

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for transfer
by Heartland Utilities, Inc.
(holder of Certificate No. 420-W
in Highlands County) of DeSoto
City and Sebring Country Estates
water systems to City of
Sebring.

DOCKET NO. 001826-WU
ORDER NO. PSC-01-1986-PAA-WU
ISSUED: October 8, 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 ACKNOWLEDGING TRANSFER AND
AMENDING CERTIFICATE NO. 420-W TO DELETE TERRITORY

AND

NOTICE OF PROPOSED AGENCY ACTION
ORDER DECLINING TO ADDRESS GAIN ON SALE AT THIS TIME

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service
Commission that the action discussed herein declining to address
the gain on sale at this time 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

Heartland Utilities, Inc. (Heartland or utility) is a Class C
utility serving approximately 740 residential water customers in
Highlands County. The utility is located in the Southwest Florida

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FPSC-COMMISSION CLERK

Water Management District (SWFWMD) in the Highlands Ridge Water Use Caution Area. Wastewater service is provided by septic tanks. The utility consists of three service areas, DeSoto City (DeSoto), Sebring Country Estates (Estates) and Sebring Lakes (Lakes).

On December 27, 2000, the utility filed an application for transfer of the DeSoto (364 customers) and Estates (339 customers) water systems to the City of Sebring (City). Included with the application is a copy of the transfer agreement between the two parties. The effective date of the transfer is January 3, 2001, the date of closing. This leaves the utility with only the Lakes service area, which includes approximately 37 customers and about 363 undeveloped lots. It does not appear that the remaining service area will meet the small systems exemption under Section 367.022(6), Florida Statutes, at build out.

Heartland has provided water service to the Estates and DeSoto water systems since 1964. The Highlands County Commission transferred jurisdiction of its water and wastewater utilities to this Commission on September 7, 1982. The utility was issued Certificate No. 420-W pursuant to Order No. 12846, issued January 5, 1984, in Docket No. 830332-W. The utility's territory was amended to include the Lakes water system pursuant to Order No. PSC-98-0797-FOF-WU, issued on June 8, 1998, in Docket No. 980433-WU, after the Department of Environmental Protection (DEP) requested service be extended because of contaminated wells.

We have jurisdiction pursuant to Section 367.071, Florida Statutes.

Application

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. As such, no notice of the transfer is required and no filing fees apply. The application for acknowledgment of the transfer had deficiencies which were corrected as of February 23, 2001. The application is now in compliance with Section 367.071(4)(a), Florida Statutes, and Rule 25-30.037(4), Florida Administrative Code.

The application contains a statement that the City obtained Heartland's most recent income and expense statement, balance sheet, statement of rate base for regulatory purposes, and contributions-in-aid-of-construction pursuant to Rule 25-30.037(4)(e), Florida Administrative Code. A statement that the customer deposits and interest thereon will be paid to the City for the benefit of the customers as required by Rule 25-30.037(4)(g), Florida Administrative Code, was included with the application.

Additionally, pursuant to the requirements of Rule 25-30.037(4)(h), Florida Administrative Code, a statement was included that Heartland will pay outstanding regulatory assessment fees (RAFs) as part of its regular annual filing. The utility has filed all RAFs and annual reports through 2000.

Based on the foregoing, the transfer of the DeSoto and Estates water systems from Heartland to the City is hereby acknowledged. Because Heartland is transferring only two of its three water systems, Certificate No. 420-W is hereby amended to reflect the territory deletion effective January 3, 2001. The territory that Heartland is authorized to serve after the transfer is shown on Attachment A of this Order, which by reference is incorporated herein.

Gain on Sale

The proposition that a gain on sale should be shared with customers has been considered in other dockets. In each case, we evaluated whether or not ratepayers in the remaining service area were entitled to share in the gain when another portion of the utility's operating facility was sold. See Order No. PSC-93-0301-FOF-WS, issued February 25, 1993, in Docket No. 911188-WS; Order No. PSC-93-0423-FOF-WS, issued March 22, 1993, in Docket No. 920199-WS; and Order No. PSC-96-1320-FOF-WS, issued October 30, 1996, in Docket No. 950495-WS.

Rate base was last established for Heartland by Order No. PSC-96-1389-FOF-WU, issued November 19, 1996, in Docket No. 960517-WU, for the test year ending December 31, 1995. At that time, the utility consisted only of the Estates and DeSoto systems. Uniform rates were established for the utility and rate base was set at

\$139,226. The base facility charge for a 5/8 inch x 3/4 inch meter was \$7.58 and the gallonage charge was \$1.74 per thousand gallons.

The utility began service to the Lakes in 1998 pursuant to a request from the DEP, because 18 of the approximately 40 homes in the development had contaminated wells. Heartland submitted an application to the Commission to amend its service territory to add the Lakes. The utility received a \$250,000 grant from DEP to assist in providing service to the Lakes, including \$11,700 for reimbursement of connection fees and \$238,300 towards the cost of constructing the new water treatment plant and lines. The utility estimated the total cost of construction of this stand-alone system to be approximately \$320,500. The Lakes system is approximately four miles from the DeSoto system and approximately ten miles from the Estates system.

In conjunction with the amendment, Heartland also filed a special service agreement to allow Heartland to charge its existing rates to the Lakes system. Stand-alone rates have never been calculated for the Lakes system.

The purpose of a gain on sale investigation would be to determine whether the remaining customers of Heartland (Lakes customers) subsidized the investment in the overall Heartland systems during the years that the three systems were combined for ratemaking purposes (June, 1998 through January, 2001) such that they should share in the profits from the sale of these systems. If the Lakes customers had subsidized the DeSoto and Estates customers through payment of monthly rates, it would be appropriate to pursue an investigation on possible gain on sale.

