



Public Service Commission

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RECORDS AND
REPORTING

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RECEIVED-FPSC

DATE: APRIL 6, 2000

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

FROM: DIVISION OF WATER AND WASTEWATER (BRADY) *pb*
DIVISION OF LEGAL SERVICES (FUDGE) *SM JW*

RE: DOCKET NO. 000149-WU - APPLICATION FOR TRANSFER OF MAJORITY ORGANIZATIONAL CONTROL OF RAINTREE UTILITIES, INC., HOLDER OF CERTIFICATE NO. 539-W FROM DON MONN TO KEITH J. SHAMROCK AND CORRECTION OF TERRITORY DESCRIPTION.

COUNTY: LAKE

AGENDA: 04/18/00 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\WAW\WP\000149.RCM

CASE BACKGROUND

Raintree Utilities, Inc., (Raintree or utility) is a Class C water utility providing service to approximately 45 residential connections in Raintree Harbor subdivision of Lake County, Florida. (Wastewater is provided by septic system.) The utility's 1999 annual report indicates total gross revenues of \$15,447 with a net operating loss of \$1,423.

Raintree was originally granted a small system exemption from Commission regulation pursuant to Section 367.022, Florida Statutes, by Order No. 18131, issued September 8, 1987, in Docket No. 870796-WU. Raintree's exempt status was based on Phase I of the development having only 29 lots and associated water plant capacity. Raintree began operations in January of 1988 and implemented rates and charges in January of 1990. On July 18,

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1991, the Commission received a customer complaint concerning a bill. Upon contacting Raintree, the Commission was advised the utility was in the process of expanding its distribution system to serve an additional 119 lots in Phase II and would, therefore, be filing an application for an original water certificate. Water Certificate No. 539-W was ultimately granted by Order No. PSC-92-0019-FOF-WU, issued March 10, 1992, in Docket No. 911039-WU.

In December of 1999, the owner of the development and utility, Mr. Don Monn, sold the development rights to the promoter, Shamrock Homes, Inc., (Shamrock). Consequently, Mr. Monn and Shamrock's president, Mr. Keith J. Shamrock, entered into an agreement to transfer 100% of the stock of the utility system, as well, upon written Commission approval. On February 7, 2000, an application for approval of the transfer of majority control of Raintree was filed, opening this docket.

While reviewing the filing, staff became aware that the territory description in Order No. PSC-92-0019-FOF-WU contained a scrivener's error in the legal description. Staff is, therefore, including an additional issue in its recommendation to address the necessary correction to the utility's service territory prior to its recommendation on the transfer.

DISCUSSION OF ISSUES

ISSUE 1: Should the territory granted Certificate No. 539-W by Order No. PSC-92-0019-FOF-WU be corrected?

RECOMMENDATION: Yes, the territory granted Certificate No. 539-W by Order No. PSC-92-0019-FOF-WU contains a scrivener's error and should be replaced by the replatted metes and bounds description as described in Attachment B. Order No. PSC-92-0019-FOF-WU should be affirmed in all other respects. (BRADY, FUDGE)

STAFF ANALYSIS: As noted in the Case Background, when the utility was granted Certificate No. 539-W by Order No. PSC-02-0019-FOF-WU, issued March 10, 1992, in Docket No. 911039-WU (original order), a description of its approved service territory was attached. There have been no other orders affecting the utility's service territory. However, instead of using the territory description attached to the original order to notice the transfer of majority organizational control, the buyer used the territory description noticed in Docket No. 911039-WU. When staff compared the description in the notice given in this application to that in the original order, a difference in quarter section reference was noted.

Checking back through the documentation in Docket No. 911039-WU, it seemed clear to staff that the difference in quarter section reference was due to a scrivener's error in staff's recommendation in that docket. However, to be certain, staff requested that the buyer confirm the platted description of Raintree Harbor. The buyer confirmed with its surveyor that the territory description attached to the original order did contain a scrivener's error which incorrectly represented its platted development. However, rather than correcting the original quarter section territory description, the buyer suggested substituting a newer, replatted metes and bounds description of the development. Since, in this case, a metes and bounds description would be a more precise representation of the territory served by the utility, staff believes this is appropriate.

