

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for transfer of majority organizational control of Hunters Ridge Utility Co. of Lee County to Hunters Ridge Community Association, Inc., and request for cancellation of Certificate No. 472-S.	DOCKET NO. 100452-SU ORDER NO. PSC-11-0098-FOF-SU ISSUED: February 2, 2011
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The following Commissioners participated in the disposition of this matter:

ART GRAHAM, Chairman
LISA POLAK EDGAR
RONALD A. BRISÉ
EDUARDO BALBIS
JULIE I. BROWN

ORDER APPROVING TRANSFER

BY THE COMMISSION:

Background

Hunters Ridge Utility Co. of Lee County (HRUC or Utility) is a Class B utility providing wastewater service to approximately 469 residential customers in the Hunters Ridge Golf & Country Club subdivision (Hunters Ridge) of Bonita Springs, located east of Interstate 75 in southern Lee County. Water service is provided by Bonita Springs Utilities, Inc. HRUC is located in the South Florida Water Management District in a Critical Water Supply Problem Area, as designated by Rule 40E-23, Florida Administrative Code (F.A.C.). The Utility's 2009 annual report indicates gross operating revenues of \$365,155 and a net operating loss of \$60,215.

The Hunters Ridge community covers approximately 275 acres and consists of approximately 550 dwelling units (440 villas and single family homes and 110 coach homes), as well as a clubhouse and golf facilities. The Utility was established in August 1988 to provide wastewater service, which it did without compensation until we granted it wastewater Certificate No. 472-S on August 25, 1992.¹ The Utility has not had any amendments or transfers since that time.

On December 1, 2010, HRUC filed an application for transfer of majority organizational control of the Utility to Hunters Ridge Community Association, Inc. (HRCIA or Association). The application also requested cancellation of the Utility's Certificate No. 472-S, pursuant to Section 367.022(7), Florida Statutes (F.S.), which grants exemption from Commission regulation

¹ Order No. PSC-92-0867-FOF-SU, issued August 25, 1992, in Docket No. 920369-SU, In re: Application for a certificate to provide wastewater service in Lee County by Hunters Ridge Utility Co. of Lee County.

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for a nonprofit association providing service solely to members who own and control the association.

The purpose of this Order is to address approval of the transfer of majority organizational control of HRUC to HRCAI and cancellation of HRUC's wastewater Certificate No. 472-S. We have jurisdiction to consider this matter pursuant to Sections 367.071 and 367.022, F.S.

Analysis and Decision

On December 1, 2010, an application was filed for the transfer of majority organizational control of HRUC from the Utility to the Association through a Stock Purchase Agreement (Agreement), pursuant to Section 367.071, F.S., and Rule 25-30.037(3), F.A.C. In accordance with Section 367.071(1), F.S., the Second Addendum to the Agreement stated that the closing is conditioned on our approval of the transfer.

HRCAI is a Florida not-for-profit corporation established by the developer of Hunters Ridge, BBA Development Corporation, and was incorporated on May 20, 1988. The Association is responsible for the operation and maintenance of the common areas and attendant facilities, as well as the enforcement of the community's Master Declaration and Covenants, Conditions, and Restrictions (MDCCR). On November 3, 2006, HRCAI was deeded the community's Country Club facility, which includes golf facilities, as well as a clubhouse, activities center, maintenance buildings, swimming pools, and tennis courts. HRCAI is also responsible for the operation and maintenance of the Country Club facility.

Membership in the Association is exclusive to and required of all owners of living units in Hunters Ridge by the community's MDCCR. As each property owner is an automatic member of the Association, each is entitled to voting rights. Eligibility to serve on the Board of Directors is based upon membership type. Pursuant to the MDCCR, at least two-thirds of the Board should consist of golf members and/or charter members who have elected to be golf members.² As of December 31, 2009, there were 556 social members and 307 golf members. Included with the application were copies of the Amended and Restated MDCCR for Hunters Ridge and the Association's Amended By-Laws. We verified with the Florida Department of State that the Association is a registered and active nonprofit corporation. In accordance with Section 367.022(7), F.S., HRCAI is exempt from our regulation as a nonprofit association that provides service solely to members who own and control the Association.

The application included a copy of the Agreement between HRUC and the Association, dated September 24, 2010. According to the terms of the Agreement, its execution was contingent upon the members of the Association approving the stock purchase at a special meeting held on October 28, 2010. The minutes of that meeting indicated that 426 of the 431

² As defined by the Amended and Restated MDCCR for Hunters Ridge, executed December 8, 2006, a golf member is one who is entitled to the use of the entire Country Club facility upon payment of annual dues levied by HRCAI's Board. A charter member is one who may elect, from year to year, whether a golf or social membership is desired. A social member is one who is entitled to the use of the clubhouse, activities center, tennis courts, and swimming pools, but is specifically excluded from the use of the golf facilities without payment of annual fees.

ballots cast by members voted to acquire the HRUC facilities. We confirmed with a Utility representative that the closing occurred on November 1, 2010. However, the Utility continues to operate the facilities pending our approval of the transfer.

