



Public Service Commission

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DATE: JUNE 6, 2002

TO: DIRECTOR, DIVISION OF THE COMMISSION CLERK &
ADMINISTRATIVE SERVICES (BAYÓ)

FROM: DIVISION OF ECONOMIC REGULATION (BRADY, KAPROTH) *pb*
OFFICE OF THE GENERAL COUNSEL (CROSBY, HELTON) *net* *RDM* *CSA*
JDJ

RE: DOCKET NO. 011651-WU - APPLICATION FOR TRANSFER OF
MAJORITY ORGANIZATIONAL CONTROL OF PINECREST RANCHES,
INC., HOLDER OF CERTIFICATE NO. 588-W IN POLK COUNTY, FROM
JAMES O. VAUGHN AND MARGARET S. HANKIN TO S. NORMAN DUNCAN
AND RICHARD S. LITTLE.
COUNTY: POLK

AGENDA: 06/18/02 - REGULAR AGENDA - INTERESTED PERSONS MAY
PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\ECR\WP\011651.RCM

CASE BACKGROUND

Pinecrest Ranches, Inc. (Pinecrest or utility) is a Class C utility providing service to approximately 120 mobile homes in a community in Polk County known as Citrus Highlands. Pinecrest is in the Southern Water Use Caution Area of the South West Florida Water Management District (SWFWMD). According to its 2001 annual report, the utility had operating revenues of \$20,195 and a net operating loss of \$11,799.

Pinecrest was issued Certificate No. 588-W pursuant to the grandfather provisions of Section 367.171, Florida Statutes, and Rule 25-30.035, Florida Administrative Code, by Order No. PSC-97-0367-FOF-WU, issued April 2, 1997, in Docket No. 961253-WU. On December 17, 2001, the utility filed an application for transfer of

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majority organizational control from James O. Vaughn and Margaret S. Hankin (sellers) to S. Norman Duncan and Richard S. Little (buyers) opening this docket. The Stock Purchase Agreement (Agreement) was entered into and closed on April 1, 2002, with provisions to be contingent upon Commission approval.

The Commission has jurisdiction pursuant to Section 367.071, Florida Statutes.

DISCUSSION OF ISSUES

ISSUE 1: Should the transfer of majority organizational control of Pinecrest Ranches, Inc. from James O. Vaughn and Margaret S. Hankin to S. Norman Duncan and Richard S. Little be approved?

RECOMMENDATION: Yes. The transfer of majority organizational control of Pinecrest Ranches, Inc., should be approved effective the date of Commission vote. A description of the utility's approved territory is appended to this memorandum as Attachment A. The buyers should be responsible for filing the utility's 2002 annual report and remitting 2002 regulatory assessment fees. (BRADY, KAPROTH, CROSBY)

STAFF ANALYSIS: As noted in the Case Background, an application for the transfer of majority organizational control of Pinecrest from James O. Vaughn and Margaret S. Hankin to S. Norman Duncan and Richard S. Little was filed on December 17, 2001. The stock transfer occurred on April 1, 2002, with provisions to be contingent upon Commission approval, as required by Section 367.071, Florida Statutes.

The application, as filed and supplemented, is in compliance with Section 367.071, Florida Statutes, and other pertinent statutes and provisions of the Florida Administrative Code with regard to authority for transfer. The application contained the correct filing fee pursuant to Rule 25-30.020, Florida Administrative Code. The application also contained proof of compliance with the noticing provisions set forth in Rule 25-20.030, Florida Administrative Code. No objections to the application have been received and the time for filing such has expired.

BUYERS

Pursuant to Rule 25-30.037(3)(a), (b), (c), and (d), Florida Administrative Code, the application contained information on the buyers' ownership interest and prior utility ownership. Prior to the transfer, Pinecrest was owned 50% each by James O. Vaughn and Margaret S. Hankin. Subsequent to the transfer, Pinecrest is now owned 50% each by S. Norman Duncan, acting as President, and Richard S. Little, acting as Secretary/Treasurer. Neither Mr. Duncan nor Mr. Little own any other utility facilities.