Appended to this memorandum as Attachment A is the territory description as attached to the original order and corrected in legislative format for the quarter section scrivener's error. Appended as Attachment B is a metes and bounds description of the corrected territory. Staff recommends that the Commission adopt Attachment B as the corrected description of the utility's service territory. Order No. PSC-92-0019-FOF-WU should be affirmed in all other respects.

ISSUE 2: Should the transfer of majority organizational control of Raintree Utilities, Inc., from Don Monn to Keith J. Shamrock, be approved?

RECOMMENDATION: Yes, the transfer of majority organizational control should be approved. The territory being transferred, as corrected in Issue 1, is described in Attachment B. Documentation evidencing the closing should be filed with the Commission by the buyer within 30 days from the date of the closing. The buyer should be responsible for filing an annual report for the utility and remitting the resulting regulatory assessment fees to the Commission for the year 2000 in the manner prescribed by Commission rules. (BRADY, FUDGE)

STAFF ANALYSIS: On February 7, 2000, an application was filed for approval of the transfer of majority organizational control of Raintree Utilities, Inc., from Don Monn to Shamrock Homes, Inc. Since the document evidencing the transfer of stock was from Don Monn to Keith J. Shamrock, the docket title was changed accordingly.

As filed and modified, the application is in compliance with the governing statute, Section 367.071, Florida Statutes, and other pertinent statutes and administrative rules pertaining to an application for transfer of majority organizational control. The application contained the correct filing fee pursuant to Rule 25-30.020, Florida Administrative Code. The application also contained evidence of compliance with the noticing requirements pursuant to Rule 25-30.030, Florida Administrative Code. And, as noted in Issue 1, staff confirmed that the legal description given in the notice is that recorded by deed. No objections to the notice have been received by the Commission and the time for filing such has expired.

Financing

Rules 25-30.037(3)(e) and (g), Florida Administrative Code, require a statement of the financing and a disclosure of all entities that have provided, or will provide, funding to the buyer. According to the "Agreement For Sale of Stock" (Stock Agreement), Keith J. Shamrock purchased 100% of the outstanding and issued shares of common stock in Raintree for \$50,000.00. The Stock Agreement was entered into on December 22, 1999, with the purchase price held in an interest bearing account for the benefit of the buyer until closing. The Stock Agreement provides for the closing to occur as soon as practicable after obtaining written approval from the Commission for the transfer.

The funding for the transfer is being provided by First Federal Savings Bank of Lake County. The Loan Agreement is by and between Keith J. Shamrock and Patricia B. Shamrock, jointly and severally as the Borrower, and Shamrock as the Guarantor. The terms are for three years with a fixed interest rate of 8.75 annually, to be reviewed annually, with monthly payments of \$499.72 commencing 30 days from closing. A balloon payment of the unpaid principal, plus accrued interest, will be due at maturity. The repayment is based upon a fifteen (15) year amortization. Collateral consists of: (1) a pledge of the water system revenue and (2) first security interest in the assets of the water system.

Ownership and Environmental Compliance

The application contained proof the utility continues to own the land upon which its facilities are located, pursuant to Rule 25-30-037(3)(i), Florida Administrative Code. And, pursuant to Rule 25-30.037(3)(h), Florida Administrative Code, the buyer has provided a statement that, upon reasonable investigation, the systems being acquired appear to be in satisfactory condition and in compliance with all applicable standards set by the Florida Department of Environmental Protection (FDEP). Staff has confirmed with the FDEP that the utility is in satisfactory working condition and in compliance with all applicable environmental standards.

Regulatory Assessment Fees and Date of Transfer

Staff has confirmed that the utility is current through 1999 on annual reports and regulatory assessment fees (RAFs) and that there are no penalties, fees or refunds due. As already noted, the Stock Agreement provides that the stock transfer will not take place until after written approval by the Commission. Therefore the date of closing and transfer is not known at this time but is anticipated to be sometime before June 1, 2000. In the provisions of the Stock Agreement, the seller is responsible for RAFs up through the date of closing and the buyer is responsible from that date forward.

However, the true-up will be between the parties at the time of closing and will be factored into the final purchase amount. Therefore, the buyer has agreed to be responsible for filing the utility's 2000 annual report and remitting the resulting RAFs. The buyer has also agreed to provide the Commission with a copy of the closing documents as soon as practicable after executed. The buyer filed a supplemental statement to the application reflecting these agreements.

