

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for transfer
of Certificate No. 518-W in Lake
County from Century Realty
Funds, Inc. and Haselton
Associates, Ltd. d/b/a Route 19A
North Joint Venture to CWS
Communities LP.

DOCKET NO. 001083-WU
ORDER NO. PSC-01-0425-PAA-WU
ISSUED: February 22, 2001

The following Commissioners participated in the disposition of
this matter:

E. LEON JACOBS, JR., Chairman
J. TERRY DEASON
LILA A. JABER
BRAULIO L. BAEZ
MICHAEL A. PALECKI

ORDER APPROVING TRANSFER, REQUIRING ACCOUNTS
AND RECORDS TO BE MAINTAINED IN CONFORMANCE WITH THE
NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS
UNIFORM SYSTEM OF ACCOUNTS

AND

NOTICE OF PROPOSED AGENCY ACTION
ORDER DECLINING TO ESTABLISH RATE BASE

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service
Commission that our action declining to establish rate base, as
discussed herein, is preliminary in nature and will become final
unless a person whose interests are substantially affected files a
petition for a formal proceeding, pursuant to Rule 25-22.029,
Florida Administrative Code.

Background

On August 9, 2000, Century Realty Funds, Inc. and Haselton
Associates, Ltd. d/b/a Route 19A North Joint Venture (North Joint
Venture, utility or seller) filed an application with this

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FPSC-RECORDS/REPORTING

Commission for approval of the transfer of the utility from Century Realty Funds, Inc. and Haselton Associates, Ltd. to CWS Communities LP (CWS or buyer). North Joint Venture is a Class C utility, which serves 147 unmetered residential water and wastewater customers in Lake County. The utility was granted Certificates Nos. 518-W and 451-S by Order No. 21342, issued June 6, 1989, in Docket No. 880936-WS.

Subsequent to that time, North Joint Venture interconnected its wastewater system with the City of Eustis. As a result, the utility was found to be an exempt reseller of wastewater service, and Certificate No. 451-S was canceled by Order No. PSC-96-1470-FOF-WU, issued December 3, 1996, in Docket No. 961146-SU. The utility remained under our jurisdiction as a water utility. The instant docket concerns the transfer of the water system to CWS. We have jurisdiction pursuant to Section 367.071, Florida Statutes.

According to the application, the Partners and CWS entered into an agreement for purchase and sale on December 10, 1998, whereby CWS contracted to buy six mobile home parks or manufactured home communities owned by Century Realty Funds, Inc. Included in the transaction were Haselton Village and the utility system. The application indicated that the allocated purchase price for the Haselton Village property was \$4,961,488, and the value of the utility system was \$111,243, as of the date of the transfer, March 30, 1999. The value of the utility system was based upon information in the 1999 annual report.

Transfer Prior to Commission Approval

Section 367.071(1), Florida Statutes, requires 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 . . . However, a sale, assignment, or transfer of its certificate of authorization, facilities . . . may occur prior to commission approval if the contract for sale, assignment, or transfer is made contingent upon commission approval.

North Joint Venture closed on the sale of its facilities to CWS on March 30, 1999, prior to obtaining Commission approval. In addition, the Agreement of Purchase and Sale contained no provisions to make the agreement contingent upon Commission approval.

Section 367.161(1), Florida Statutes, authorizes this 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. In closing on the transfer of its facilities prior to Commission approval, the utility's act was "willful" in the sense intended by Section 367.161, Florida Statutes. In Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL, titled In Re: Investigation Into The Proper Application of Rule 25-14.003, Florida Administrative Code, Relating To Tax Savings Refund For 1988 and 1989 For GTE Florida, Inc., the Commission having found that the company had not intended to violate the rule, nevertheless found it appropriate to order it to show cause why it should not be fined, stating that "[i]n our view, 'willful' implies an intent to do an act, and this is distinct from an intent to violate a statute or rule."

Although North Joint Venture's failure to obtain Commission approval prior to transferring its facilities is an apparent violation of Section 367.071(1), Florida Statutes, there are circumstances that appear to mitigate the utility's apparent violation. Based on information provided by CWS, North Joint Venture was transferred on March 30, 1999, as part of a large property purchase which involved other time sensitive sale transactions. In addition to the large property exchange in this Docket, CWS also purchased Alafaya Palm Valley Associates, Ltd. (Docket No. 991984-WS), and Crystal Lake Club (Docket No. 991889-WS) at about the same time North Joint Venture was purchased. The circumstances are similar in each of these transactions. Order No. PSC-00-1675-PAA-WS, issued September 19, 2000, in Docket No. 991984-WS, placed CWS on notice that it is expected to know and comply with the Commission's rules and regulations.

