

State of Florida



Public Service Commission

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-M-E-M-O-R-A-N-D-U-M-

DATE: May 4, 2006

TO: Director, Division of the Commission Clerk & Administrative Services (Bayó)

FROM: Division of Economic Regulation (Johnson, Redemann, Kaproth) *ca, per, kl, PD, JS*
Office of the General Counsel (Gervasi) *PS, W, K*

RE: Docket No. 050912-WS – Application for transfer of majority organizational control of Plantation Bay Utility Co. in Flagler and Volusia Counties from Francois Lazare to Morteza Hosseini-Kargar.

AGENDA: 05/16/06 – Regular Agenda – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Arriaga

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\ECR\WP\050912.RCM.DOC

Case Background

On December 12, 2005, Plantation Bay Utility Company (Plantation Bay or utility) filed an application for transfer of majority organizational control from Mr. Francois Lazare (Mr. Lazare or Seller) to Mr. Morteza Hosseini-Kargar (Mr. Hosseini-Kargar or Buyer). Plantation Bay is a Class B utility providing service to approximately 1,251 water and 1,210 wastewater customers in Volusia and Flagler Counties. Plantation Bay is located in the St. Johns River Water Management District in a priority water resource caution area. In 2004, the utility had annual operating revenues of \$346,238 for water and \$224,920 for wastewater, with a net operating income of \$55,541 for water and a net operating loss of \$90,838 for wastewater.

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

The utility was granted Certificate Nos. 455-W and 389-S in 1985 under the name of Plantation Bay Utilities.¹ One name change was approved.² There have been two territory amendments approved by the Commission.³ Water and wastewater rate bases and rates were last established for this utility by Order No. PSC-06-0170A-PAA-WS, issued March 1, 2006, in Docket No. 050281-WS, a file and suspend rate proceeding.⁴ During that proceeding, it was discovered that on April 9, 2004, the seller and buyer entered into a \$300,000 stock purchase agreement for the transfer of 775 shares of stock. The utility was advised by staff that the transfer of stock without the approval of the Commission or being contingent upon Commission approval was an apparent violation of Section 367.071, Florida Statutes. As a result, the utility immediately filed this application for approval of the transfer of majority organizational control. Because of the immediate filing, by Order No. PSC-06-0170A-PAA-WS the Commission declined to initiate show cause proceedings.

The proposed transfer of majority organizational control was met with one timely customer objection. By letter dated March 6, 2006, staff requested that the customer advise the Commission by April 6, 2006, if he intended to pursue his objection and request a formal hearing. Because the customer did not further respond, his letter was placed on the correspondence side of the docket for informational purposes. There are no outstanding protests to the application.

Presently, Mr. Hosseini-Kargar owns 77.5% of the stock in Plantation Bay. The purpose of this recommendation is to address Plantation Bay's request for a transfer of majority organizational control. The Commission has jurisdiction to consider this matter pursuant to Section 367.071, Florida Statutes.

¹ Order No. 15507, issued December 20, 1985, in Docket No. 850616-WS, In Re: Application of Plantation Bay Utilities for certificates to provide water and sewer service in Flagler and Volusia Counties, Florida, pursuant to the provisions of Section 367.041, Florida Statutes.

² Order No. 25429, issued December 2, 1991, in Docket No. 911112-WS, In Re: Request for name change on Certificates Nos. 389-S and 455-W in Flagler and Volusia Counties from Plantation Bay Utilities to Plantation Bay Utility Co.

³ Order No. PSC-05-0491-FOF-WS, issued May 5, 2005, in Docket No. 050123-WS, In re: Application for "quick take" amendment of Certificate Nos. 455-W and 389-S in Flagler County by Plantation Bay Utility and Order No. PSC-95-0830-FOF-WS, issued July 12, 1995, in Docket No. 950181, In re: Application for Amendment of Certificates Nos. 455-W and 389-S in Volusia County by Plantation Bay Utility Co.

⁴ In re: Application for increase in water and wastewater rates in Volusia County by Plantation Bay Utility Company. The order was protested and is scheduled for a formal evidentiary hearing.

Discussion of Issues

Issue 1: Should the transfer of majority organizational control of Plantation Bay from Mr. Francois Lazare to Mr. Morteza Hosseini-Kargar be approved?

