



ORIGINAL
Public Service Commission

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

DATE: May 20, 1999
TO: Alice Crosby, Division of Legal Services
Division of Records and Reporting
FROM: Patricia Brady, Division of Water and Wastewater pb STM
RE: Docket No. 981930-WU, Application for transfer of facilities of Fiveland Investments, Inc. to Charlotte County, and cancellation of Certificate No. 571-W.

Fiveland Investments, Inc. (Fiveland or utility) is a Class B water utility providing service to primarily condominium owners in the Fiddler's Green, Christian City, and Wildflower condominium developments in Charlotte County. Wastewater service to these communities is provided by Sandalhaven Utility, Inc. According to Fiveland's 1997 annual report, the utility served approximately 801 customers with water revenues of \$386,000 and a net operating loss of \$15,000.

On December 22, 1998, an application was filed on behalf of Fiveland to transfer its facilities to Charlotte County and to cancel its water certificate. Since the application was essentially complete, staff discussed the remaining information necessary to process a recommendation by phone and facsimile with the utility contact. On February 1, 1999 and March 22, 1999, the additional information was filed. However, during the pendency of the application, staff was made aware that a portion of Fiveland's service territory overlapped with Rotonda West Utility Corporation's (Rotonda West's) service territory. By letter filed April 22, 1999 in Docket No. 981958-WS [an application to transfer facilities from Rotonda West to AquaSource Utility, Inc. (AquaSource)], AquaSource requested that the overlapping territory not be transferred from Rotonda to itself when the Commission considers the application for transfer. Since the recommendation in Docket No. 981958-WS is still being processed, this docket should remain open, and Fiveland's water certificate active, pending a determination by the Commission in Docket No. 981958-WS that the overlapping territory is no longer an issue.

Except as noted above, Fiveland's application is otherwise in compliance with Section 367.071(4)(a), Florida Statutes, and Rule 25-30.037(4), Florida Administrative Code (F.A.C.).

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A copy of "Fiveland Investments, Inc. Utility System Contribution Agreement" (Contract) executed by and between Charlotte County and Fiveland was provided. According to the Contract, the utility system was transferred and contributed to Charlotte County for a "nominal monetary consideration." However, the parties also acknowledged and agreed that the fair market value of the utility system was \$1,000,000.00. The application states the Contract was executed by the Chairman of the Charlotte County Commission on December 29, 1998 but the closing occurred the following day on December 30, 1999.

Pursuant to Section 2.11.11 of the Contract, Fiveland was required to provide at the closing a report accounting for any customer deposits and a cashier's check payable to Charlotte County for any amount held. However, the application states that Fiveland had previously advised Charlotte County that it does not have any customer deposits on hold. A statement was also provided with the application confirming that Fiveland had previously provided Charlotte

DOCUMENT NUMBER-DATE
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May 20, 1999

County with its most recently available income and expense statement, balance sheet, statement of rate base for regulatory purposes and contributions-in-aid-of-constructions (CIAC). The application also provided a statement regarding disposition of any outstanding regulatory assessment fees, fines or refunds owed. According to Commission records, the utility has paid 1998 regulatory assessment fees up to the closing on December 30, 1998 and has no outstanding fees, fines or refunds owed. Commission records also confirm that disposition of gross-up of CIAC does not apply to Fiveland. The utility's original certificate has been returned for cancellation. This information satisfies the requirements of Commission rule. However, staff and the Receiver believed the following statements were necessary to verify the transfer would be free and clear of future legal complications.

Fiveland's water certificate was granted by Order No. PSC-95-0613-FOF-WU, issued May 22, 1995, in Docket No. 941340-WS. Although not apparent in that order, Fiveland was under receivership at that time. Originally, Fiveland had two equal shareholders. One was a resident shareholder and the on-site manager. The non-resident shareholder terminated the resident shareholder's management functions due to perceived inadequacies. As a result of the deadlock, the Twelfth Judicial Circuit Court appointed Mr. Theodore C. Steffens, Esquire, as Receiver on September 5, 1991 until the dispute could be resolved in civil court. During the pendency of the receivership, the utility plant was partially upgraded and automated and delinquent taxes, annual reports and regulatory assessment fees were filed and paid by the Receiver. As a consequence, the Receiver remained in control of the utility until a \$50,000 Receiver Certificate (lien) was satisfied. Staff requested and received an affidavit by the prevailing party in the ownership dispute, Mr. Eugene Schwartz, that he released and disclaimed any and all interest in the facilities owned by Fiveland and transferred to Charlotte County.

Also, prior to the Receiver's appointment, Fiddlers Green Condominium had filed a lawsuit against the utility on August 19, 1991, alleging damage to lines, utilities, and improvements as a result of inadequate potable water. The Receiver recently and successfully resolved the lawsuit without liability accruing to the utility. However, there remained the potential that the utility may recover monies from the insurance company at some future date. Since the Receiver was not necessary to collect such recovery, the Receiver has taken steps for the Dissolution of Receivership so that any such monies will revert to Charlotte County.

Based on the above, staff finds that the application is in compliance with Section 367.071(4)(a), Florida Statutes, and Rule 25-30.037(4), Florida Administrative Code. Pursuant to Section 367.071(4)(a), Florida Statutes, the sale of facilities to a governmental authority shall be approved as a matter of right. An order should be issued within thirty days acknowledging the transfer of facilities from Fiveland Investments, Inc. to Charlotte County. However, Certificate No. 571-W should remain active, and the docket open, pending a determination by the Commission in Docket No. 981958-WS that the territory overlap with Rotonda West is no longer an issue. At that time Certificate No. 571-W should be canceled and this docket administratively closed.

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cc: Division of Water and Wastewater (Chase)