According to the Option to Purchase Agreement, the DeSoto and Estates systems were sold to the City for \$1,175,000. The rate base for the two systems was established as of December 1995 at \$139,226. This would result in a potential gain on sale of \$1,035,774 to be shared with the 37 Lakes customers.

The data from the utility's 2000 annual report has been used to provide some level of quantitative analysis of the Lakes' operating expenses versus utility revenues. A review of the water sold and existing connections for the three systems based upon the 2000 annual report reveals the following information.

	DESOTO	ESTATES	LAKES
a) Connections	364	339	37
b) Gallons Sold (000 omitted)	30,347	29,290	1,717
c) Base facility charge \$7.58 x connections x 12 months	\$33,109	\$30,835	\$3,366
d) Gallonage charge \$1.74/1000 x gallons sold	<u>\$52,804</u>	<u>\$50,965</u>	<u>\$2,988</u>
e) Estimated Annual Revenue (c+d)	\$85,913	\$81,800	\$6,354

According to this information, the Lakes system produces an annual gross revenue of about \$6,354, or about 3.6% of the gross revenue of \$174,067 for all three systems. Based on the 2000 annual report, the net operating income for the three systems was \$14,208. Assuming the net operating income was proportionate to the gross revenues, the Lakes system would have been allocated approximately \$511 of the \$14,208 net income.

We recognize that without an audit, there is no way to actually quantify rate base and the cost of service for Lakes's customers. However, baseline information appears to indicate that the Lakes' customers may have been subsidized by DeSoto and Estates customers, rather than the other way around. Furthermore, the addition of the Lakes customers to the Heartland utility occurred at the request of DEP, rather than being initiated by the utility, in order to serve a distressed area. In addition, the Lakes' system was added after Heartland's 1996 staff-assisted rate case. Lastly, if a gain on sale were approved with respect to this sale, it could result in the utility's rate base being reduced to \$0 or even a negative amount, which could be very troublesome for the utility.

Based on the foregoing, we do not find it appropriate to address the gain on sale at this time. Should it be deemed appropriate, this may be addressed in future proceedings.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the transfer of the Sebring Country Estates and Sebring Lakes systems from Heartland Utilities, Inc., 10405 US 27 South, Sebring, Florida 33870, to the City of Sebring, 368 South Commerce Avenue, Sebring, Florida 33870, is hereby acknowledged. It is further

ORDERED that Certificate No. 420-W is hereby amended to reflect the deletion of the Sebring Country Estates and Sebring Lakes service areas. It is further

ORDERED that the territory that Heartland Utilities, Inc. is authorized to serve after the transfer and amendment of Certificate No. 420-W is set forth on Attachment A of this Order, which by reference is incorporated herein. It is further

ORDERED that we decline to address the gain on sale at this time. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, 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 the Commission Clerk and Administrative Services, 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 if no timely protest is received to the proposed agency action, this docket shall be closed administratively.

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By ORDER of the Florida Public Service Commission this 8th
day of October, 2001.

BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records and Hearing
Services

(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 declining to address the gain on sale at this time 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 the Commission Clerk and Administrative Services, at 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on October 29, 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.

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 the Commission Clerk and Administrative Services 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 the Commission Clerk and Administrative Services 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.

HEARTLAND UTILITIES, INC
Highlands County
Water Service area for Sebring Lakes

A portion of Sebring Lakes Unit 1-A, 1-B, 2-A, 2-B, and 2-C located in Highlands County, Florida, Sections 3 and 4, Township 36 South, Range 29 East, being more particularly described as follows:

Commence at the Southeast Corner of Section 3, Township 36 South, Range 29 East, Thence North $00^{\circ}29'23''$ East along the East line of Section 3 a distance of 1298.93 feet to a point on the Westerly Right-of-way line of U.S. Highway 27, thence North $31^{\circ}32'59''$ West along the Westerly right-of-way line of U.S. Highway 27 a distance of 400 feet more or less to a point on the North line of Josephine Creek and for a Point of Beginning:

Thence continue North $31^{\circ}32'59''$ West along said West right-of-way line U.S. Highway 27 a distance of 1264.43 feet to a point on the North line of the South 1/2 of Section 3; thence South $89^{\circ}41'36''$ West along the North line of the South 1/2 of Section 3 a distance of 3155.71 feet to the Southeast corner of the West 1/2 of the Northwest 1/4 thence North $0^{\circ}53'45''$ East along the East line of the West 1/2 of the Northwest 1/4 a distance of 669.33 feet, to the Northeast corner of the South 1/2 of the Southwest 1/4 of the Northwest 1/4; thence South $89^{\circ}46'12''$ West along the North line of the South 1/2 of the Southwest 1/4 of the Northwest 1/4 a distance of 1331.90 feet to a point on the West line of Section 3; thence North $1^{\circ}01'32''$ East along the West line of Section 3 a distance of 2013.48 feet to the Northwest corner of Section 3; also being the Northeast corner of Section 4; thence South $89^{\circ}55'46''$ West along the North line of Section 4 for a distance of 570 feet to a point on the Easterly line of Josephine Creek; thence run Southwesterly along the Easterly line of Josephine Creek a distance of 2,400 feet, more or less, thence Southerly along the Easterly line of Josephine Creek a distance of 900 feet; thence Easterly along the Northerly line of Josephine Creek a distance 8,100 feet, more or less, to the Point of Beginning.

CONTAINING 250 ACRES MORE OR LESS.