

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

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

DATE: July 22, 2010

TO: Office of Commission Clerk (Cole)

FROM: Division of Economic Regulation (Brady Kaproth)
Office of the General Counsel (Sayler)

Handwritten initials: pb, PD, URBA, KK, JS, ALM

RE: Docket No. 090093-WS – Application for approval of transfer of Keith & Clara Starkey d/b/a Heather Hills Estates' water and wastewater utility, holder of Certificates 577-W and 498-S, to Heather Hills Estates Utilities, LLC, in Manatee County.

AGENDA: 08/03/10 – Regular Agenda – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Graham

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\ECR\WP\090093.RCM.DOC

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COMMISSION
CLERK

Case Background

On February 27, 2009, an application was filed on behalf of Keith & Clara Starkey d/b/a Heather Hills Estates (Heather Hills, Utility, Seller) for the transfer of Certificate Nos. 577-W and 498-S to Heather Hills Estates Utilities, LLC (HHEU, Buyer). Heather Hills is a Class C utility which purchases water and wastewater treatment services from Manatee County. It is located in an area of Manatee County which is considered by the Southwest Florida Water Management District to be in one of the Southern Water Use Caution Area's most impacted areas. In its 2009 Annual Report on file with the Commission, the Utility reported annual gross revenues of \$122,297 with a total net operating loss of (\$6,457).

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Heather Hills was established in 1967 to serve water and wastewater customers within the Heather Hills Estates community in Manatee County, Florida. The Utility serves 353 single family residential customers, as well as a park clubhouse and a golf course clubhouse/restaurant. The golf course has a septic tank for wastewater service.

Pursuant to Manatee County declaring the privately owned water and wastewater utilities in Manatee County subject to the provisions of Chapter 367, Florida Statutes (F.S.) in 1995,¹ Certificate Nos. 577-W and 498-S were granted to the Utility in 1996 by Commission order.² There have been no further certification applications until the pending transfer in this docket was filed.³ The Utility's initial application was found to be deficient. However, these deficiencies were subsequently corrected and the filing was deemed complete on August 11, 2009.

Five customers initially protested the application to transfer. The primary concerns expressed were (1) the magnitude of the purchase price (in excess of \$123,000) versus net book value of the Utility (\$902 per the Utility's 2007 Annual Report), (2) the amount of debt and additional responsibility being incurred by the Buyer, and (3) the Buyer's reliance on the Seller for financial backing and technical training. On July 8, 2009, staff sent letters to the customers who protested to determine if they wished to pursue a formal hearing. On August 7, 2009, one of the five customers filed a petition for formal hearing.⁴ Staff conducted informal meetings with the parties on November 11, 2009 and March 17, 2010. On May 26, 2010, the customer who filed the petition for formal hearing filed a notice of the withdrawal of her petition.

This recommendation concerns the application to transfer filed pursuant to Section 367.071, F.S., and Rule 25-30.037, Florida Administrative Code (F.A.C.). The Commission has jurisdiction to consider this matter pursuant to Section 367.071, F.S.

¹ Order No. PSC-95-1393-FOF-WS, issued November 9, 1995, in Docket No. 951235-WS, In re: Resolution of the Board of County Commissioners of Manatee County declaring Manatee County subject to the provisions of Chapter 367, F.S.

² Order No. PSC-96-0434-FOF-WS, issued March 28, 1996, in Docket No. 951533-WS, In re: Application for certificates to provide water and wastewater service in Manatee County by Keith & Clara Starkey d/b/a Heather Hills Estates.

³ Docket No. 080428-WS, In re: Joint application for transfer of water and wastewater systems from Keith & Clara Starkey d/b/a Heather Hills Estates to Ni Florida, Inc., in Manatee County, was withdrawn by request of the joint applicants on October 13, 2008, and the Docket voluntarily dismissed by the Commission on October 14, 2008.

⁴ Although the Office of the Public Counsel (OPC) did not formally intervene in the docket, they assisted the customer in filing her petition. OPC also worked with staff, the customer, and the Buyer and Seller to find a non-hearing resolution to the customer's issues.

Discussion of Issues

Issue 1: Should the transfer of Certificate Nos. 577-W and 498-S from Keith & Clara Starkey d/b/a Heather Hills Estates to Heather Hills Estates Utilities, LLC be approved?

Recommendation: Yes. The transfer of Certificate Nos. 577-W and 498-S from Keith & Clara Starkey d/b/a Heather Hills Estates to HHEU is in the public interest and should be approved, effective the date of Commission vote. No acquisition adjustment should be made pursuant to Rule 25-30.0371, F.A.C. The territory being transferred is described in Attachment A. The resultant order should serve as HHEU's water and wastewater certificates and should be retained by HHEU. The Utility's existing rates and charges, as shown on Schedule 1, should continue to be in effect until authorized to change by the Commission in a subsequent proceeding. The tariff pages reflecting the transfer should be effective for services provided or connections made on or after the stamped approval date on the tariff sheets, pursuant to Rule 25-30.475, F.A.C. HHEU should be responsible for filing a 2010 Annual Report and all future annual reports and remitting 2010 Regulatory Assessment Fees (RAFs) and all future RAFs for the utility systems. (Brady, Kaproth, Saylor)

Staff Analysis: As stated in the case background, on February 27, 2009, an application was filed on behalf of the Utility for the transfer of Certificate Nos. 577-W and 498-S from Keith and Clara Starkey to HHEU. The closing on the sale of assets took place on January 1, 2009, subject to approval by the Commission as provided in Section 367.071(1), F.S.