North Joint Venture's failure to obtain our approval prior to transferring its facilities appears to be due to a lack of understanding and knowledge of this Commission's rules and

regulations. Although North Joint Venture is held to know the Commission's rules and statutes under which it must operate, when this matter was brought to the utility's attention, the utility stated that it was not aware of the statutory requirement to obtain prior approval of the transfer from thi Commission. We do 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, we do not find it appropriate to initiate a show cause proceeding against North Joint Venture for failure to obtain our approval prior to transferring its facilities to CWS. However, CWS is hereby placed on notice that it is expected to know and comply with this Commission's rules and regulations.

Books and Records

Rule 25-30.115, Florida Administrative Code, states that "Water and wastewater utilities shall, effective January 1, 1998, maintain their accounts and records in conformity with the 1996 NARUC Uniform Systems of Accounts (NARUC USOA) adopted by the National Association of Regulatory Utility Commissioners." Accounting Instruction 2, of the NARUC USOA for Class C utilities states:

Each utility shall keep its books of account, and all other books, records, and memoranda which support the entries in such books of account so as to be able to furnish readily full information as to any item included in any account. Each entry shall be supported by such detailed information as will permit a ready identification, analysis, and verification of all facts relevant thereto. (emphasis added)

Further, Accounting Instruction 4, of the NARUC USOA for Class C utilities states:

Each utility shall keep its books on a monthly basis so that for each month all transactions applicable thereto, as nearly as may be ascertained, shall be entered in the books of the utility. Amounts applicable or assignable to specific utility departments shall be segregated monthly. Each utility shall close its books at the end

of each calendar year unless otherwise authorized by the Commission. (emphasis added)

Rule 25-30.450, Florida Administrative Code, states:

In each instance, the utility must be able to support any schedule submitted, as well as any adjustments or allocations relied on by the utility. The work sheets, etc., supporting the schedules and data submitted must be organized in a systematic and rational manner so as to enable Commission personnel to verify the schedules in an expedient manner and minimum amount of time. The supporting work sheets, etc., shall list all reference sources necessary to enable Commission personnel to track to original source of entry into the financial and accounting system and, in addition, verify amounts to the appropriate schedules. (emphasis added)

During the audit of North Joint Venture's books and records in September 2000, it was determined that the utility's accounts are commingled with those of the Haselton Village community and the books and records are maintained out-of-state. The resulting audit report contained audit exceptions related to the utility's books and records.

Audit Exception No. 1 was the audit opinion that the utility was not maintaining its books pursuant to Rule 25-30.115, Florida Administrative Code, which requires all water and wastewater utilities to maintain their accounts and records in conformance with the NARUC USOA. The auditor further stated that the utility accounts are commingled with those of the operation of the Haselton Village community; documentation was not maintained at the utility location for plant additions, and no retirement entries were made; the utility contracts were with a CPA firm to prepare its Annual Report to the Commission; and the Annual Report is prepared by extracting utility activity from its Haselton Village community general ledger.

Documentation relative to utility operations and plant was located out-of-state, in apparent violation of Rule 25-30.110 (1)(b), Florida Administrative Code. That rule requires that "[u]nless otherwise authorized by the Commission, each utility

shall maintain its records at the office or offices of the utility within this state and shall keep those records open for inspection during business hours by Commission staff."

The sellers' failure to maintain the utility's books and records in accordance with 1996 NARUC USOA is an apparent violation of Rule 25-30.115, Florida Administrative Code. However, the sellers do not own the utility anymore since CWS has acquired the facilities and is currently operating the utility. We have received a verbal commitment from CWS of its intention to bring the books and records into compliance with the 1996 NARUC USOA. With respect to maintaining its books and records out-of-state, during the course of this proceeding, the utility made the necessary information available for purposes of the audit.

