

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:** March 28, 2013

**TO:** Office of Commission Clerk (Cole)

**FROM:** Division of Accounting and Finance (Brown, Fletcher, Maurey)  
Division of Economics (Bruce)  
Division of Engineering (Brady, Lewis, Simpson)  
Office of the General Counsel (Young)

**RE:** Docket No. 120188-WU – Application for approval of transfer of Century-Fairfield Village, Ltd. water system and Certificate No. 640-W in Marion County to GCP Fairfield Village, LLC.

**AGENDA:** 04/09/13 – Regular Agenda – Proposed Agency Action for Issue 3 – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** ~~Staff~~ *All Commissioners - ac*

**PREHEARING OFFICER:** Administrative

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** None

**FILE NAME AND LOCATION:** S:\PSC\AFD\WP\120188.RCM.DOC

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COMMISSION CLERK

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### **Case Background**

Century-Fairfield Village, Ltd. (Century-Fairfield or Utility) is a Class C water and wastewater utility serving a 294-unit mobile home community in Marion County. The Utility is in the Southwest Florida Water Management District (SWFWMD). According to the Utility's 2011 annual report, gross revenues were \$19,996. Century-Fairfield reported an operating loss of \$31,258 in 2011.

Prior to 2007, the Utility was statutorily exempt from Commission regulation because it provided water and wastewater service without specific compensation for service. In response to certain water use permitting requirements, however, Century-Fairfield began charging water conservation charges to discourage excess usage. As a result, the Utility lost its statutory exemption and obtained Certificate Nos. 640-W and 549-S from the Commission.<sup>1</sup> Century-Fairfield never collected rates for wastewater service; therefore, the Commission subsequently cancelled wastewater Certificate No. 549-S and approved the water conservation rates as part of a settlement agreement.<sup>2</sup>

On July 11, 2012, an application was filed for the transfer of the Century-Fairfield water system and Certificate No. 640-W to GCP Fairfield Village, LLC. (GCP or Buyer). The closing occurred on December 14, 2010, and was not made contingent upon Commission approval, as required under Section 367.071(1), F.S. GCP states that the sale was part of a larger transaction in which GCP purchased the Fairfield Village mobile home community, and was unaware at the time of the requirement to transfer the water certificate. The Commission has jurisdiction pursuant to Section 367.071, F.S.

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1 See Order No. PSC-08-0067-FOF-WS, issued January 29, 2008, in Docket No. 070548-WS, In re: Application for certificates to provide water and wastewater service in Marion County by Century - Fairfield Village, Ltd.

2 See Order No. PSC-08-0435-PAA-WS, issued July 7, 2008, in Docket No. 070548-WS, In re: Application for certificates to provide water and wastewater service in Marion County by Century - Fairfield Village, Ltd.

### Discussion of Issues

**Issue 1:** Should the Commission order Century-Fairfield to show cause, in writing within 21 days, why it should not be fined for its failure to obtain Commission approval prior to transferring its facilities to GCP, in apparent violation of Section 367.071, F.S.?

**Recommendation:** No. The Commission should not initiate a show cause proceeding, but the Commission should place the Utility on notice that it is expected to know and comply with the Commission's rules and regulations. (Young)

**Staff Analysis:** Section 367.071(1), F.S., requires that:

No utility shall sell, assign, or transfer its certificate of authorization, facilities or any portion thereof . . . , without determination and approval of the commission that the proposed sale, assignment, or transfer is in the public interest . . . . However, a sale, assignment, or transfer of its certificate of authorization, facilities . . . may occur prior to commission approval if the contract for sale, assignment, or transfer is made contingent upon commission approval.

As stated in the case background, Century-Fairfield closed on the sale of its facilities to GCP on December 14, 2010, prior to obtaining Commission approval. The Purchase and Sale Agreement contained no provisions to make the agreement contingent upon Commission approval.

Section 367.161(1), F.S., authorizes the Commission to assess a penalty of not more than \$5,000 for each offense if a utility is found to have knowingly refused to comply with, or to have willfully violated, any provision of Chapter 367, Florida Statutes. In closing on the transfer of its facilities prior to Commission approval, the Utility's act was "willful" in the sense intended by Section 367.161(1), Florida Statutes. In Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL, In re: Investigation Into The Proper Application of Rule 25-14.003, Florida Administrative Code, Relating To Tax Savings Refund For 1988 and 1989 For GTE Florida, Inc., having found that the company had not intended to violate the rule, the Commission nevertheless found it appropriate to order it to show cause why it should not be fined, stating that "[i]n our view, 'willful' implies an intent to do an act, and this is distinct from an intent to violate a statute or rule." Additionally, "it is a common maxim, familiar to all minds that 'ignorance of the law' will not excuse any person, either civilly or criminally." Barlow v. United States, 32 U.S. 404, 411 (1833).

