

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of limited proceeding to restructure wastewater rates for Florida Water Service Corporation's Tropical Isles service area in St. Lucie County.

DOCKET NO. 970409-SU

In re: Application by Florida Water Services Corporation for transfer of facilities and attendant assets of Tropical Isles Wastewater Plant to Tropical Isles Utilities Corporation, a Florida not-for-profit corporation, and for cancellation of Certificate No. 482-S in St. Lucie County.

DOCKET NO. 011634-SU  
ORDER NO. PSC-02-0781-FOF-SU  
ISSUED: June 10, 2002

The following Commissioners participated in the disposition of this matter:

LILA A. JABER, Chairman  
J. TERRY DEASON  
BRAULIO L. BAEZ  
MICHAEL A. PALECKI  
RUDOLPH "RUDY" BRADLEY

ORDER APPROVING TRANSFER OF FACILITIES,  
CANCELING CERTIFICATE NO. 482-S, AND CLOSING DOCKETS

BY THE COMMISSION:

Florida Water Services Corporation (FWSC or seller) is a Class A utility providing water and wastewater service throughout Florida. Most of its systems are under our jurisdiction including the Tropical Isles Wastewater Plant (Tropical Isles or utility) which is a stand-alone wastewater system in St. Lucie County. While Tropical Isles does not provide water service, it is located in the Critical Water Supply Area of the South Florida Water Management District. Water service is provided by the Ft. Pierce

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Utility Authority (FPUA). As of June 30, 2001, Tropical Isles had 251 active connections. According to FWSC's 2000 annual report, the system had operating revenues of \$107,845 and net operating income of \$42,610.

FWSC purchased the Tropical Isles system from Messrs. Spizizen and Shacket in 1989 with Messrs. Spizizen and Shacket retaining ownership of the modular housing park known as the Tropical Isles Mobile Home Park (TIMHP or park). Effective October 1, 1992, the St. Lucie County Board of County Commissioners transferred jurisdiction over privately-owned water and wastewater utilities in St. Lucie County to this Commission. By Order No. PSC-93-0621-FOF-SU, issued April 21, 1993, in Docket No. 930075-SU, we granted FWSC, then known as Southern States Utilities, Inc., Certificate No. 482-S for the territory served by Tropical Isles. The order also approved the continuation of the monthly flat rate being charged for wastewater service as established by the St. Lucie County Water and Sewer Authority.

At a service hearing in FWSC's most recent rate case (Docket No. 950495-WS), the Tropical Isles' customers questioned the validity of a flat rate for wastewater service since they received metered water service from the FPUA. By Order No. PSC-96-1320-FOF-WS, issued in the rate case on October 30, 1996, we required FWSC to investigate whether it could establish metered wastewater rates based on FPUA's water meter information.

As a result of FWSC's investigation, Docket No. 970409-SU was opened on April 1, 1997, to investigate the possibility of restructuring Tropical Isles' wastewater flat rate. A customer meeting on the matter was held on November 19, 1997. Based on customer comments, and other information obtained after the customer meeting, the scope of Docket No. 970409-SU was expanded to also investigate the revenue requirement for the Tropical Isles system.

By Proposed Agency Action Order No. PSC-00-0526-PAA-SU (PAA Order), issued March 13, 2000, we proposed a base facility/gallongage charge rate structure for Tropical Isles but declined to change the revenue requirement. However, the PAA Order was protested by Mr. Clarke Schaaf on behalf of the Tropical Isles Homeowners Association and the matter was set for hearing by Order No. PSC-00-2034-PCO-SU, issued June 12, 2000.

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Subsequently, FWSC and the utility customers began negotiations for the sale of the utility to the customers. All controlling dates in Docket No. 970409-SU, including the hearing dates, were held in abeyance and continued pending the outcome of the negotiations. See Orders Nos. PSC-00-1197-PCO-SU, issued July 3, 2000; PSC-00-2135-PCO-SU, issued November 8, 2000; and PSC-01-1770-PCO-SU, issued August 30, 2001.

On December 10, 2001, FWSC filed an application in Docket No. 011634-SU for the transfer of the facilities and assets of Tropical Isles to Tropical Isles Utilities Corporation (TIUC or buyer) a not-for-profit corporation formed on behalf of the utility customers, and for the cancellation of Certificate No. 482-S. The transfer occurred on July 16, 2001, with provisions to be contingent upon Commission approval. Although the Tropical Isles Homeowners Association has declined to withdraw its protest to Order No. PSC-00-0526-PAA-SU, it has agreed that Docket No. 970409-SU can be closed once we approve the transfer to TIUC.

We have jurisdiction pursuant to Sections 367.045 and 367.071, Florida Statutes.

#### TRANSFER OF FACILITIES

On July 16, 2001, FWSC closed on an Agreement for Purchase and Sale (Agreement) for the transfer of utility facilities and assets to TIUC. The Agreement contained provisions for the transfer to be contingent upon our approval as required by Section 367.071, Florida Statutes. On December 10, 2001, FWSC filed an application in Docket No. 011634-SU for approval of the transfer of Tropical Isles' facilities and assets from FWSC to TIUC and for cancellation of Certificate No. 482-S.