Recommendation: Yes, the transfer of majority organizational control of Plantation Bay from Mr. Francois Lazare to Mr. Morteza Hosseini-Kargar is in the public interest and should be approved effective on the date of the Commission's vote. Pursuant to Rule 25-9.044(1), Florida Administrative Code, the rates and charges approved for Plantation Bay should be continued until authorized to change by the Commission in a subsequent proceeding. Plantation Bay is responsible for all regulatory assessment fees and annual reports for 2005 and into the future. A description of the territory being transferred is appended to this recommendation as Attachment A. (Johnson, Redemann, Gervasi)

Staff Analysis: As stated in the case background, on December 12, 2005, Plantation Bay filed an application for authority to transfer majority organizational control of Plantation Bay from Mr. Lazare to Mr. Hosseini-Kargar. The application as filed is in compliance with the governing statute, Section 367.071, Florida Statutes, and the requirements of Rule 25-30.037, Florida Administrative Code, pertaining to an application for transfer of majority organizational control.

The application contains proof of compliance with the noticing provisions set forth in Rule 25-30.030, Florida Administrative Code. One objection to the application was received; however the objector did not request a hearing. No other objections were received and the time for the filing of such objections has expired.

The application contained a statement that, after reasonable investigation, the utility systems appear to be in satisfactory condition and in compliance with all applicable standards set by the Florida Department of Environmental Protection (FDEP). The quality of service was investigated in Docket 050281-WS, a file and suspend rate proceeding. There were some water and wastewater issues identified by the FDEP in the case. The order requires the utility to submit quarterly progress reports to the Commission and the Office of Public Counsel. However, the order has been protested.

The application contains a statement describing how the transfer is in the public interest, including a summary of the buyer's experience in water and wastewater operations and a showing of the buyer's financial ability. Mr. Hosseini-Kargar, the President of Plantation Bay, has been instrumental in managing and directing of the operations of the utility for many years. The acquisition of majority control of Plantation Bay by Mr. Hosseini-Kargar will not result in any change in the management of Plantation Bay. Plantation Bay will continue to have the ability to provide consistent and uninterrupted service to its customers.

The utility will continue to have the financial ability to provide service and the transfer will not affect the existing sources of funding for the utility. In addition, Mr. Hosseini-Kargar provided a statement that he will fulfill all of the utility's commitments, obligations, and representations with regard to utility matters. Moreover, the utility has provided proof of ownership of the land upon which its facilities are located, in the form of a quick claim deed and title insurance. The utility has paid its 2005 regulatory assessment fee (RAFs) and has an

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extension to file its 2005 annual report by May 30, 2006. The responsibility for filing the 2006 RAFs and annual reports for 2005 and into the future will remain the responsibility of Plantation Bay.

Based on all of the above, staff recommends that the application for transfer of majority organizational control of Plantation Bay from Mr. Lazare to Mr. Hosseini-Kargar is in the public interest and should be approved effective on the date of the Commission's vote. Pursuant to Rule 25-9.044(1), Florida Administrative Code, the rates and charges approved for Plantation Bay should be continued until authorized to change by the Commission in a subsequent proceeding. Plantation Bay is responsible for all regulatory assessment fees and annual reports for 2005 and into the future. A description of the territory being transferred is appended to this recommendation as Attachment A.

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Issue 2: Should this docket be closed?

Recommendation: Yes, because no further action is necessary, this docket should be closed.
(Gervasi)

Staff Analysis: Because no further action is necessary, this docket should be closed.

Plantation Bay Utility Co.