Although Century-Fairfield's failure to obtain Commission approval prior to transferring its facilities is an apparent violation of statute, there are circumstances that appear to mitigate the Utility's apparent violation. Based on information provided by GCP, the Century-Fairfield water system was transferred on December 14, 2010, as part of a larger property transaction in which GCP purchased the Fairfield Village mobile home community. GCP was unaware at the time of the requirement to transfer the water certificate. GCP realized this was a requirement after already having purchased the utility, during preparation for its recent filing for an application to

transfer Plantation Landings, LLC in Docket No. 120219-WS.<sup>3</sup> The Utility filed an application for approval of the transfer shortly after it became aware of the requirement. Under these circumstances, staff does not believe that the apparent violation of Section 367.071(1), F.S., rises to the level of warranting a show cause order. In similar cases, the Commission has declined to initiate a show cause proceeding against utilities for failure to first obtain, or make a sale contingent upon, the Commission's approval.<sup>4</sup> In addition, staff would note that GCP asserts it has continued to provide reliable service to the tenants of the mobile home community without specific compensation other than the water conservation rates approved by the Commission in Order No. PSC-08-0435-PAA-WS. Thus, staff does not believe that the customers have been harmed by Century-Fairfield's failure to comply with the statute and as such, staff recommends that GCP not be required to refund any portion of its previously collected rates.

Staff recommends that the Commission should not initiate a show cause proceeding against Century-Fairfield for failing to obtain Commission approval of the sale of its facilities to GCP or making said agreement contingent upon Commission approval as Section 367.071(1), F.S., requires. However, the GCP should be placed on notice that it is expected to know and comply with the Commission's rules and regulations. In addition, staff recommends that GCP should not be required to refund any portion of its previously collected rates.

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<sup>3</sup> See Order No. PSC-13-0121-PAA-WS, issued March 11, 2013, in Docket No. 120219-WS, In re: Application for approval of transfer of Plantation Landings, Ltd. water and wastewater system and Certificate Nos. 606-W and 522-S in Polk County to GCP Plantation Landings, LLC.

<sup>4</sup> See Order Nos. PSC-01-0428-PAA-WS, issued February 22, 2001, in Docket No. 991889-WS, In re: Application for Transfer of Certificates Nos. 525-W and 454-S in Highlands County from Crystal Lake Club to CWS Communities LP d/b/a Crystal Lake Club; and Order No. 01-0425-PAA-WU, issued February 22, 2001, in Docket No. 001083-WU, In re: Application for transfer of Certificate No. 518-W in Lake County from Century Realty Funds, Inc. and Haselton Associates, Ltd. d/b/a Route 19A North Joint Venture to CWS Communities LP.

**Issue 2:** Should the transfer of the Century-Fairfield Village, Ltd. water system and Certificate No. 640-W to GCP Fairfield Village, LLC be approved?

**Recommendation:** Yes. The transfer is in the public interest and should be approved effective the date of the Commission vote. The territory being transferred is described in Attachment A. The resultant order should serve as GCP's water certificate and should be retained as such. Pursuant to Rule 25-9.044(1), Florida Administrative Code (F.A.C.), the Utility's existing rates and charges should remain in effect until a change is authorized by the Commission in a subsequent proceeding. The tariffs reflecting the transfer should be effective for services rendered or connections made on or after the stamped approval date on the tariffs, pursuant to Rule 25-30.475(1), F.A.C. GCP will be responsible for annual reports and regulatory assessment fees (RAFs) for 2012 and all future years. (M. Brown)

**Staff Analysis:** On July 11, 2012, an application was filed for approval of the transfer of the Century-Fairfield water system and Certificate No. 640-W to GCP in Marion County. With the exception of not making the closing contingent upon Commission approval, as required by Section 367.071(1), F.S., and as discussed in Issue 1, the application is in compliance with the governing statute, Section 367.071, F.S., and administrative rules concerning applications for transfer of certificates.

#### Noticing, Territory, and Land Ownership

The application contains proof of compliance with the noticing provisions set forth in Section 367.071, F.S. and Rule 25-30.030, F.A.C. No objections to the transfer were filed with the Commission. The application contains a description of the Utility's authorized service territory, which is appended to this recommendation as Attachment A. The application contains a copy of a special warranty deed that was executed on December 14, 2010, and recorded with the Marion County Clerk of Courts on December 16, 2010, as evidence that GCP owns the land upon which the water treatment facilities are located, in accordance with Section 367.1213, F.S.

