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DIVISION OF LEGAL SERVICES
NOREEN S. DAVIS
DIRECTOR
(850) 413-6199

Public Service Commission

May 14, 1999

Mr. Matthew A. Potter
Dixie Groves Estates, Inc.
5940 Main Street
New Port Richey, FL 34652

Re: Docket No. 990548-WU - Application for transfer of majority organizational control of Dixie Groves Estates, Inc., holder of Certificate 139-W in Pasco County, from Frank W. Potter to Judson F. Potter and Matthew A. Potter.

Dear Mr. Potter:

This letter is an informal opinion of the Division of Legal Services in response to your request that the Florida Public Service Commission interpret Section 367.071(1), Florida Statutes. This letter in no way binds the Commission to any of the information or opinions contained herein. According to the statute, a transfer of majority organizational control requires prior Commission approval. It is the opinion of the legal division that you are required to file an application for transfer of majority organizational control.

In the first paragraph of your letter you state your interpretation of Section 367.071(1), Florida Statutes to be that a "utility must be involved in a sale or transfer of its water certificate to another company or the company which owns the majority of the water certificate ... sells or transfers its portion so that it no longer is the majority organizational control." This is incorrect. The statute reads: **"No utility shall sell, assign, or transfer its certificate of authorization ... or majority organizational control without determination and approval of the commission that the proposed sale, assignment, or transfer is in the public interest and that the buyer, assignee, or transferee will fulfill the commitments, obligations, and representations of the utility."** The buyer, assignee, or transferee is not necessarily another utility or company, but can be another individual. Although the name of the utility does not change, a stock transfer of majority organizational control results in a change in the stockholders of the utility. Previously, Frank W Potter was the majority stockholder of the utility. As a result of the stock transfer in your situation, Frank W. Potter is no longer majority stockholder; Judson F. Potter and Matthew A. Potter are now majority stockholders. Thus, even though the same family still owns the stock, the same individuals do not own the stock.

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Rule 25-30.037(3), Florida Administrative Code, requires the buyer to certify that the transfer is in the public interest, including a summary of the buyer's experience in water or wastewater utility operations, a showing of the buyer's financial and technical ability to provide such service, and a statement that the buyer will fulfill the commitments, obligations and representations of the seller regarding utility matters. The rationale behind requiring this information in a transfer of majority organizational control, even if such a transfer occurs within the same family, is that the Commission must ensure that the new owner has the financial and technical ability to continue to provide quality service to the customers of the utility and that the new owner certifies that he or she is qualified to provide such service and will take responsibility for the obligations of the utility.

In the second paragraph of your letter you inquire as to whether the transfer of majority organizational control could have been handled at the same time as the staff assisted rate case. Had Dixie Groves filed an application for transfer of majority organizational control at the same time it filed for a staff-assisted rate case, the transfer could have been handled at that time; however, a separate application and fee still would have been required. To exempt you from filing an application for transfer of majority organizational control would be in effect a waiver of the statute, which the Commission is not authorized by law to do. The Commission does not have the authority to waive statutory filing requirements nor does it have the authority to exempt a utility from submitting the statutorily prescribed filing fee. In addition, the Division of Legal Services does not have the authority to hold a check submitted as a filing requirement in a docket.

I hope this letter addresses your questions and concerns. If you need additional information or if I can be of any further assistance, please do not hesitate to contact me at (850) 413-6179.

Sincerely,



Stephanie A. Crossman
Attorney

SAC

cc: Division of Legal Services (Gervasi)
Division of Records and Reporting
Division of Water and Wastewater (J. Williams, Messer)