Volusia and Flagler Counties

Water and Wastewater Territory Descriptions

Docket No. 850616-WS – Order No. 15507

NORTH PARCEL

A Portion Of Sections 2, 3, 4, 5, 8, 9, 10, 11, 14, 15, 16, 21, And 22, Township 13 South, Range 31 East, Volusia And Flagler Counties, Florida, Being A Part Of Bunnell Development Company Subdivision As Recorded In Map Book 1, Page 1, Of The Public Records Of Flagler County, Florida, And A Part Of Fleetwood Terrace, Unit No. 1, As Recorded In Plat Book 2, Page 41, Of The Public Records Of Flagler County, Florida, Described As Follows; From The Southeast Corner Of Said Section 22, Run S89°24'20"W Along The South Line Of Said Section 22 A Distance Of 757.22 Feet To The Easterly Right-Of-Way Line Of U.S. No. 1, A 160 Foot Right-Of-Way; Thence N49°48'45"W Along Said Easterly Right-Of-Way Line A Distance Of 4538.57 Feet To The Point Of Beginning; Thence Continue N49°48'45"W A Distance Of 637.20 Feet To The P.C. Of A Curve, Concave Easterly, Having A Radius Of 5619.59 Feet And A Central Angle Of 8°42'32"; Thence Run Northerly Along The Arc Of Said Curve A Distance Of 854.17 Feet; Thence N48°52'35"E A Distance Of 35.00 Feet To The P.C. Of A Curve, Concave Easterly, Having A Radius Of 5584.59 Feet And A Central Angle Of 1°40'40"; Thence Run Northerly Along The Arc Of Said Curve A Distance Of 163.53 Feet To The P.T. Of Said Curve; Thence N39°26'45"W A Distance Of 276.47 Feet; Thence S50°33'15"W A Distance Of 35.00 Feet; Thence N39°26'45"W A Distance Of 7995.87 Feet To The North Line Of Said Section 16; Thence Departing Said Right-Of-Way Line, Run N89°09'22"E Along Said North Line A Distance Of 999.49 Feet; Thence N02°03'09"W Along The West Line Of Lot 10, Block C, Said Bunnell Development Company Subdivision In Said Section 9, A Distance Of 1320.83 Feet; Thence N89°09'29"E Along The North Line Of Lot 10 And 12, Block C, A Distance Of 1325.60 Feet; Thence N02°07'21"W Along The East Line Of Lot 1 And 2, Block C, A Distance Of 1320.83 Feet; Thence S89°09'35"W Along The North Line Of Lots 2 And 3, Block C, A Distance Of 1323.99 Feet; Thence S02°03'09"E Along The West Line Of Lot 3, Block C, A Distance Of 1320.83 Feet; Thence S89°09'29"W Along The South Line Of Lot 4, Block C, A Distance Of 662.80 Feet; Thence N02°01'03"W Along The West Line Of Lot 4, Block C And Lot 9, Block B, A Distance Of 1981.25 Feet; Thence S89°09'38"W Along The South Line Of Lot 7, Block B And Lot 12, Block A, Said Section 8 A Distance Of 1396.16 Feet; Thence N07°23'46"W A Distance Of 442.07 Feet; Thence S72°32'01"W A Distance Of 267.61 Feet To The Easterly Right-Of-Way Line Of Said U.S. No. 1, Thence N 17°25'45"W Along Said Right-Of-Way Line A Distance Of 311.39 Feet; Thence N89°11'55"E Along The South Line Of Said Fleetwood Terrace, Unit No. 1, A Distance Of 310.90 Feet; Thence N17°20'52"W A Distance Of 690.36 Feet; Thence N01°10'31"W A Distance Of 235.10 Feet; Thence S89°16'29"W A Distance Of 280.00 Feet; Thence N01°10'31"W A Distance Of 425.00 Feet To The North Line Of Said Section 8; Thence S89°16'29"W Along Said North Line A Distance Of 152.45 Feet; Thence N01°04'56"W Along The West Line Of Lot 10 And 3, Block D, Said Section 5, A Distance Of