#### Purchase Agreement and Financing

Pursuant to Rule 25-30.037(2)(h), F.A.C., the application contains a copy of the executed purchase agreement, which includes the purchase price, terms of payment, and a list of the assets purchased. The Utility's assets and the Fairfield Village mobile home community were purchased by GCP for \$13,925,000. There are no customer deposits, guaranteed revenue contracts, developer agreements, or debt of Century-Fairfield that must be disposed of with regard to the transfer.

#### Facility Description and Compliance

The water system consists of two wells treated with liquid chlorine which is channeled into a hydropneumatic tank for distribution to customers. The distribution system consists of 2" and 6" inch polyvinylchloride (PVC) mains with about 11,500 lineal feet for distribution to customers. Staff has verified with the Florida Department of Environmental Protection (DEP) that the water system is currently in satisfactory condition and in substantial compliance with all applicable standards set by DEP.

### Technical and Financial Ability

Pursuant to Rule 25-30.037(2)(j), F.A.C., the application contains a statement indicating how the transfer is in the public interest. According to the application, the transfer is in the interest of the customers because it allows for a more efficient operation of the utility system. GCP is a wholly-owned subsidiary of Green Courte Partners, LLC. Although GCP does not own any other water or wastewater utilities, its parent company manages other utility systems in Florida. In response to a staff data request, GCP stated that Tri-Star Operations, Inc. (Tri-Star) has been and will continue to operate and maintain the system. Tri-Star currently serves approximately 45 water and wastewater utilities in Marion and Citrus counties, including Walden Woods, an exempt sister company of GCP.

The application also includes financial statements demonstrating the financial ability of the applicant to provide service to its customers. In support of its financial ability, GCP provided its 2011 income statement. Further, GCP provided a statement agreeing to fulfill the commitments, obligations, and representations of Century-Fairfield with regard to utility matters. Based on this information, staff recommends that GCP appears to have demonstrated the financial and technical ability to operate the Utility pursuant to Rule 25-30.037(2)(j), F.A.C. Therefore, staff recommends that the transfer of utility assets and Certificate No. 640-W to GCP Fairfield Village, LLC is in the public interest.

### Rates and Charges

The Utility's rates and charges, including miscellaneous service charges and a late payment fee, were last approved effective July 7, 2008.<sup>5</sup> In that order, the Commission approved a settlement agreement which stated the purpose of the Utility's rates were "to curb excessive usage and not to provide the Utility with a reasonable revenue requirement based upon standard ratemaking principles" and stated that these rates are "not compensatory rates". The approved rates do not include a base facility charge or a gallonage charge if the customer uses 7,000 gallons or less per month. The conservation rates apply for usage over 7,000 gallons per month. The Utility's existing rates and charges are shown on Schedule 1. 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 this Commission. Therefore, staff recommends that the Utility's existing rates and charges remain in effect until a change is authorized by this Commission in a subsequent proceeding.

### Regulatory Assessment Fees and Annual Reports

Staff has verified that the Utility is current on its annual report for 2011 and all prior years and there are no outstanding RAFs, fines, or refunds due. GCP will be responsible for filing the annual reports and paying RAFs for 2012 and all future years.

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<sup>5</sup> See Order No. PSC-08-0435-PAA-WS, issued July 7, 2008, in Docket No. 070548-WS, In re: Application for certificates to provide water and wastewater service in Marion County by Century - Fairfield Village, Ltd.

Conclusion

Based on the above, staff recommends that the transfer of the Century-Fairfield water system and Certificate No. 640-W to GCP is in the public interest and should be approved effective the date of Commission vote. The territory being transferred is described in Attachment A. The resulting order should serve as GCP's water certificate and should be retained as such. The Utility's existing rates and charges should remain in effect until a change is authorized by the Commission in a subsequent proceeding. The tariffs reflecting the transfer should be effective for services rendered or connections made on or after the stamped approval date on the tariffs, pursuant to Rule 25-30.475(1), F.A.C. GCP will be responsible for annual reports and RAFs for 2012 and all future years.

**Issue 3:** What is the appropriate net book value of the Utility for transfer purposes, and should an acquisition adjustment be approved?

**Recommendation:** Neither the net book value (NBV) of the Utility, nor an acquisition adjustment, can be determined at this time. (M. Brown)

**Staff Analysis:** In its application, GCP presented an excerpt from the 2011 Annual Report as documentation of its proposed NBV. Pursuant to Section 367.071(5), F.S., which states, in part, the commission by order may establish the rate base for a utility or its facilities or property when the commission approves a sale, assignment, or transfer thereof. The Commission has never set a NBV for the Century-Fairfield water system. Additionally, the Utility was unable to provide original cost documentation for staff to set a NBV in this docketed case. In similar cases, the Commission has found that NBV cannot be established when staff was unable to obtain sufficient information to determine the Utility's NBV at the time of transfer.<sup>6</sup> Staff recommends the same treatment in this case.