While the application was initially deficient, the deficiencies were resolved and the application is now in compliance with the governing statute, Section 367.071, F.S., and Rule 25-30.037, F.A.C., pertaining to an application for the sale, assignment, or transfer of certificates of authorization. The territory being transferred is described in Attachment A. Since the Utility purchases water and wastewater treatment services from Manatee County, it is not required to provide proof of ownership of the land under the treatment facilities, pursuant to Rule 25-30.037(2)(q), F.A.C. The application includes the required proof of noticing, pursuant to Rule 25-30.030, F.A.C.

Pursuant to Rule 25-30.037(2)(g) and (k), F.A.C., the application contains a copy of the Asset Purchase Agreement with an attached easement agreement which allows the Utility access to the distribution and collection systems. The purchase price for the Utility was approximately \$123,000, which will be financed by the Seller with quarterly repayments by the Buyer of \$3,750 at an annual interest rate of 3.520 percent. According to the application, there are no customer deposits, guaranteed revenue contracts, developer agreements, customer advances, or utility debt or leases to be disposed of as part of the transfer.

Pursuant to Rule 25-30.037(2)(j), F.A.C., HHEU's application includes a statement that the transfer is in the public interest because the owners of HHEU are the owners of the clubhouse and amenities that serve the residents of Heather Hills Estates. The application also contains the Buyer's personal financial statements and other information to support its financial ability. In addition to the financial statements, staff believes that the Buyer's ownership interest in the community will be added incentive for properly maintaining the utility facilities.

With regard to Rule 25-30.037(2)(j), F.A.C.'s, requirement for technical ability, staff would note that water distribution and wastewater collection lines do not require a licensed operator. However, the application contains statements that the Buyer has retained a consulting firm to assist in Utility operations on an as-needed basis and that a plumbing company has been retained for emergencies. Pursuant to Rule 25-30.037(2)(p), F.A.C., the application also includes a statement that, after reasonable inspection, the system appears to be in satisfactory condition and is in compliance with all related governmental agencies. The Manatee County Health Department, which is responsible for environmental water compliance in Manatee County, provided a letter indicating that the public water system is currently in compliance with all required testing.

As also required by Rule 25-30.037(2)(j), F.A.C., the Buyer stated that it intends to fulfill the commitments, obligations, and representations of the Seller with regard to utility matters. In this respect, staff would note that the Buyer has successfully operated the utility systems for over a year and a half during which time the remaining work on the Seller's prior commitment to install new water valves and replace existing meters is almost complete. Based on all the above, the Buyer appears to have demonstrated that it has the technical and financial ability to continue to operate and maintain Heather Hills water distribution and wastewater collection systems in addition to its other responsibilities.

Pursuant to Section 367.071, F.S., the Commission may set rate base in transfer dockets. The Commission has not previously established rate base for the Heather Hills systems. However, the Utility's 2008 Annual Report reflects a combined net book value at the time of the purchase of \$23,536. Without a rate proceeding, staff cannot be certain of the net book value of the Utility, but it appears that it would be considerably less than the purchase price of slightly more than \$123,000. The application does not include a request for a positive acquisition adjustment; therefore, no acquisition adjustment should be made pursuant to Rule 25-30.0371, F.A.C. According to the application, the Buyer has obtained the books and records as well as the tax returns of the Seller, pursuant to Rule 25-30.037(2)(o), F.A.C. The Buyer understands the need to maintain such records for inspection by Commission.

The Utility has no unpaid RAFs and no fines or refunds are owed. Heather Hills timely paid 2009 RAFs and filed its 2009 Annual Report for the water and wastewater systems. HHEU should be responsible for filing a 2010 Annual Report and all future annual reports and remitting 2010 RAFs and all future RAFs for the utility systems.

Heather Hills' existing rates and charges were established in 1997 resulting from an overearnings investigation.⁵ Those rates have been indexed annually. In addition, the Utility was recently granted a late payment fee.⁶ Rule 25-9.044(1), F.A.C., provides that, in the case of a change of ownership or control of a utility, the rates, classifications, and regulations of the former owner must continue unless authorized to change by the Commission. The Utility's existing rates, as shown on Schedule 1, should continue in effect until authorized to change by the Commission in a subsequent proceeding.

