTILITIES,
INC. IN LAKE COUNTY TO UTILITIES, INC.
COUNTY: LAKE

AGENDA: JANUARY 5, 1999 - REGULAR AGENDA - INTERESTED PERSONS MAY
PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\WAW\WP\980958.RCM

CASE BACKGROUND

Lakes Groves Utilities, Inc. (Lake Groves or utility or Seller) is a class C utility that provides water and wastewater service in Polk County and serves approximately 608 water and 604 wastewater customers. According to its application, Lake Groves has been providing service since 1987. The annual report for 1997 shows that the operating revenue were \$187,063 and \$151,481 the net operating income was \$82,887 and \$80,330, for the water and wastewater systems respectively. The utility's facilities consist of one water treatment plant and one water transmission and distribution system and one wastewater collection and treatment plant.

On July 29, 1998, Utilities, Inc. filed an application for transfer of majority organizational control (TMOC) of Lake Groves Utilities from Lake Holding, Inc. (Sellers) to Utilities, Inc. (Buyer). The utility's application was found to be deficient. The

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deficiencies were corrected on October 1, 1998. It has been Commission practice that rate base is not established in TMOG proceedings, and thus, rate base audits are not conducted in TMOG cases. Although, Lake Groves was certificated in Docket No. 900957-WS, Order No. 24283, dated March 25, 1991, it has never filed for a rate case. Therefore, rate base has never been established for this utility.

Lake Groves closed on the transfer of majority organizational control of its facilities to Utilities, Inc., on July 2, 1998, prior to obtaining Commission approval. This will be discussed further in Issue No. 1. The following is staff's recommendation regarding the utility's request to transfer majority organizational control.

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DISCUSSION OF ISSUES

ISSUE 1: Should Lake Groves Utilities, Inc., be ordered to show cause, in writing within 21 days, why it should not be fined for violation of Section 367.071, Florida Statutes?

RECOMMENDATION: No. A show cause proceeding should not be initiated. (MCRAE)

STAFF ANALYSIS: As stated in the case background, Lake Groves closed on the transfer of majority organizational control of its facilities to Utilities, Inc., on July 2, 1998, prior to obtaining Commission approval. Section 367.071(1), Florida Statutes, states that:

No utility shall sell, assign, or transfer its certificate of authorization, facilities or any portion thereof..., without determination and approval of the commission that the proposed sale, assignment, or transfer is in the public interest...

Section 367.161(1), Florida Statutes, authorizes the Commission to assess a penalty of not more than \$5,000 for each offense, if a utility is found to have knowingly refused to comply with, or to have willfully violated any provision of Chapter 367, Florida Statutes. While staff has no reason to believe that the utility intended to violate Section 367.071(1), Florida Statutes, its act was "willful" in the sense intended by Section 367.161, Florida Statutes. See Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL.

Although Lake Groves' failure to obtain Commission approval prior to transferring majority organizational control of its facilities to Utilities, Inc., is an apparent violation of Section 367.071(1), Florida Statutes, there are circumstances which appear to mitigate the utility's apparent violation. According to a letter from the utility dated December 8, 1998, Lake Groves is operated by the same personnel as Sanlando Utilities Corporation (Sanlando), which has an application for the transfer of majority organizational control of its facilities to Utilities, Inc., pending before this Commission in Docket No. 980957-WS. This letter also states that Sanlando is involved in a number of matters which require immediate attention and substantial effort and financial commitment which the prior owners are not willing to make. Sanlando closed on the transfer of majority organizational control of its facilities to Utilities, Inc., on July 2, 1998.

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Because Sanlando Utilities and Lake Groves are operated by the same personnel, the letter states that it would not be possible to operate Lake Groves under the ownership of the prior shareholders while transferring ownership of the Sanlando Utilities system. Therefore, Lake Groves closed on the transfer of majority of organizational control of its facilities on July 2, 1998, along with Sanlando Utilities. Furthermore, there is a provision in the contract between Lake Groves and Utilities, Inc., which states that the sale is subject to this Commission's jurisdiction and if the application is denied by the Commission, the parties will "unwind" the transaction.