Public Interest

Pursuant to Rules 25-30.037(3)(d) and (f), Florida Administrative Code, the application states that Shamrock pledges the necessary commitment of resources, both financial and technical, to operate the water systems in good condition. Since Shamrock is also the Guarantor of the Loan Agreement, its 1999 income statement was provided with the application. Such statement appears to indicate a sufficient margin of profit on sales revenues to finance both the continued development of the subdivision and the operations of the utility. In addition, the application indicates that Shamrock has been in the land development and new home construction business for over eighteen years.

The seller retained the services of Plant Technicians, Inc., a FDEP licensed operator, to maintain its water systems. The buyer is also retaining the services of Plant Technicians, Inc. Since the buyer is the developer of the subdivision, the application indicates the transfer is in the public interest, as the buyer is motivated to maintain a well run utility to sustain house sales. Finally, the buyer has pledged to fulfill the commitments, obligations and representations of the seller regarding utility matters.

Based on all the above, staff believes the transfer of majority control of Raintree Utilities, Inc. from Don Monn to Keith J. Shamrock is in the public interest and should be approved. The territory being transferred, as corrected in Issue 1, is described in Attachment B. Documentation evidencing the closing should be filed with the Commission by the buyer within 30 days from the date of the closing. The buyer should be responsible for filing an annual report for the utility and remitting the resulting RAFs to the Commission for the year 2000 in the manner prescribed by Commission rules.

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ISSUE 3: Should rate base be established for Raintree Utilities, Inc., at the time of the transfer?

RECOMMENDATION: No, rate base should not be established at the time of transfer. (BRADY)

STAFF ANALYSIS: Section 367.071(5), Florida Statutes, states in part, "[t]he commission by order may establish the rate base for a utility or its facilities or property when the commission approves a sale, assignment, or transfer thereof."

The Commission generally establishes rate base at the time of a sale, assignment or transfer of certificate because the purchase price of the utility, as compared to the rate base, is part of determining whether the transfer is in the public interest. However, the Commission generally does not establish rate base for transfers of majority control since the purchase is usually accomplished by the transfer of stock. Stock is publicly traded and, as such, its price has no regulatory relationship to a utility's established rate base.

Since the transfer of majority control of Raintree will be accomplished by the transfer of stock, staff recommends that rate base not be established at the time of transfer.

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ISSUE 4: Should the rates and charges approved for Raintree Utilities, Inc., be continued?

RECOMMENDATION: Yes, the rates and charges approved for the utility should be continued. The tariff reflecting the change in majority control should be approved and effective for services rendered or connections made on or after the stamped approval date. (BRADY)

STAFF ANALYSIS: The utility's current rates and charges were approved effective March 23, 1992, as established by Order No. PSC-92-0019-FOF-WU, in Docket No. 911039-WU, which granted the utility its original certificate.

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, or when its name is change, the company which will thereafter 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 rates and charges of the utility. Accordingly, staff recommends that the buyer continue operate the utility under its approved rates, classifications and charges. The buyer has filed a revised tariff reflecting the change in issuing officer due to the transfer of majority organizational control. The tariff filing should be approved and effective for services rendered or connections made on or after the stamped approval date.

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ISSUE 5: Should this docket be closed?

RECOMMENDATION: No. The docket should remain open pending receipt of required documentation evidencing the closing, after which time, the docket should be closed administratively. (FUDGE)

STAFF ANALYSIS: As recommended in Issue 2, the buyer should be required to file documentation evidencing the closing within 30 days from the date of the closing. This docket should remain open to ensure such documentation is received and processed. The docket should be administratively closed upon the receipt of the required documentation.

TERRITORY DESCRIPTION -- CORRECTED IN LEGISLATIVE FORMAT
FOR
RAINTREE UTILITIES, INC.
LAKE COUNTY

WATER SERVICE, ONLY

Township 18 South, Range 26 East

Section 33 West 1/2 of the NW 1/4 of the NW 1/4 and the north 1,184 feet of the East 3/4 of the NW 1/4 of Section 33, Township 18 South, Range 26 East, Lake County.