FINANCING

Pursuant to Rules 25-30.037(3)(e) and (g), Florida Administrative Code, the application described the financing of the purchase. The total purchase price was \$100,000. The buyers paid 30% of the purchase price in cash and financed the remaining 70% using the utility assets as collateral. The terms of the financial agreement are for repayment to be made over a period of three years at 7.5% interest.

PUBLIC INTEREST

Rule 25-30.037(3)(f) and (h), Florida Administrative Code, requires a statement indicating how the transfer is in the public interest including a summary of the buyer's experience, a showing of the buyer's financial ability and a statement of the buyer's assessment of the condition of the utility facilities.

Mr. Duncan and Mr. Small provided a copy of their personal Federal Income Tax returns for 2000 as a showing of their financial ability. The tax returns show that the buyers have sufficient liquid assets to finance the utility. The buyers also own property in an adjacent community which they intend to develop. In addition, on May 8, 2002, the buyers filed for a staff-assisted rate case (SARC) in Docket No. 020406-WU. Once meters have been installed and compensatory rates are established by the Commission, the buyers should have sufficient revenues to maintain utility operations without sustaining further losses.

As noted above, neither Mr. Duncan nor Mr. Little have previous utility ownership experience. However, they have contracted with a licensed operator to provide operating services for Pinecrest. In addition, Mr. Duncan is a licensed contractor. The buyers have also indicated their intent to fulfill the commitments, obligations, and representations of the seller with respect to utility matters.

With one exception, the buyers found the utility to be in satisfactory condition and in compliance with all applicable environmental standards. The exception was concrete damage to the casing of the utility's 4" well. The damage is located at the deck level and was caused by chlorine overflow. The application indicated that the buyers have accepted the responsibility for the repairs which are estimated to cost approximately \$3,800. Staff

has confirmed that the utility is, nevertheless, in compliance with the environmental requirements of the Polk County Health Department.

Based upon all the above, staff believes the buyers have demonstrated that they have the technical ability, financial resources, and commitment to continue to operate the utility in the public interest.

LAND OWNERSHIP

Rule 25-30.037(3)(i), Florida Administrative Code, requires evidence that the utility owns the land upon which the utility treatment facilities are located, or a copy of an agreement which provides for the continued use of the land, such as a 99-year lease. The application contained a copy of a recorded warranty deed as evidence that the land upon which the utility facilities are located is owned in the name of Pinecrest. In addition the application included a Quit Claim Deed by Mr. Vaughn and Ms. Hankin for all rights to any utility easements and all property located thereon.

ANNUAL REPORT AND REGULATORY ASSESSMENT FEES (RAFTS)

Staff has verified that the utility has paid RAFTS through December 31, 2001, filed all annual reports through 2001, and that no interest, penalties, or refunds are due. As noted, the closing occurred on April 1, 2002, at which time, the buyers were compensated for first quarter 2002 RAFTS. As a consequence, the application indicated the buyers will be responsible for filing a complete 2002 annual report and remitting the full amount of 2002 RAFTS.

RATE BASE

As noted above, Docket No. 020406-WU has been opened to process a SARC for Pinecrest. Since rate base will be established as part of the SARC process, staff has not established rate base for the transfer. However, in general, it has been Commission practice not to establish rate base for transfers of majority organizational control. Since the utility's assets and liability accounts are not altered by stock transfers, such transfers have no effect on the utility's rate base balance. Similarly, it has also

been Commission practice that acquisition adjustments for stock transfers are not part of the consideration of public interest.

For the above reasons, staff's recommendation does not include issues regarding the establishment of rate base or an acquisition adjustment.

CONCLUSION

Based on all the above, staff recommends that the transfer of majority organizational control of Pinecrest Ranches, Inc. from James O. Vaughn and Margaret S. Hankin to S. Norman Duncan and Richard S. Little be approved. The transfer should be approved effective the date of Commission vote. A description of the utility's approved territory is appended to this memorandum as Attachment A. The buyers should be responsible for filing the utility's 2002 annual report and remitting 2002 regulatory assessment fees.

ISSUE 2: Should the rates and charges approved for Pinecrest Ranches, Inc. be continued?