⁵ Order No. PSC-97-0233-FOF-WS, issued February 26, 1997, in Docket No. 960814-WS, In re: Investigation of possible overearnings in Manatee County by Keith & Clara Starkey d/a/a Heather Hills Estates.

⁶ Order No. PSC-10-0014-TRF-WS, issued January 4, 2010, in Docket No. 090500-WS, In re: Request for approval of late payment charge by Heather Hills Estates Utilities, LLC, in Manatee County.

Based on the above, staff recommends that the transfer of Certificate Nos. 577-W and 498-S from Keith & Clara Starkey d/b/a Heather Hills Estates to Heather Hills Estates Utilities, LLC is in the public interest and should be approved effective the date of Commission vote. No acquisition adjustment should be made pursuant to Rule 25-30.0371, F.A.C. The territory being transferred is described in Attachment A. The resultant order should serve as HHEU's water and wastewater certificates and should be retained by HHEU. The Utility's existing rates and charges, as shown on Schedule 1, should continue to be in effect until authorized to change by the Commission in a subsequent proceeding. The tariff pages reflecting the transfer should be effective for services provided or connections made on or after the stamped approval date on the tariff sheets pursuant to Rule 25-30.475, F.A.C. HHEU should be responsible for filing a 2010 Annual Report and all future annual reports and remitting 2010 RAFs and all future RAFs for the utility systems.

Docket No. 090093-WS

Date: July 22, 2010

Issue 2: Should this docket be closed?

Recommendation: Yes. If the Commission approves staff's recommendation in Issue 1, no further action will be necessary and this docket should be closed. (Sayler)

Staff Analysis: If the Commission approves staff's recommendation in Issue 1, no further action will be necessary and this docket should be closed.

TERRITORY DESCRIPTION
Heather Hills Estates Utilities, LLC
Manatee County
Water and Wastewater Service

Township 35 South, Range 17 East
Section 11

The NE 1/4 of the SE 1/4 and the South 1/2 of the SE 1/4 of the NE 1/4.

Also

Township 35 South, Range 17 East
Section 12

From the NW corner of the SW 1/4 of the SW 1/4 of the NW 1/4 run due East 170.0 feet to the Point of Beginning; thence due North 50.0 feet; thence due East 100.0 feet; thence due South 100.0 feet; thence due West 100.0 feet; thence due North 50.0 feet to the Point of Beginning.

FLORIDA PUBLIC SERVICE COMMISSION
authorizes
Heather Hills Estates Utilities, LLC
pursuant to
Certificate Number 577-W

to provide water service in Manatee County in accordance with the provisions of Chapter 367, Florida Statutes, and the Rules, Regulations, and Orders of this Commission in the territory described by the Orders of this Commission. This authorization shall remain in force and effect until superseded, suspended, cancelled or revoked by Order of this Commission.

<u>Order Number</u>	<u>Date Issued</u>	<u>Docket Number</u>	<u>Filing Type</u>
PSC-96-0434-FOF-WU	04/29/97	951533-WS	Grandfather Certificate
*	*	090093-WS	Transfer of Certificates

***Order Number and date to be provided at time of issuance.**

FLORIDA PUBLIC SERVICE COMMISSION
authorizes
Heather Hills Estates Utilities, LLC
pursuant to
Certificate Number 498-S

to provide wastewater service in Manatee County in accordance with the provisions of Chapter 367, Florida Statutes, and the Rules, Regulations, and Orders of this Commission in the territory described by the Orders of this Commission. This authorization shall remain in force and effect until superseded, suspended, cancelled or revoked by Order of this Commission.

<u>Order Number</u>	<u>Date Issued</u>	<u>Docket Number</u>	<u>Filing Type</u>
PSC-96-0434-FOF-WU	04/29/97	951533-WS	Grandfather Certificate
*	*	090093-WS	Transfer of Certificates

*Order Number and date to be provided at time of issuance.

HEATHER HILLS ESTATES UTILITIES, LLC

Quarterly Service Rates

Water Residential and General Service

Meter Size:	
5/8" x 3/4"	\$ 22.85
3/4"	34.29
1"	57.15
1 1/2"	114.23
2"	182.78
3"	365.87
4"	571.17
6"	1,142.33
Gallage Charge per 1,000 gallons	\$ 2.46

Wastewater Residential and General Service

Meter Size:	Residential Service	General Service
5/8" x 3/4"	\$ 29.27	\$ 29.27
3/4"		43.90
1"		73.16
1 1/2"		146.37
2"		234.16
3"		468.33
4"		713.76
6"		1,463.52
Gallage Charge*	\$ 6.02	\$ 6.02

* Per 1,000 gallons based on 85% of water use.

Miscellaneous Service Charges

	Water Service	Wastewater Service
Initial Connection Fee	\$10.00	\$10.00
Normal Reconnection Fee	10.00	10.00
Violation Reconnection Fee	15.00	Actual Cost
Premises Visit Fee (in lieu of disconnection)	5.00	5.00
Late Payment Fee	\$ 5.00	\$ 5.00