Also:

Begin at the intersection of the west line of Section 33, Township 18 South, Range 26 East, Lake County, and the center line of Grantor's former Astor Branch main track, thence easterly along the center line of said former main track the width of 50 feet on each side thereof, a distance of 665 feet more or less, to the intersection of the east line of the West 1/2 of the NW 1/4 of Section 33; containing 1.52 acres more or less. The foregoing being all or part of the same premises acquired by grantor herein by virtue of deeds dated August 23, 1883, recorded February 5, 1982, in Book 15, page 229 and December 18, 1883, recorded February 5, 1892, in Book 15, page 230 public records of Lake County, Florida.

TERRITORY DESCRIPTION -- METES AND BOUNDS DESCRIPTION
RAINTREE UTILITIES, INC.
LAKE COUNTY

WATER SERVICE, ONLY

RAINTREE HARBOR SECTION ONE

Township 18 South, Range 26 East

Section 33

That part of the following described property lying northeasterly of County Road No. 452. The West 1/2 of the NW 1/4 of the NW 1/4 and a strip of land 536 feet wide north and south across the north side of the East 1/2 of the NW 1/4 of the NW 1/4 and across the NE 1/4 of the NW 1/4 of Section 33, Township 18 South, Range 26 East, lying and being in Lake County, Florida

Also:

Begin 45-1/3 yards north of the SW corner of the NE 1/4 of the NW 1/4 of Section 33, Township 18 South, Range 26 East; thence west 220 yards, thence north 216 yards, thence east to Lake Yale, thence southerly along Lake Yale to point east of beginning; thence west to beginning, lying and being in Lake County, Florida. Being further described as follows:

From the NW corner of the NW 1/4 of Section 33, Township 18 South, Range 26 East, Lake County, Florida, run S.89°49'04"E., along the north line of said NW 1/4 of Section 33 a distance of 1,264.15 feet to the Point of Beginning, said point being on the northeasterly right-of-way line of County Road No. 452; thence continue S.89°49'04"E., along said north line a distance of 863.19 feet to a point called Point "A" for reference; thence continue S.89°49'04"E., along said north line a distance of 507.11 feet, more or less, to the east line of said NW 1/4 of Section 33, thence southerly along said east line to a point on the south line of the north 536.00 feet of said NW 1/4 of Section 33; thence N.89°49'04"W., along said south line a distance of 405 feet, more or less, to the shore line of Lake

Yale; thence run southerly along said shore line a distance of 670 feet, more or less, to the south line of the north 1,184.00 feet of said NW 1/4 of Section 33; thence N.89°49'04"W., along said south line a distance of 45.97 feet, more or less, to a point called Point "B" for reference, being S.09°09'00"E., and 1,199.88 feet from aforesaid Point "A"; thence continue N.89°49'04"W., along said south line a distance of 214.03 feet to the aforesaid northeasterly right-of-way line of County Road No. 452; thence N.35°17'31"W., along said right-of-way line a distance of 1,453.87 feet to the Point of Beginning. Containing 14.8 acres more or less, not including that portion of Lake Yale.

RAINTREE HARBOR SECTION TWO

Township 18 South, Range 26 East

Section 33

Begin at the NW corner of the NW 1/4 of Section 33, Township 18 South, Range 26 East, Lake County, Florida, run S.89°49'04"E., along the north line of said NW 1/4 of Section 33 a distance of 1,141.36 feet to the southwesterly right-of-way line of County Road No. 452; thence S.35°17'31"E., along said right-of-way line a distance of 1,453.87 feet to a point on the south line of the north 1,184.00 feet of said NW 1/4 of Section 33; thence S.39°49'04"W., along said south line a distance of 1,322.67 feet to a point on the east line of the West 1/2 of the NW 1/4 of the NW 1/4 of said Section 33; thence S.00°12'15"E., along said east line a distance of 144.68 feet to the south line of said West 1/2 of the NW 1/4 of the NW 1/4 of Section 33; thence S.89°39'54"W., along said south line of the West 1/2 of the NW 1/4 of the NW 1/4 of Section 33 a distance of 659.65 feet to the west line of said NW 1/4 of Section 33; thence N.00°01'15"E., along said west line a distance of 1,326.92 feet to the Point of Beginning. Containing 44.62 acres, more or less.