The application, as filed, 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 contains the correct filing fee, pursuant to Rule 25-30.020, Florida Administrative Code. The application also contains proof of compliance with the noticing provisions set forth in Rule 25-30.030, Florida Administrative Code. No objections to the application have been received and the time for

filing such has expired. The applicants have also returned the utility's original certificate for cancellation.

#### Buyer

Pursuant to Rule 25-30.037(2)(c), (d), (e) and (f), Florida Administrative Code, the application contains information on the corporate nature of the buyer. TIUC was incorporated on July 3, 2000, as a Florida not-for-profit corporation. Its officers are Roger Shacket, Louis McGough, and Donna Nickel. All members of TIUC are persons and entities, including TIMHP, who receive service from the Tropical Isles system within and adjacent to the park.

As an exempt entity formed solely for the purpose of owning and operating the Tropical Isles system, TIUC does not own any other utility facilities. For informational purposes, we note that the system is currently in compliance with all applicable standards set by the Florida Department of Environmental Protection and that TIUC has retained professional services to operate the facilities on a going-forward basis.

#### Agreement

Pursuant to Rule 25-30.037(2)(g), (h), (i), and (k), Florida Administrative Code, the application contains a copy of the Agreement between FWSC, the seller, TIUC, and TIMHP, collectively the buyers. The total purchase price for the Tropical Isles system is \$43,000, which includes all utility assets and property with the exception of a parcel of land that was erroneously conveyed to FWSC by TIMHP in 1989. The application and Agreement indicate that TIUC relied on TIMHP for the guarantees necessary to secure the funds to purchase the system.

While TIMHP, a for-profit entity, is considered one of the buyers, the Agreement is clear that the utility assets and property were sold exclusively to TIUC. However, the Agreement also includes several special provisions collectively referred to as the 2001 Transactions. It is necessary to understand the 2001 Transactions in order to determine if a non-profit exemption pursuant to Section 367.022(7), Florida Statutes, applies. The 2001 Transactions include two Prior Service Agreements (PSAs), a Standby Operating Agreement (SOA), and terms for a financial hold by TIMHP.

Prior Service Agreements

The two PSAs are for wastewater service to be provided without charge. One is for service without charge to six mobile home units within the Park until the residents of these units sell the lots. This PSA is the result of an agreement with these customers that predated FWSC's 1989 ownership of the utility. Currently, two residents have relocated, leaving four units still receiving service without charge. The other PSA is for service without charge to the clubhouse located in the park.

The non-profit exemption pursuant to Section 367.022(7), Florida Statutes, requires that service be provided solely to members. According to the application, the clubhouse and lots receiving service without compensation are members of TIUC. Even if these customers were not members, we have previously determined in Orders Nos. PSC-95-1436-FOF-WU, issued November 27, 1995, in Docket No. 951154-WU, and 23897, issued December 18, 1990, in Docket No. 900516-WU, that service by a non-profit corporation to a nonmember without compensation is non-jurisdictional. According to Section 367.021(12), Florida Statutes, only those entities which provide, or propose to provide, service to the public for compensation are a utility subject to Chapter 367, Florida Statutes. Therefore, any services which TIUC provides without compensation would not be considered utility services.

Standby Operating Agreement

The SOA is an agreement between the buyers, TIUC, and TIMHP, which augments and transcends the transfer Agreement. The SOA spells out the mechanism for the transfer of a parcel of land known as the 1989 Parcel to TIMHP (see Land Ownership below), the assignment of responsibility for the PSAs (above), and the terms for a financial hold over TIUC by TIMHP.

Financial Hold

As already noted, the Agreement is clear that TIUC now owns and operates the utility. However, TIMHP provided the financial guarantees which enabled TIUC to secure a loan to purchase the utility. The loan included additional money to fund TIUC's corporate reserves. In consideration, the SOA requires that TIMHP

be satisfied that TIUC will (a) provide wastewater service without interruption and in a nondiscriminatory manner, (b) operate and maintain the systems in environmental compliance, (c) assume and abide by the obligations of the PSAs, and (d) not allow ownership to pass to a third party.

As a consequence, the SOA required TIUC's By-Laws to provide that one member of TIUC's board be a TIMHP representative and that all withdrawals require two signatures, one of which must be that of the TIMHP representative. As long as TIMHP receives service from Tropical Isles through the clubhouse, its membership in TIUC is consistent with a non-profit exemption under Section 367.022(7), Florida Statutes.

In event of default by TIUC of the mutually-agreed upon operating and financial system requirements set forth in the SOA, TIMHP has the right under the SOA to assume operating control until the default is remedied or until the system is peacefully surrendered to TIMHP. The SOA also provides for automatic transfer of ownership to TIMHP in the event of an abandonment. In the event of a bona fide offer to purchase the utility system, TIMHP retains the first right of refusal. TIMHP's financial hold is not substantially different from contract provisions for mortgages held by regular lending institutions. As such, we find that the hold is not inappropriate.