Staff does not believe that the apparent violation of Section 367.071, Florida Statutes, rises in these circumstances to the level which warrants the initiation of a show cause proceeding. Therefore, staff recommends that the Commission not order Lake Groves to show cause for failing to obtain Commission approval prior to transferring majority organizational control of its facilities to Utilities, Inc.

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ISSUE 2: Should the transfer of majority organizational control of Lake Groves Utilities, Inc. to Utilities, Inc. be approved?

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

STAFF ANALYSIS: As discussed in the case background, on July 29, 1998, Utilities, Inc. filed an application for transfer of majority organizational control of Lake Groves Utilities from Lake Holding, Inc. to Utilities, Inc. The application was found deficient on August 26, 1998. The deficiencies were corrected and received on October 1, 1998. Except as discussed in Issue No. 1, 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 Rule 25-30.020, Florida Administrative Code.

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. No objections to the notice of application have been received and the time for filing such has expired. A description of the territory served by the utility is appended to this memorandum as Attachment A.

The application states that the transfer is in the public interest because the Buyer's primary business is operating water and wastewater utilities. The Buyer has the financial resources to make the future improvements to the utility systems as deemed necessary. Additionally, the application contains a statement that the Buyer will fulfill the commitments, obligations and representations of the Sellers with regard to utility matters. In contrast the Seller is no longer interested in continuing to own and operate the utility systems.

Regarding the Buyer's technical ability, Utilities, Inc. is a holding company which, as of December 31, 1997, owned and operated approximately 350 water and wastewater utility systems through sixty-three subsidiary operating companies. Utilities, Inc. has approximately 31 years of experience in the water and wastewater utility industry. In addition, Utilities, Inc., has 22 years of experience in operating water and wastewater utilities under the regulation of the Florida Public Service Commission and the financial resources to ensure consistent compliance with

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environmental regulations. At the present time, Utilities, Inc. provides safe and reliable water and wastewater service to approximately 165,000 customers in fifteen states.

According to our records, the utility is current on its regulatory assessment fees and has filed an annual report for 1997. Utilities, Inc. will be responsible for filing the utility's annual report and regulatory assessment fees for 1998 and all subsequent years.

The application states that the Buyer's representative has performed a reasonable investigation of the Utility system. The plant facilities appear to be in satisfactory condition and in compliance with all applicable standards set by the Florida Department of Environmental Protection (DEP). Staff has contacted the DEP and learned that there are no outstanding notices of violation.

Regarding the Buyer's financial ability, it has provided the company's consolidated financial statement, along with additional information regarding the sources of annual income. The First Union Bank financed a two year loan for \$2,086,771 for the purchase of the common stock of Lake Groves Utilities, Inc. The two year note has a interest rate of 6.94% and can be renegotiated at the end of the two year term. Additionally, Utilities, Inc. of Florida is a wholly-owned subsidiary of Utilities, Inc. which has approximately \$265,563,000 of assets and a total capitalization of \$84,000,000. Utilities, Inc. has the capability to provide investment capital at reasonable rates to Lake Groves Utilities.

Rule 25-30.037(3)(i), Florida Administrative Code, requires a utility to provide proof of ownership of the land upon which its facilities are located. The application contained a deed in the name of Lake Groves Utilities, Inc. that covers the entire Lake Groves development.

Based on the above, staff recommends that the Commission find the transfer of majority organizational control of Lake Groves Utilities, Inc. to Utilities, Inc. is in the public interest and therefore, it should be approved.

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Attachment A

LAKE GROVES UTILITIES, INC.

WATER AND SEWER SERVICE AREA

LAKE COUNTY

Per Order No. 24283 in Docket No. 900957-WS

The following described lands located in portions of sections 22, 23 and 27, Township 24 South, Range 26 East, Lake County, Florida:

Beginning at a point that is 12.51 feet S and 298.75 feet E of the SE corner of the NE 1/4 of Section 22, TWP 24 S, Range 26 E, of the Tallahassee Meridian, on the West right of way line of State Road 25; run thence N 21 deg. 18 min. 45 sec. W along said right of way line 655.45 feet, said line being parallel to and 80 feet Southwesterly from the center line of pavement; thence S 89 deg. 06 min. 20 sec. W 3363.71 feet to the West line of the E 1/4 of the NW 1/4 of said Section; thence S 0 deg. 01. min. 55 sec. W along said line 614.27 feet; thence N 89 deg. 06. min. 20 sec. E 3602.31 feet to point of beginning.