2338.83 Feet; Thence N89°16'21"E Along The North Line Of Lots 3 And 2, Block D A Distance Of 1328.19 Feet; Thence N89°30'43"E Along The North Line Of Lot 5, Block C, Said Section 4, A Distance Of 668.21 Feet; Thence S02°57'27"E Along The East Line Of Said Lot 5, Block C, A Distance Of 660.00 Feet; Thence S89°31'13"W Along The South Line Of Said Lot 5, Block C, A Distance Of 666.05 Feet; Thence S03°08'42"E Along The West Line Of Lots 6, 7, And 8, Block C, A Distance Of 1680.93 Feet To The Southwest Corner Of Said Section 4; Thence N89°06'58"E Along The South Line Of Lots 8 And 9, Block C, A Distance Of 1320.73 Feet; Thence N02°46'10"W Along The East Line Of Lot 9, Block C, A Distance Of 1011.14 Feet; Thence N89°31'20"E Along The North Line Of Lot 10, And 12, Block C, And The North Line Of Lot 7, Block D, A Distance Of 1992.53 Feet; Thence N02°15'17"W Along The West Line Of Lot 4, Block D, A Distance Of 1287.00 Feet To The South Right-Of-Way Line Of Old Dixie Highway, A 66 Foot Right-Of-Way; Thence N89°30'43"E Along Said Right-Of-Way A Distance Of 668.21 Feet; Thence S02°06'36"E Along The East Line Of Lots 4 And 9, Block D, A Distance Of 2281.18 Feet; Thence N89°12'37"E Along The South Line Of Lots 10 And 11, Block D, A Distance Of 1324.71 Feet To The Southeast Corner Of Said Section 4; Thence N01°49'12"W Along The East Line Of Lots 11 And 12, Block D, A Distance Of 986.85 Feet; Thence S89°31'32"W Along The North Line Of Lot 12, Block D, A Distance Of 664.38 Feet; Thence N01°59'23"W Along The West Line Of Lots 1 And 2, Block D, A Distance Of 1287.00 Feet To The South Right-Of-Way Line Of Said Old Dixie Highway; Thence N89°30'43"E Along Said Right-Of-Way Line A Distance Of 668.21 Feet; Thence N89°25'29"E A Distance Of 1331.54 Feet; Thence S01°50'51"E Along The East Line Of Lot 4, Block C, Said Section 3, A Distance Of 1287.00 Feet; Thence N89°25'46"E Along The South Line Of Lot 3, Block C, A Distance Of 666.09 Feet; Thence N01°51'41"W Along The West Line Of Lot 1, Block C, A Distance Of 660.00 Feet; Thence N89°25'12"E Along The North Line Of Lot 1, Block C, And Lot 6, Block D, Section 3, A Distance Of 1327.75 Feet; Thence N02°01'58"W Along The West Line Of Lot 4, Block D, A Distance Of 627.00 Feet To The South Right-Of-Way Line Of Said Old Dixie Highway; Thence N89°25'29"E Along Said Right-Of-Way Line A Distance Of 11.68 Feet To The Right-Of-Way Line Of Interstate No. 95; Thence Run Along Said Right-Of-Way Line The Following Courses And Distances; S00°33'17"E A Distance Of 133.45 Feet, Thence N89°26'43"E A Distance Of 836.58 Feet To The P.C. Of A Curve, Concave Southerly, Having A Radius Of 600.00 Feet And A Central Angle Of 43°52'36"; Thence Run Easterly Along The Arc Of Said Curve A Distance Of 459.48 Feet; Thence S46°40'41"E A Distance Of 1057.37 Feet To The P.C. Of A Curve, Concave Westerly, Having A Radius Of 600.00 Feet And A Central Angle Of 24°46'08"; Thence Run Southerly Along The Arc Of Said Curve A Distance Of 259.38 Feet; Thence S21°54'33"E A Distance Of 799.10 Feet; Thence S20°45'47"E A Distance Of 4906.02 Feet; Thence S40°09'19"W A Distance Of 5885.21 Feet To A Point On The Boundary Of Eagle Rock Ranch Subdivision As Recorded In Map Book 26, Page 51 And 52, Of The Public Records Of Flagler County, Florida; Thence Run Along Said Boundary The Following Courses And Distances; S88°25'01"W A Distance Of 45.18 Feet; Thence S40°09'19"W A Distance Of 2189.93 Feet; Thence S49°50'30"E A Distance Of 1171.20 Feet; Thence S40°11'28"W A Distance Of 2222.60 Feet To The Point Of Beginning.

Containing 2753.76 Acres.

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South Parcel

A Portion Of Sections 14, 22, And 23, Township 13 South, Range 31 East, Volusia And Flagler Counties, Florida, Described As Follows; From The Southeast Corner Of Said Section 22, Run S89°24'20"W Along The South Line Of Said Section 22 A Distance Of 757.22 Feet To The Easterly Right-Of-Way Line Of U.S. Highway No. 1, A 160 Foot Right-Of-Way; Thence N49°48'45"W Along Said Right-Of-Way Line A Distance Of 509.05 Feet To The Point Of Beginning; Thence Continue N49°48'45"W A Distance Of 100.10 Feet; Thence Departing Said Right-Of-Way Line, Run N42°45'10"E, Parallel With The Southerly Line Of Eagle Rock Ranch Subdivision, As Recorded In Map Book 26, Page 51 And 52, Of The Public Records Of Flagler County, Florida, A Distance Of 2222.97 Feet; Thence N49°48'48"W A Distance Of 428.53 Feet; Thence N40°09'19"E A Distance Of 5473.32 Feet To The Westerly Right-Of-Way Line Of Interstate No. 95, A 300 Foot Right-Of-Way; Thence S20°45'47"E Along Said Right-Of-Way Line A Distance Of 5003.89 Feet To The East Line Of Said Section 23; Thence S01°53'15"E Along Said East Line A Distance Of 1773.40 Feet To The Southeast Corner Of Said Section 23; Thence S89°43'25"W Along The South Line Of Said Section 23 A Distance Of 2661.49 Feet; Thence Departing Said Line, Run N49°48'48"W A Distance Of 3006.16 Feet; Thence S42°45'10"W A Distance Of 2222.97 Feet To The Point Of Beginning. Containing 457.48 Acres.