However, we note that, because TIMHP is a for-profit entity, it would not be exempt from our regulation if it were to own or control utility service. Therefore, TIUC, or any successors in interest, shall notify this Commission of any change in circumstance or method of operation which causes it to no longer qualify for exemption pursuant to Section 367.022, Florida Statutes.

#### Land Ownership

Rule 25-30.037(2)(q), 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 rule also provides for us to consider a written easement or other cost-effective alternative. For the reason noted below, a written easement has been provided.

As noted above, FWSC originally purchased the utility facilities and land in 1989 from Messrs. Spizizen and Shacket who, as TIMHP, retained ownership of the park. During that purchase, TIMHP conveyed a parcel of real property (1989 Parcel) to FWSC which erroneously included real property not related to the utility facilities. To correct the error, the Agreement in this transfer provided for TIUC to buy the utility facilities and property, exclusive of the 1989 Parcel. FWSC then conveyed the 1989 Parcel back to TIMHP which, in turn, granted an easement to TIUC for the portion of the 1989 Parcel which constitutes the land under the utility plant site. It was for this limited purpose that TIMHP is considered one of the buyers in the Agreement.

#### Public Interest

Rule 25-30.037(2)(j), Florida Administrative Code, requires a statement indicating how the transfer is in the public interest. In response, TIUC has indicated it is exempt from our regulation pursuant to Section 367.022(7), Florida Statutes, which exempts nonprofit corporations, associations, or cooperatives providing service solely to members who own and control such entities. The application contains a copy of TIUC'S registration with the Florida Department of State as a not-for-profit corporation pursuant to Section 617.0821, Florida Statutes. The registration was effective July 3, 2000. The application also contains copies of TIUC'S Articles of Incorporation and By-Laws as well as a copy of its Operating Policy and Procedures, which is a tariff.

A review of these documents verifies that service is intended to be provided solely to members (variously referred to as subscribers or accounts) and that each member has one vote in TIUC matters. Further, these documents confirm that TIUC intends to operate at all times on a cooperative, not-for-profit basis whereby the income of the corporation is used solely to cover losses and expenses. No interest or dividends are to be paid by TIUC on capital furnished by its members.

By means of these documents, we find that TIUC has demonstrated its exemption from regulation as defined in Section 367.022(7), Florida Administrative Code.

Rate Base, Acquisition Adjustment, Rates and Charges

In approving a transfer to an exempt entity, it is not necessary to establish rate base, consider the appropriateness of an acquisition adjustment, or approve the continuation of rates and charges. For informational purposes, rate base for the Tropical Isles system was last established by Order No. PSC-96-1320-FOF-WS, issued October 30, 1996, in Docket No. 950495-WS. As of the time of FWSC's 2000 annual report, rate base had been adjusted to \$282,257. As indicated earlier, FWSC sold the system to its customers for \$43,000.

Annual Reports and Regulatory Assessment Fees (RAFs)

Rule 25-30.110(3), Florida Administrative Code, requires an annual report be filed for any year a utility is jurisdictional as of December 31<sup>st</sup>. We have verified that FWSC is current on its annual reports for the Tropical Isles system through 2000 and has until May 31, 2002, in which to file its 2001 consolidated annual report. However, since the transfer to an exempt entity occurred in July of 2001, the Tropical Isles system was not jurisdictional as of December 31<sup>st</sup>. Therefore, there is no requirement for FWSC to include the Tropical Isles system in its 2001 annual report.

We have also verified that FWSC has paid RAFs for the Tropical Isles system up through the transfer in 2001 and that there are no penalties, interest, or refunds due. Therefore, FWSC has no further requirements with respect to annual reports or RAFs for the Tropical Isles system.

Conclusion

Based upon the above, the transfer of Tropical Isles Wastewater Plant to Tropical Isles Utilities Corporation, an exempt entity pursuant to Section 367.022(7), Florida Statutes, is hereby approved. Certificate No. 482-S is cancelled effective July 16, 2001. Tropical Isles Utilities Corporation, or any successors in interest, shall notify this Commission of any change in circumstance or method of operation which causes it to no longer qualify for exemption pursuant to Section 367.022, Florida Statutes.



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Based on the foregoing, it is

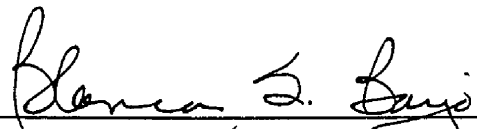
ORDERED by the Florida Public Service Commission that the Application by Florida Water Services Corporation for transfer of facilities and attendant assets of Tropical Isles Wastewater Plant to Tropical Isles Utilities Corporation, a Florida not-for-profit corporation, is hereby approved. It is further

ORDERED that Certificate No. 482-S is hereby cancelled effective July 16, 2001. It is further

ORDERED that Tropical Isles Utilities Corporation, or any successors in interest, shall notify this Commission of any change in circumstance or method of operation which causes it to no longer qualify for exemption pursuant to Section 367.022, Florida Statutes. It is further

ORDERED that Dockets Nos. 970409-SU and 011634-SU are hereby closed.

By ORDER of the Florida Public Service Commission this 10th Day of June, 2002.

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

( S E A L )

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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.

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, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, 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 and/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.