The sale was accomplished by a 100 percent buyout of Utility stock, which the Association financed with a \$300,000 deposit from its general reserve fund and a five-year loan of \$975,000 from a property owner and member of the Association. The loan is payable in quarterly payments beginning February 1, 2011, and ending November 1, 2015, with an interest rate of four percent. A Promissory Note stating the terms of the loan was executed by the President of the Association and was included with the application, along with an amortization schedule. The application also stated that all members will be assessed \$18 per month for the next five years to help pay the loan, and additional funds will be provided by annual Association budget surpluses, which have averaged more than \$250,000 for the last four years.

The application included a statement that described how the transfer is in the public interest, in accordance with Rule 25-30.037(3)(f), F.A.C. According to the statement, the transfer from the shareholders of HRUC to the members of HRCAI will result in more efficient operation of the wastewater system and will remove the profit motive inherent in ownership by a business entity. The statement also indicated that the financial ability of the Association is greater than that of the Utility since the Association has the ability to assess its members for the Utility's operating expenses. We find that HRCAI has demonstrated financial ability to continue to operate the Utility based upon its financial statements provided with the application and its ability to assess members for expenses.

Additionally, the statement of public interest specified that HRCAI has the necessary experience to provide reliable service. The Association's experience in wastewater utility operations is demonstrated by means of its personnel. The Association's General Manager and the Utility's Plant Manager of 19 years will continue to manage the operations of the wastewater facilities, and the current Plant Operator of seven years will remain in that position. Therefore, we find that HRCAI has demonstrated technical ability to operate the Utility based upon its personnel's years of experience managing and operating the Utility. The statement concluded with HRCAI's intent to fulfill all commitments, obligations, and representations of the Utility with regard to utility matters.

HRUC has paid regulatory assessment fees (RAFs) for 2009 and all prior years, pursuant to Rule 25-30.120, F.A.C. The Utility has also paid RAFs for the period January 1, 2010, through June 30, 2010. The application included a statement that the Association will fulfill all commitments, obligations, and representations of the Utility with regard to utility matters. Therefore, the Association is responsible for RAFs for the period July 1, 2010, through November 1, 2010, the date of closing. Payment of the required RAFs for the stated period shall be made by January 30, 2011.

In accordance with Rule 25-30.110, F.A.C., HRUC has filed its annual reports for 2009 and all prior years. Because the Association is exempt from our regulation pursuant to Section 367.022(7), F.S., the Utility will no longer be jurisdictional and no further RAFs or annual

reports will be due following our approval of the transfer. Therefore, the Utility is not required to file a 2010 annual report since it will not be jurisdictional as of December 31, 2010.

Pursuant to Rule 25-30.037(3)(h), F.A.C., the application indicated that HRC AI has found the wastewater system to be in satisfactory condition and in compliance with all applicable standards set by the Florida Department of Environmental Protection (DEP). A letter from a representative of HRUC's engineering firm stated that there is reasonable assurance that the Utility's facilities will comply with applicable statutes when properly operated and maintained. This determination is based upon the engineer's professional opinion, past facility inspections, and an evaluation of the facility conducted during the water use permit renewal process with the DEP. We confirmed that the inspections were completed in April and June of 2008. Another representative of the engineering firm stated during the Association's special meeting that the existing Utility facilities are in very good condition. We confirmed with DEP that the Utility has no outstanding Consent Orders or any other compliance issues, and it has an active water use permit with the South Florida Water Management District.

A copy of a recorded deed evidencing that HRUC owns the land upon which the facilities are located accompanied the application, as required by Rule 25-30.037(3)(i), F.A.C. The deed, which indicates a transfer of the property from BBA Development Corporation to HRUC, is dated October 3, 1991, and includes an addendum of utility, force main, pump station, and access easements. As this is a transfer of majority organizational control, HRUC will continue to be the property owner of the land on which the facilities are located.

The application is in compliance with the governing statute, Section 367.071, F.S., and other pertinent statutes and rules concerning an application for transfer of majority organizational control. Pursuant to Rule 25-30.030, F.A.C., the application contains proof of compliance with the noticing provisions. No objections to the notice of application were received and the time for filing objections has expired.

Based on the above, we find that the transfer of majority organizational control of HRUC to HRC AI is in the public interest and shall hereby be approved effective the date of our vote, January 25, 2011. HRC AI is responsible for RAFs for the period July 1, 2010, through the closing date of November 1, 2010, and shall pay the accrued RAFs by January 30, 2011. As the Utility will no longer be jurisdictional pursuant to Section 367.022(7), F.S., Certificate No. 472-S shall be cancelled effective the same date.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the transfer of majority organizational control of Hunters Ridge Utility Co. of Lee County to Hunters Ridge Community Association, Inc. is hereby approved effective January 25, 2011. It is further

ORDERED that Hunters Ridge Community Association, Inc. shall pay the accrued regulatory assessment fees for the July 1 through November 1, 2010 period by January 30, 2011. It is further

ORDERED that Certificate No. 472-S shall be cancelled effective January 25, 2011. It is further

ORDERED by the Florida Public Service Commission that this docket shall be closed.

By ORDER of the Florida Public Service Commission this 2nd day of February, 2011.



ANN COLE
Commission Clerk

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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 Office of Commission Clerk, 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 Office of Commission Clerk, 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.