Docket No. 950181-WS - Order No. PSC-95-0830-FOF-WS

Plantation Bay- Delgado Parcel

Township 13 South, Range 31 East, Volusia County, Florida

Section 11: A Portion Of Section 11, 14 And 23, Township 13 South, Range 31 East, Volusia County, Florida, Described As Follows:

From A Point Of Reference Being The Northwest Corner Of Said Section 14, Run South 02° 02' 51" East Along The West Line Of Said Section 14 A Distance Of 1,272.46 Feet To The Point Of Beginning, Said Point Also Being The Northeast Corner Of Eagle Rock Subdivision, As Recorded On Map Book 26, Pages 51 And 52 Of The Public Records Of Flagler County, Florida; Thence Departing Said Line Run North 40° 11' 55" East, A Distance Of 2,951.39 Feet To A Point On The Westerly Right-Of-Way Line Of Interstate No. 95, Also Known As State Road No. 9 A 300 Foot Right-Of-Way As Laid Out, Thence South 20° 43' 11" East, Along The Westerly Right-Of-Way Line Of Said Interstate No. 95 A Distance Of 5,421.18 Feet To A Point, Thence Departing Said Right-Of-Way Line Run South 40° 11' 55" West, A Distance Of 5,473.32 Feet To A Point, Thence North 49° 46' 12" West A Distance Of 55.80 Feet To A Point On The West Line Of Said Section 23 Said Point Also Being The Southeast Corner Of Said Eagle Rock Ranch Subdivision, Thence North 02° 01' 23" West Along Said Section Line A Distance Of 2,951.88 Feet To The Northwest Corner Of Said Section 23, Said Corner Also Being The Southwest Corner Of Said Section 14, Thence North 02° 02' 51" West Along The West Line Of Said Section 14, A Distance Of 4,013.28 Feet To The Point Of Beginning. Parcel Containing 461.39 Acres, More Or Less.

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Docket No. 050123-WS - ORDER NO. PSC-05-0492-FOF

Old Dixie Community Park

Township 13 South, Range 31 East, Flagler County, Florida

Section 4: A Portion Of Lot 4, Block D, Section 4, Township 13 South, Range 31 East, Bunnell Development Company Subdivision, As Recorded In Map Book 1, Page 1, Public Records Of Flagler County, Florida, Described As Follows:

From The Southeast Corner Of Said Section 4; Run South 89°12' 37" West Along The South Line Of Said Section 4, A Distance Of 1,324.71 Feet; Thence Departing Said Line, Run North 02° 06' 36" West Along The East Line Of Lot 9, Block D And Lot 4, Block D A Distance Of 1,628.22 Feet To The Point Of Beginning; Thence Departing Said Line; Run South 89° 30' 43" West A Distance Of 666.56 Feet; Thence North 02° 15' 17" West Along The West Line Of Said Lot 4, Block D, A Distance Of 653.01 Feet To The South Right-Of-Way Line Of Old Dixie Highway, A 66-Foot Right-Of-Way; Thence North 89° 30' 43" East Along Said Right-Of-Way Line A Distance Of 668.21 Feet; Thence Departing Said Right-Of-Way Line; Run South 02° 06' 36" East Along The East Line Of Said Lot 4, Block D A Distance Of 652.96 Feet To The Point Of Beginning. Containing 10.0 Acres.

Township 13 South, Range 31 East, Flagler County, Florida

Section 4: A Portion Of Lot 4, Block D, Section 4, Township 13 South, Range 31 East, Bunnell Development Company Subdivision, As Recorded In Map Book 1, Page 1, Public Records Of Flagler County, Florida, Described As Follows:

From The Southeast Corner Of Said Section 4; Run South 89° 12' 37" West Along The South Line Of Said Section 4, A Distance Of 1,324.71 Feet; Thence Departing Said Line, Run North 02° 06' 36" West Along The East Line Of Lot 9, Block D, A Distance Of 994.19 Feet To The Point Of Beginning; Thence Continue North 02° 06' 36" West Along The East Line Of Lot 4, Block D, A Distance Of A Distance Of 634.03 Feet; Thence Departing Said Line; Run South 89° 30' 43" West, A Distance Of 666.56 Feet To The West Line Of Said Lot 4, Block D; Thence South 02° 15' 17" East Along Said Line A Distance Of 633.9 Feet; Thence Departing Said Line; Run North 89° 31' 09" East Along The South Line Of Said Lot 4, Block D, A Distance Of 664.96 Feet To The Point Of Beginning. Containing 9.60 Acres.