Based on the foregoing, we do not find it appropriate to initiate a show cause proceeding against North Joint Venture for failure to maintain its books and records in conformance with the NARUC USOA or for failure to maintain its accounts and records in-state, in apparent violation of Rules 25-30.115 and 25-30.110(1)(b), Florida Administrative Code, respectively. CWS shall maintain the utility's books and records in conformance with the 1996 NARUC USOA. In addition, CWS shall maintain the utility's books and records in-state or shall request the requisite authorization from this Commission to continue to maintain them out-of-state. CWS shall submit a statement from its accountant by March 31, 2001, with the utility's 2000 Annual Report stating that its books and records are in conformance with 1996 NARUC USOA and indicating that its books and records are being maintained in-state or that it is requesting authorization to maintain the utility's books and records out-of-state.

In determining whether to request such authorization from the Commission, CWS should be aware that Section 367.121(1)(k), Florida Statutes, authorizes this Commission "[to] assess a utility for reasonable travel costs associated with reviewing the records of the utility and its affiliates when such records are kept out-of-state." Rule 25-30.110(1)(c), Florida Administrative Code, defines reasonable travel expenses as "those travel expenses that are equivalent to travel expenses paid by the Commission in the ordinary course of its business."

Application

The application, as filed, contained deficiencies, which were corrected on October 20, 2000. The application is now in compliance with Section 367.071, Florida Statutes, and other pertinent statutes and provisions of the Florida Administrative Code. In particular, the application contains a filing fee in the amount of \$750, pursuant to Rule 25-30.020, Florida Administrative Code. The applicant also provides evidence, in the form of a recorded special warranty deed, that the utility facilities are located on real property which is owned by CWS, as required by Rule 25-30.037(2)(q), Florida Administrative Code.

In addition, proof of compliance with the noticing provisions set forth in Rule 25-30.030, Florida Administrative Code, has been provided, including notice to the customers of the system being transferred. No objections to the application were received, and the time for the filing such has expired.

The application contains a statement of how the transfer is in the public interest, pursuant to Rule 25-30.037(2)(j), Florida Administrative Code. According to the statement, the transfer is in the public interest because the Haselton Village customers will continue to receive the same quality service to which they are accustomed.

Regarding technical ability, CWS is retaining the management team that has operated the water and wastewater utility for the past ten years. At this time, the utility provides safe and reliable water and wastewater service to its customers, according to the application. The Department of Environmental Protection (DEP) was contacted and, according to DEP, there are no outstanding notices of violation against the utility.

With regard to financial ability, CWS provided the company's consolidated financial statements. According to these statements, CWS has the financial ability to continue to operate the system. Further, CWS has indicated that it will provide the financial stability required to maintain the utility system in accordance with Commission standards and environmental regulations.

The application contains a copy of the agreement for purchase and sale, which includes the purchase price, terms of payment and a list of the assets purchased and liabilities assumed. The buyer will assume responsibility for the seller's existing mortgage on the Haselton Village property in the amount of approximately \$3,152,955.

There were no outstanding or pending customer deposits, guaranteed revenue contracts, developer agreements, or customer advances related to the utility at the time of closing. CWS provided a statement that it will fulfill the commitments, obligations and representations of the seller with regard to utility matters, and will pay any outstanding regulatory assessment fees or fines.

According to our records, the utility is current on its regulatory assessment fees and has filed an annual report for 1999 and all prior years. CWS will be responsible for future annual reports and the payment of all regulatory assessment fees for the year 2000. The application states that CWS performed a reasonable investigation of the utility system and it appears to be in satisfactory condition and in compliance with all applicable standards set by the DEP.

Based on the foregoing, we find that the transfer of assets and utility facilities from North Joint Venture to CWS is in the public interest and it is approved. The territory the utility is authorized to serve is shown on Attachment A of this Order, which by reference is incorporated herein:

Rate Base

An attempt was made in September 2000 to audit the books and records of North Joint Venture. We were unable to obtain sufficient information to determine the utility's rate base at the time of transfer because the utility's books and records are maintained out-of-state and are commingled with those of the Haselton Village community. The audit report, however, contained three audit exceptions. Those exceptions are set forth below.

Audit Exception No. 1. The auditor indicated in the report that the utility does not maintain its books and records pursuant to Rule 25-30.115, Florida Administrative Code, which requires all water and wastewater utilities to maintain their accounts and records in conformance with the NARUC USOA. The auditor further stated that the utility accounts are commingled with those of the operation of the Haselton Village community; documentation was not maintained at the utility location for plant additions, and no retirement entries were made; the utility contracts were with a CPA firm to prepare its Annual Report to the Commission; and the Annual Report is prepared by extracting utility activity from its Haselton Village community general ledger.

