

# Holland & Knight

315 South Calhoun Street, Suite 600 | Tallahassee, FL 32301 | T 850.224.7000 | F 850.224.8832  
Holland & Knight LLP | www.hkllaw.com

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March 10, 2010

D. BRUCE MAY, JR.  
850-425-5607  
bruce.may@hkllaw.com

VIA HAND DELIVERY

Ann Cole  
Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

100114-WS, 020 MAR 2010

DEPOSIT DATE

COMMISSION CLERK

10 MAR 11 AM 11:04

RECEIVED-FPSC

Re: Application for Approval of Transfer of Horizon Homes of Central Florida, Inc. and Five Land Group LLC's Water and Wastewater Systems to Aqua Utilities Florida, Inc. and for Amendment of Certificate No. 441-S and 507-W, in Sumter County

Dear Ms. Cole:

Enclosed on behalf of Aqua Utilities Florida, Inc. ("AUF") are the original and seven (7) copies of AUF's application for approval of transfer of Horizon Homes of Central Florida, Inc. and Five Land Group LLC's water and wastewater systems and for amendment of Certificate No. 441-S and 507-W, in Sumter County. Because this transfer is unique in several respects, AUF provides the following information to fully apprise the Commission of events that led to this filing.

**AUF's Prior Request**

AUF previously requested approval of this transfer in Docket No. 080517-WS, but later withdrew its request for the reasons stated in its letter dated August 12, 2009. In its letter of withdrawal, AUF advised the Commission that it would proceed to unwind its conditional acquisition and sell the systems back to the prior owner - Horizon Homes.

**Efforts to Unwind**

After withdrawing its previous request, AUF made repeated and concerted attempts to unwind its conditional acquisition of the utility systems. On September 30, 2009, AUF sent a letter to Horizon Homes stating that it was unwinding the purchase agreement, and would be transferring the assets back and seeking the reimbursement of the purchase price and all capital expenditures that had been made to maintain the systems in good working order. Furthermore, to ensure continued operation of the utility systems, and to comply with the requirements of Chapter 367, Florida Statutes, AUF provided Horizon Homes with a professional service agreement for the licensed operation of the systems. During this same time period, AUF made numerous telephone calls to Horizon Homes and its agents to discuss the logistics of unwinding

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the acquisition. None of these efforts have proven successful, and to date AUF has never received a response from the prior owner confirming its agreement to the unwind.

### **Developer's Disinterest in Continued Operations**

The prior owner has not operated, maintained or provided any water or wastewater services to the customers since the initial acquisition agreement was signed on December 13, 2007. Moreover, the prior owner has shown no interest whatsoever in assuming any operation of the utility despite AUF's diligent efforts to transfer the systems back. The prior owner in fact has repeatedly signaled that it will not assume the responsibility of owning or operating the systems. Therefore, faced with the fact that the prior owner has effectively abandoned the systems, and in order to ensure that customers continue to receive water and wastewater service, AUF is requesting again that the Commission approve the acquisition and authorize it to own and operate the systems.

### **AUF's Proposal**

Because of the unique aspects of this transaction, AUF has structured the attached application for approval of the transfer to (1) ensure the continued receipt of quality water and wastewater service to the customers, and, (2) address potential concerns that rigid application of subsection (3)(b) of the Commission's negative acquisition adjustment rule-- Rule 25-30.0371 (the "Rule")-- could result in a possible "windfall." Because subsection (3)(b) of the Rule is in effect today, AUF could request that the subsection be applied in this case. However, AUF is not making that request. Instead, in a good faith attempt to address concerns articulated in the prior docket, AUF is proposing two alternative options. Both options address the consequences of applying the Rule to this unique scenario where the purchase price is significantly below the net book value of the utility systems being acquired.

*Option 1.* Under Option 1, upon Commission approval of the transfer, AUF proposes to immediately recognize 50% of the negative acquisition amount, which is calculated as the difference between the purchase price and 80% of net book value. In Docket No. 080517-WS, staff calculated the negative acquisition amount to be \$303,260. Thus, AUF would immediately record 50% of that amount (\$151,630) on its books as negative acquisition adjustment for both ratemaking and earnings review purposes. AUF would amortize this amount over the average remaining life of the purchased assets for a period of 24 years. This amortization period is based on the remaining average life of the acquired systems, which is consistent with the amortization treatment prescribed by the Rule for contested negative acquisition adjustments. See Rule 25-30.0371(3)(a), Florida Administrative Code. Moreover, the 24 year amortization period is significantly longer than the 5 year amortization period prescribe by provisions in the Rule relating to uncontested negative acquisition adjustments. Thus, this approach avoids the potential for a "windfall" after 5 years, and results in the customers of the acquired utility (as well as the existing AUF customers) receiving the benefit of the recorded negative acquisition adjustment for the next 24 years.

*Option 2.* Under Option 2, upon Commission approval of the transfer, AUF would recognize the total amount of negative acquisition adjustment as calculated in Option 1, *i.e.*, \$303,260. This treatment is consistent with the existing Rule. However, in order to recognize the unique circumstances of this particular purchase, AUF would propose to extend the negative acquisition amortization period from five years to ten years. By extending the amortization period, a greater portion of the negative acquisition amount would be recognized in prospective rates thus further dissuading the utility from coming in for a rate case. (It is important to note that in the prior rulemaking proceedings which culminated in the adoption of the Rule, all of the stakeholders, including OPC, discussed in detail the length of time over which the negative acquisition adjustment should be amortized. In its comments, OPC stated that extending the amortization period to a term of "six to ten years" would be an improvement to the Commission's policy and would provide greater rate stability to customers. See OPC's 2001 Comments, pp. 4-5.) AUF believes that extending the amortization period to more than ten years would take away any incentive for a well-run utility to acquire smaller systems and thus would countermand the fundamental policy upon which the Rule is based. For that reason, AUF is proposing that the amortization period could be extended to ten years for this particular purchase.

AUF believes that both options described above are consistent with the spirit of the existing Rule.

#### **Other Information**

In Docket No. 080517-WS, the Commission staff requested additional information regarding the acquisition's potential impact on AUF's existing body of customers. Although that type of information had never before been part of the Commission's transfer approval analysis under Section 367.071(1), Florida Statutes, AUF supplied the requested information on an expedited basis to facilitate staff's request. However, after AUF withdrew its prior application, it discovered that in its haste to develop the requested information, it had significantly understated the number of bills for the acquired utility. AUF has internally corrected its miscalculation and this corrected information shows that the acquisition will not put upward pressure on the bills of existing AUF customers, either under the existing Rule or under Options 1 or 2.

\* \* \*

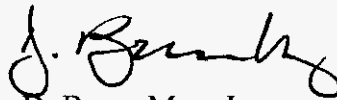
Also enclosed with this application are: one copy of the territory and system map for water; one copy of the territory and system map for wastewater; the original and two copies of the proposed water and wastewater tariffs; and, AUF's filing fee check in the amount of \$1,500.00.

Ann Cole  
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Finally, for our records, please acknowledge your receipt of this filing on the enclosed copy of this letter. Thank you for your consideration.

Sincerely,

HOLLAND & KNIGHT LLP



D. Bruce May, Jr.

DBM:kjg  
Enclosures

cc: Carl Smith  
Kimberly A. Joyce  
William T. Rendell