AND

Commence at a point 652.17 feet South and 548.33 feet East of the Northeast corner of the SE 1/4 of Section 22, Township 24 South, Range 26 East on the West right-of-way of State Road No. 25, run thence N. 21 deg. 18 min. 45 sec. W. along said right-of-way, 686.70 feet, said line being parallel with and 80 feet Southwesterly from the center line of pavement; thence S. 89 deg. 06 min. 20 sec. W., 550.39 feet to the Point of Beginning; thence continue S. 89 deg. 06 min. 20 sec. W., 3051.92 feet to the West line of the NE 1/4 of the NE 1/4 of the SW 1/4 of said Section 22; thence S. 00 deg. 01 min., 55 sec. W. along said line, 631.12 feet to the Southwest corner of the NE 1/4 of the NE 1/4 of the SW 1/4 of said Section; thence N. 89 deg. 21 min. 30 sec. E., 3051.92 feet; thence N. 00 deg. 01 min. 55 sec. E., 664.57 feet to the Point of Beginning, containing 44.68 acres, more or less.

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AND

TRACT 1:

The South 3/4 of the West 1/2 of the Southwest 1/4 of Section 23, Township 24 South, Range 26 East, Lake County, Florida, lying West of U.S. Highway No. 27.

AND

TRACT 2:

The South 3/4 of the Southeast 1/4 of section 22, Township 24 South, Range 26 East, Lake County, Florida.

AND

TRACT 3:

The Northeast 1/4 of the Northeast 1/4 and the East 1/2 of the Northwest 1/4 of the Northeast 1/4 of Section 27, Township 24 South, Range 26 East, Lake County, Florida.

Containing 223.33 acres, more or less.

The bearings on this plat are based on an assumed bearing of S. 89 deg. 34 min. 36 sec. W. along the South boundary of Section 23-24-26. There are no easements or encroachments visible on the ground. Other than shown.

Per Order No. PSC-92-1328-FOF-WS in Docket No. 920900-WS

The following described lands located in portions of sections 14 and 15, Township 24 South, Range 26 East, Lake County, Florida:

All that portion of the Northeast 1/4 of Section 15, Township 24 south, Range 26 East, lying East of the Easterly right-of-way of U.S. Highway 27, Lake County, Florida.

AND

All of the Northeast 1/4 and the Northwest 1/4 of Section 14, Township 24 South, Range 26 East, Lake County, Florida.

Per Order No. P5C-94-0116-FOF-WS in Docket No. 931000-WS

That part of Section 23, Township 24 South, Range 26 East, Lake County, Florida, described as follows: The South 3/4 of the West 1/2 of the West 1/2 of the Southeast 1/4 of Section 23, Township 24

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South, Range 26 East, Lake County, Florida, less the South 100.00 feet thereof; that part of the South 3/4 of the East 1/2 of the Southwest 1/4 lying East of the Northeasterly right-of-way line of U.S. Highway 27, less the South 100.00 feet thereof; that part of the West 1/2 of said Section 23, lying East of the Northeasterly line of U.S. Highway 27 and lying South and Southeasterly of the following-described line: From the Northwest corner of the Southwest 1/4 of said Section 23, run North 89°42' East along the North line of the said Southwest 1/4 a distance of 502.64 feet, more or less, to the Easterly right-of-way line of U.S. Highway 27, thence South 20°23'20" East along said right-of-way line 94.17 feet to a Point of Beginning. Thence North 89°50'40" East 375.55 feet, thence North 39°19'10" East 229.10 feet; thence North 47°37'10" East 363.28 feet to a point on the East line of the West 1/4 of said Section 23 for a Point of Terminus.