Audit Exception No. 2. This exception was the audit opinion that without an official starting point, a per audit balance could not be established for land, plant, and accumulated depreciation. The staff auditor recommended that an original cost study be performed in conjunction with the next rate proceeding for the utility.

Audit Exception No. 3. This exception was the audit opinion that the contributions-in-aid-of-construction (CIAC) and Amortization of CIAC were incorrect. Based upon the existing rates approved by Order No. 21342, the utility had charged its 143 customers a tap-in fee of \$325. From June 30, 1988, to March 31, 1999, the utility added four customers. The resulting CIAC (147 x \$325) is \$47,775, and CIAC amortization is \$20,686.

Although Section 367.071(5), Florida Statutes, states, "The 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 . . .," we find that rate base cannot be established at this time since the Commission staff was unable to obtain sufficient information to determine the utility's rate base at the time of transfer. CWS is hereby put on notice that an original cost study may be required when the utility files a rate petition if the utility cannot provide the original cost documentation.

Acquisition Adjustment

An acquisition adjustment results when the purchase price differs from the original cost calculation adjusted to the time of the transfer. The utility facilities were acquired by CWS along with a mobile home community as part of a large acquisition of six mobile home and manufactured housing communities. Haselton Village, which included the utility, had an allocated purchase price of \$4,961,488. Neither North Joint Venture nor CWS were able to place a separate value on the utility facilities. In addition, CWS has not requested an acquisition adjustment.

In the absence of extraordinary circumstances, it has been Commission practice that the purchase of a utility system at a premium or discount shall not affect the rate base calculation. There are no extraordinary circumstances regarding this purchase that would justify an acquisition adjustment to rate base. This is consistent with previous Commission decisions. See Order No. PSC-00-1675-PAA-WS, issued September 19, 2000, in Docket No. 991984-WS; Order No. PSC-00-1659-PAA-WU, issued September 18, 2000, in Docket No. 000334-WU; Order No. PSC-00-1515-PAA-WU, issued August 21, 2000, in Docket No. 000333-WU; and Order No. PSC-00-1389-PAA-WU, issued July 31, 2000, in Docket No. 991001-WU.

Because the parties were unable to provide a separate purchase price for the utility's assets, rate base cannot be established for the utility as of the date of transfer. Therefore, the amount of the associated acquisition adjustment cannot be determined at this time.

Rates and Charges

North Joint Venture's current rates were approved by the Commission pursuant to Order No. 21342, issued June 6, 1989, in Docket No. 880936-WS. The utility's rates and charges are set forth below.

Water Monthly Service Rates
Residential and General Service

<u>Flat Base Facility Charge</u>	<u>Approved</u>
Occupied Unit	\$ 7.00

Unoccupied Unit \$ 3.00
If Unoccupied for 60 consecutive days.

Miscellaneous Service Charges

None

Service Availability Charges

Residential Tap in Fee (per equivalent
residential connection) \$ 325.00

Rule 25-9.044(1), Florida Administrative Code, requires the new owner of a utility to adopt and use the rates, classifications and regulations of the former operating company unless authorized to change by this Commission. CWS has not requested a change in the rates and charges of the utility, and we see no reason to change them at this time. CWS shall continue to charge the rates and charges approved in North Joint Venture's tariff until authorized to change by this Commission in a subsequent proceeding. CWS has filed a revised tariff reflecting the change in ownership. The tariff shall be effective for service rendered or connections made on or after the stamped approval date on the tariff sheets.

It is, therefore,

ORDERED by the Florida Public Service Commission that the transfer of Certificate No. 518-W and the utility from Century Realty Funds, Inc. and Haselton Associates, Ltd. d/b/a Route 19A North Joint Venture, Post Office Box 5252, Lakeland, Florida 33807, to CWS Communities LP, 14 Coral Street, Eustis, Florida 32726, is hereby approved. The territory the utility is authorized to serve is shown on Attachment A of this Order, which by reference is incorporated herein. It is further

ORDERED that CWS Communities LP is hereby put on notice that it is expected to know and comply with Commission rules and regulations. It is further

ORDERED that CWS Communities LP shall maintain its books and records in conformance with the 1996 NARUC Uniform System of Accounts, and submit a statement to this Commission with its 2000 annual report from its accountant by March 31, 2001, stating that its books and records are in conformance with the 1996 NARUC