RECOMMENDATION: Yes. The rates and charges approved for the utility should be continued until authorized to change by the Commission. The tariff reflecting the transfer of majority organizational control should be approved and effective for services rendered or connections made on or after the stamped approval date. (BRADY)

STAFF ANALYSIS: Pinecrest's monthly flat rate for water service and tap-in fee of \$350.00 were grandfathered pursuant to Order No. PSC-97-0367-FOF-WU, issued April 2, 1997, in Docket No. 961253-WU. The monthly flat rate, which has been indexed once pursuant to a 1998 Price Index and Pass-Through Adjustment is \$12.58.

Rule 25-9-044(1), Florida Administrative Code, provides:

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 changed, the company which will thereafter operate the utility business must adopt and use the rates, classification and regulations of the former operating company (unless authorized to change by the Commission).

While there has been no request for a change in rates in this docket, as noted earlier, on May 8, 2002, a SARC was filed on behalf of the utility in Docket No. 020406-WU. In filing for a SARC, the buyer requested that rates be established based on metered usage.

Since Pinecrest is located in the Southern Water Use Caution Area, staff contacted the SWFWMD to determine whether there were any current water use concerns. While Pinecrest Ranches, Inc. was issued a 20-year water use permit (formerly called consumptive use permit) in 1998, it is currently exceeding the permit's average annual rate and maximum peak month rate of 58,800 gallons per day (gpd) and 88,400 gpd, respectively. SWFWMD is in the process of formalizing rules and regulation for water use in Southern Water Use Caution Area. Currently, it is anticipated the rules and regulations will be in place before June 2002 and will be similar

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to those adopted for the neighboring Highlands Water Use Caution Area.

Although it has not done so to date, SWFWMD indicated it is likely to mandate that meters be installed and rates be designed to encourage water conservation for Pinecrest once the Southern Water Use Caution Area rules and regulations are in place. When informed of the open SARC docket, SWFWMD staff indicated a willingness to assist Commission staff in informing and educating Pinecrest's customers of the need for rates and charges that encourage conservation.

Based upon the above, staff recommends that the buyers continue to operate the utility under its approved rates and charges until authorized to change by the Commission. The application contained a revised water tariff reflecting the change in issuing officer pursuant 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 3: Should this docket be closed?

RECOMMENDATION: Yes. There are no issues remaining and the docket should be closed upon the issuance of the Final Order. (CROSBY)

STAFF ANALYSIS: Since there are no issues remaining, the docket should be closed upon the issuance of the Final Order.

PINECREST RANCHES, INC.
WATER TERRITORY
POLK COUNTY, FLORIDA

Township 30 South, Range 26 East
Section 6

Begin at the NW corner of the NE 1/4 of Section 6 and run N 89°28'10" E, along the northern boundary of Section 6, a distance of 1,145.33 feet; thence S 20°03'30" E, a distance of 383.78 feet; thence N 69°56'30" E, a distance of 57.71 feet to the east boundary of the West 1/2 of the NE 1/4; thence S 00°22'30" E, along said east boundary, a distance of 1,394.42 feet to the NE corner of the SW 1/4 of the NE 1/4 of Section 6; thence N 89°21'48" W, along the north boundary of the SW 1/4 of the NE 1/4, a distance of 1,328.39 feet to the west boundary of the NE 1/4; thence N 00°24'01" W, along said west boundary, a distance of 1,709.77 feet to the Point of Beginning.

Also, two parcels more particularly described as follows:

Township 29 South, Range 26 East
Section 31

Beginning at the SE corner of Section 31, run westerly a distance of 2,771.38 feet to the Point of Beginning, thence run west 224.50 feet; thence run north a distance of 120 feet; thence run east a distance of 224.50 feet; thence run south a distance of 120 feet to the Point of Beginning.

And beginning at the SE corner of Section 31, run westerly a distance of 2,591.38 feet to the Point of Beginning, continue west a distance of 60.00 feet; thence run north a distance of 105 feet; thence run east a distance of 60 feet; thence run south a distance of 105 feet to the Point of Beginning.