AND TOGETHER WITH

The North 1/2 of the Northwest 1/4 lying West of U.S. Highway 27 in Section 26, Township 24 South, Range 26 East.

AND TOGETHER WITH

In Township 24 South, Range 26 East, Lake County, Florida:

Section 14: The West 1/2 of the Southwest 1/4.

Section 15: That part of the Southeast 1/4 lying East of U.S. Highway 27; LESS begin where the North boundary of said Southeast 1/4 intersects the East boundary of U.S. Highway 27 right-of-way (as it existed in 1978), thence run East along said North boundary 225 feet, thence South 00°05'39" East 117.23 feet, thence West parallel with said North boundary 181.60 feet, more or less, to the U.S. Highway 27 right-of-way, thence Northwesterly along said right-of-way 125.00 feet to the Point of Beginning.

Section 22: That part of the Northeast 1/4 lying East of U.S. Highway 27.

Section 23: That part of the Northwest 1/4 of the Northwest 1/4 and that part of the North 1/2 of the Northwest 1/4 of the Southwest 1/4 of the Northwest 1/4 lying East of U.S. Highway 27; LESS begin where the South boundary of said North 1/2 of the Northwest 1/4 of the Southwest 1/4 of the Northwest 1/4 intersects the East boundary of U.S. Highway 27 right-of-way (as it existed in 1975), thence run North 89°46'29" East along said South boundary 230.00 feet, thence North 00°00'28" East 117.32 feet, thence South 89°46'29" West

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273.61 feet, more or less, to the U.S. Highway 27 right-of-way, thence South 20°24'30" East along said right-of-way 125.00 feet to the Point of Beginning.

AND TOGETHER WITH

The North 2025.73 feet of the Northeast 1/4, West of right-of-way of U.S. Highway 27 and the North 2025.73 feet of the East 1/4 of the Northwest 1/4, all in Section 22, Township 24 South, Range 26 East (less and except 30 feet along the North boundary of all of the foregoing which is reserved for right-of-way), and all that portion of the North 705.73 feet of the Southwest 1/4 of the Northwest 1/4 West of right-of-way of U.S. Highway 27, Section 23, Township 24 South, Range 26 East, all in Lake County, Florida.

AND TOGETHER WITH

The South 1/2 of Section 11, Township 24 South, Range 26 East, and the South 1/2 of Section 10, Township 24 South, Range 26 East, lying East of U.S. Highway 27, all being in Lake County, Florida.

AND TOGETHER WITH

That part of the Northwest 1/4 which lies East of State Road 25 (U.S. Highway 27), and the Northwest 1/4 of the Northeast 1/4, all in Section 10, Township 24 South, Range 26 East, Lake County, Florida.

AND TOGETHER WITH

All lands described below are situated in Township 24 South, Range 26 East, Lake County, Florida:

Section 3:

The Southwest 1/4 of the Northwest 1/4 of Section 3; and

The North 1/2 of the Northwest 1/4 of the Southwest 1/4 of Section 3; and

That part of the Southwest 1/4 of the Southwest 1/4 of Section 3 lying South and West of the Westerly line of the right-of-way of U.S. Highway 27; and

Section 4. less and except:

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That part of a) the Southeast 1/4 of the Northeast 1/4 of the Southeast 1/4, and b) the Southeast 1/4 of the Southeast 1/4 of said Section 4 lying East of the West line of the right-of-way of U.S. Highway 27; and

Less and except that part of Section 4 described as: begin at the Northeast corner of Section 4, thence South along the East boundary line of Section 4 a distance of 240.00 feet, thence West 195.00 feet, thence Northwesterly 404.00 feet, more or less, to a point on the North boundary of Section 4 a distance of 520.00 feet from the Northeast corner of Section 4, thence East to the Point of Beginning; and

Section 8. less and except:

The Northeast 1/4 of the Northeast 1/4 of the Northwest 1/4 of Said Section 8; and

Section 9, and

Section 10:

That part of the West 1/2 of Section 10 lying West of the right-of-way U.S. Highway 27.