ORDER NO. PSC-01-0425-PAA-WU
DOCKET NO. 001083-WU
PAGE 12

Uniform System of Accounts, pursuant to Rule 25-30.115, Florida Administrative Code. It is further

ORDERED that CWS Communities LP shall maintain the utility's books and records in-state or request the requisite authorization from the Commission by March 31, 2001, with its 2000 annual report to continue to maintain them out-of-state. It is further

ORDERED that rate base for the water system cannot be established at this time. It is further

ORDERED that the amount of the acquisition adjustment cannot be determined at this time. It is further

ORDERED that CWS Communities LP shall continue to charge the rates and charges approved in Century Realty Funds, Inc. and Haselton Associates, Ltd. d/b/a Route 19A North Joint Venture's tariff until authorized to change by this Commission in a subsequent proceeding. It is further

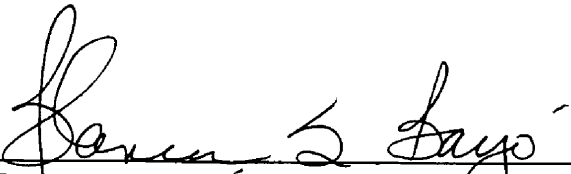
ORDERED that the tariff reflecting the change in ownership shall be effective for service rendered or connections made on or after the stamped approval date on the tariff sheets. It is further

ORDERED that the provisions of this Order, issued as proposed agency action declining to establish rate base, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that in the event this Order becomes final, this docket shall be closed.

ORDER NO. PSC-01-0425-PAA-WU
DOCKET NO. 001083-WU
PAGE 13

By ORDER of the Florida Public Service Commission this 22nd
Day of February, 2001.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

ALC

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

As identified in the body of this order, our action regarding the establishment of rate base for purposes of the transfer is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, at 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on March 15, 2001. If such a petition is filed, mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing. In the absence of such a petition, this order shall become effective and final upon the issuance of a Consummating Order.

ORDER NO. PSC-01-0425-PAA-WU
DOCKET NO. 001083-WU
PAGE 14

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

Any party adversely affected by the Commission's final action in this matter may request: (1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

ATTACHMENT A

CWS Communities LP
Lake County - Water Service Area
Serving Haselton Village Mobile Home Park

Township 18 South, Range 26 East
Section 34

PARCEL A: Beginning at the East 1/4 corner of Section 34, Township 18 South, Range 26 East, Lake County, Florida, run thence South 01° 48' 30" West a distance of 600.06 feet, thence South 60° 02' 15" East a distance of 258.75 feet to the Westerly right-of-way of County Road No. 19A, thence South 27° 20' 27" West along said right-of-way, a distance of 529.11 feet to the beginning of a curve having a radius of 510.46 feet and being concave Easterly, thence along the arc of said curve and through a central angle of 23° 49' 40" an arc length of 212.28 feet, thence South 01° 43' 53" West along said Westerly right-of-way of County Road No. 19-A, a distance of 369.71 feet to the Northerly right-of-way of County Road No. 452-A, thence South 89° 58' 57" West along said Northerly right-of-way a distance of 806.22 feet, thence North 01° 52' 26" East, a distance of 514.53 feet, thence North 89° 19' 12" West a distance of 9.49 feet, thence North 01° 50' 47" East a distance of 39.32 feet, thence South 89° 37' 31" West a distance of 339.62 feet, thence North 01° 51' 37" East a distance of 641.18 feet to the Southwest bank of a dug canal, thence North 25° 58' 09" West along said Southwest bank of dug canal, a distance of 304.55 feet, thence North 01° 51' 37" East a distance of 340.00 feet to the East-West Mid-Section line, thence South 88° 35' 32" East along said East-West Mid-Section line, a distance of 1315.80 feet to the Point of Beginning.

PARCEL B: (Wastewater Treatment Plant Site) That part of the Northeast 1/4 of Section 34, Township 18 South, Range 26 East, Lake County, Florida, described as follows: Begin at the Southeast corner of said Northeast 1/4 of Section 34, run thence North 01° 54' 49" East along the East line of said Northeast 1/4 a distance of 202.01 feet, thence North 42° 18' 58" West 524.11 feet, thence South 22° 28' 22" West 621.10 feet to a point on the South line of said Northwest 1/4 of Section 34, thence South 88° 28' 40" East along the said South line of the Northeast 1/4 Section 34, a distance of 583.71 feet to the Point of Beginning and Point of Terminus.