#### Acquisition Adjustment

An acquisition adjustment results when the purchase price of a utility differs from the original cost calculation adjusted to the time of the acquisition. The Buyer stated in the application that it was not seeking an acquisition adjustment. As previously noted, the Buyer acquired the utility facilities as part of a larger property transaction in which GCP purchased the Fairfield Village mobile home community. Fairfield Village, which included the utility system, had an allocated purchase price of \$13,925,000. In response to a staff data request, GCP allocated \$33,333 of the purchase price to the water utility assets, but was unable to provide support documentation for this amount other than an estimate of replacement costs obtained from a contractor. In addition, as discussed previously, staff recommends that rate base cannot be established at this time. Therefore, without the rate base or purchase price associated with utility facilities, the amount of an associated acquisition adjustment cannot be determined at this time. GCP should be put on notice that in any future rate proceeding the Utility will be required to provide support documentation for any assets included in rate base.

#### Conclusion

Based upon the above, neither the NBV of the Utility, nor an acquisition adjustment, can be determined at this time.

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<sup>6</sup> See Order No. PSC-01-0425-PAA-WU, issued February 22, 2001, in Docket No. 001083-WU, In re: Application for transfer of Certificate No. 518-W in Lake County from Century Realty Funds, Inc. and Haselton Associates, Ltd. d/b/a Route 19A North Joint Venture to CWS Communities LP.



Docket No. 120188-WU

Date: March 28, 2013

**Issue 4:** Should this docket be closed?

**Recommendation:** Yes. If no protest to the proposed agency action issue is filed by a substantially affected person within 21 days of the date of the order, the docket should be closed upon the issuance of a consummating order. (Young, M. Brown)

**Staff Analysis:** If no protest to the proposed agency action issue is filed by a substantially affected person within 21 days of the date of the order, the docket should be closed upon the issuance of a consummating order.

**GCP Fairfield Village, Ltd.**

**Marion County**

**Water Service Territory**

**PER ORDER NO. PSC-08-0067-FOF -WS**

Commence at the West  $\frac{1}{4}$  corner of Section 4, Township 16 south, Range 21 East, Marion County, Florida; thence North  $89^{\circ}56'18''$  East 50.00 feet to the Easterly right-of-way line of Southwest 60<sup>th</sup> Avenue (100 feet wide) for the Point of Beginning; thence North  $00^{\circ}16'09''$  East along the said Easterly right-of-way 1.41 feet; thence North  $00^{\circ}17'45''$  East continuing along said Easterly right-of-way 1318.59 feet to the North boundary line of South  $\frac{1}{2}$  of the NW  $\frac{1}{4}$  of aforesaid Section 4; thence North  $89^{\circ}56'18''$  East along the said North boundary line 1276.58 feet; thence South  $00^{\circ}15'45''$  West 1979.61 feet more or less to the SE corner of the North  $\frac{1}{2}$  of the NW  $\frac{1}{4}$  of the SW  $\frac{1}{4}$  of said Section 4; thence South  $89^{\circ}56'25''$  West along South boundary line of the said North  $\frac{1}{2}$ , 1277.42 feet to the aforesaid Easterly right-of-way line of Southwest 60<sup>th</sup> Avenue; thence North  $00^{\circ}16'09''$  East along the said Easterly right-of-way 659.57 feet to the Point of Beginning.

**FLORIDA PUBLIC SERVICE COMMISSION**

**Authorizes**

**GCP Fairfield Village, Ltd.**

**pursuant to**

**Certificate Number 640-W**

to provide water service in Marion 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-08-0067-FOF -WS	01/29/08	070548-WS	Original Certificate
*	*	120188-WU	Transfer of Certificate

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

**GCP Fairfield Village, Ltd.**

**Schedules of Water Rates and Charges**

**Monthly Service Rates**

**Residential and General Service**

Base Facility Charge	\$ 0
Gallonge Charges (per 1,000 gallons)	
0-7,000 gallons	\$ 0
7,001-12,000 gallons	\$ 3.50
Over 12,000 gallons	\$ 5.50

**MISCELLANEOUS SERVICE CHARGES**

DESCRIPTION	NORMAL HOURS	AFTER HOURS
Water Service		
Initial Connection	\$30.00	\$40.00
Normal Reconnection	\$30.00	\$40.00
Violation Reconnection	\$30.00	\$40.00
Premises Visit Charge	\$30.00	\$40.00
Late Payment Charge	\$5.00	Not Applicable