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ISSUE 3: Should rate base be established?

RECOMMENDATION: No, different ownership of stock does not affect the rate base balance. (JOHNSON)

STAFF ANALYSIS: It is Commission practice that rate base is not established in TMOC proceedings. The reason behind this approach is the philosophy that stock is publicly traded and has no regulatory relationship to rate base. Thus, different ownership of stock does not affect a utility's rate base balance. Consequently, stock purchase price and rate base are not considered in making a public interest determination of a TMOC. This same approach is followed even if the stock is privately held rather than publicly traded.

Because rate base is not considered in TMOC proceedings, rate base audits have historically not been conducted in TMOC proceedings. Further, staff believes that establishment of rate base in this docket would result in an unnecessary deviation from Commission practice. Staff does not believe the facts of this particular case warrant a deviation from past practice. The sale of the stock of Lake Groves Utilities from Lake Holding, Inc. to Utilities, Inc. will not alter the utility's asset and liability accounts. Accordingly, the transfer of stock ownership will not change the rate base balance. In consideration of the above, staff recommends that rate base not be established in this docket.

ISSUE 4: 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.

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 transfer. Therefore, staff recommends that an acquisition adjustment should not be included in the calculation of rate base.

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ISSUE 5: Should the rates and charges approved for this utility be continued?

RECOMMENDATION: Yes, the rates and charges approved for Lake Groves Utilities, Inc. should be continued. (JOHNSON)

STAFF ANALYSIS: The utility's approved rates were effective April 30, 1991 pursuant to Order No. 24283, issued on March 25, 1991, in Docket No. 900957-WS, which was an original certificate proceeding.

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

In case 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 Buyer has 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. The utility has filed a revised tariff reflecting the change in issuing officer due to the transfer of majority organizational control. Staff will approve the tariff filing effective for services rendered or connections made on or after the stamped approval date.

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ISSUE 6: Should this docket be closed?

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

STAFF ANALYSIS: No further action is required in this docket. Therefore, staff recommends that this docket be closed.

STATE OF FLORIDA

Commissioners:
JULIA L. JOHNSON, CHAIRMAN
J. TERRY DEASON
SUSAN F. CLARK
JOE GARCIA
E. LEON JACOBS, JR.



CAPITAL CIRCLE OFFICE CENTER
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TALLAHASSEE, FL 32399-0850

Public Service Commission

December 22, 1998

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DEC 23 1998
FPSC - Records/Reporting

Martin S. Friedman, Esquire
Rose, Sundstrom & Bentley
2548 Blairstone Pines Drive
Tallahassee, Florida 32301

Re: Docket No. 980958-WS - Application for transfer of majority organizational control of Lake Groves Utilities, Inc. in lake County to Utilities, Inc.

Dear Mr. Friedman:

Enclosed is a copy of the Staff Recommendation filed in this matter on December 22, 1998. The Commission is expected to consider this Recommendation at its January 5, 1999, Agenda Conference which will be held in Room 148, Betty Easley Conference Center, 4075 Esplanade Way, in Tallahassee beginning at 9:30 a.m. Due to the number of items to be covered at this conference, we cannot state the exact time at which this item will be heard. You are welcome to come to this Agenda Conference and observe and/or participate in the discussion of this item. If you have any questions, please feel free to call me at (850) 413-6202.

Sincerely,

A handwritten signature in cursive script that reads "Samantha A. McRae".

Samantha McRae
Staff Attorney

SAM/dr

cc: Division of Water and Wastewater (Johnson, Redemann)
Division of Records and Reporting

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STATE OF FLORIDA

Commissioners:
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Public Service Commission

December 22, 1998

Mr. Carl Wenz
Utilities, Inc.
2335 Sanders Road
Northbrook, Illinois 60062

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Samantha McRae
Staff Attorney

SAM/dr

cc: Division of Water and Wastewater (Johnson, Redeman))
Division of Records and Reporting

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Samantha McRae
Staff Attorney

SAM/dr

cc: Division of Water and Wastewater (Johnson, Redemann)
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Samantha McRae
Staff Attorney

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