

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: November 13, 2014

TO: Office of Commission Clerk (Stauffer)

FROM: Division of Accounting and Finance (Norris, Fletcher) *BS*
Division of Industry Development & Market Analysis (Roberts) *CRB*
Division of Economics (Hudson) *AKM*
Division of Engineering (Watts) *AMN*
Office of the General Counsel (Lawson) *J.W.D.*
MTL *ASC* *DB*

RE: Docket No. 120285-SU – Application to transfer wastewater facilities and Certificate No. 137-S in Brevard County from Colony Park Utilities, Inc. to Colony Park Development Utilities, LLC.

AGENDA: 11/25/14 – Regular Agenda – Proposed Agency Action for Issue 2 – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Balbis

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

Colony Park Utilities, Inc. (Colony Park or Utility) is a Class C utility providing wastewater service in Brevard County to approximately 300 customers. Water service and the Utility's wastewater billings are provided by the City of Cocoa. According to Colony Park's 2013 annual report, total gross revenue was \$42,771 and total operating expense was \$57,107.

The Utility was granted Certificate No. 137-S by Order No. 6365, issued December 2, 1974.¹ The Commission established rate base for the Utility by Order No. PSC-08-0760-PAA-SU, issued November 17, 2008.² In this application, the Utility stated that there have been no additions to plant and contributions in aid of construction since the 2008 order.

On November 9, 2012, an application was filed for the transfer of the Colony Park wastewater system and Certificate No. 137-S to Colony Park Development Utilities, LLC (Colony Park Development or Buyer). The closing occurred on September 27, 2012. According to the application, the Buyer purchased the wastewater system in addition to a mobile home community from FCB Central Holdings (FCB or Seller) as part of a larger foreclosure transaction. The Commission has jurisdiction pursuant to Section 367.071, Florida Statutes, (F.S.).

¹ See Order No. 6365, issued December 2, 1974, in Docket No. 73391-S, In re: Application of Mobile Home Investors, Inc., for a certificate to operate an existing sewer utility in Brevard County, Florida.

² See Order No. PSC-08-0760-PAA-SU, issued November 17, 2008, in Docket No. 080104-SU, In re: Application for staff-assisted rate case in Brevard County by Colony Park Utility, Inc.

Discussion of Issues

Issue 1: Should the Commission approve the transfer of Colony Park Utilities, Inc. and wastewater Certificate No. 137-S to Colony Park Development Utilities, LLC?

Recommendation: Yes. The transfer of Colony Park Utilities, Inc. (Colony Park or Utility) wastewater system and the transfer of Certificate No. 137-S to Colony Park Development Utilities, LLC (Colony Park Development or Buyer) 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 Colony Park Development's wastewater 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 tariff pages reflecting the transfer should be effective on or after the stamped approval date on the tariff sheets, pursuant to Rule 25-30.475(1), Florida Administrative Code, (F.A.C.). Colony Park Development will be responsible for annual reports and regulatory assessment fees for 2014 and all future years. (Norris, Watts, Roberts)

Staff Analysis: On November 9, 2012, an application was filed for approval of the transfer of the Colony Park wastewater system and Certificate No. 137-S to Colony Park Development in Brevard County. The application is in compliance with the governing statutes, Section 367.071, F.S., and administrative rules concerning applications for transfer of certificates. The closing occurred on September 27, 2012.

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 have been filed, and the time for doing so has expired. The application contains a description of the Utility's authorized service territory, which is appended to this recommendation in Attachment A. The application contains a copy of a warranty deed that was executed on September 27, 2012, and recorded with the Brevard County Clerk of Courts on September 28, 2012, as evidence that Colony Park Development owns the land upon which the wastewater treatment facilities are located.

Purchase Agreement and Financing

Pursuant to Rule 25-30.037(2)(g) and (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 were purchased by Colony Park Development for \$169,000. There are no customer deposits, guaranteed revenue contracts, developer agreements, or debt of Colony Park that must be disposed of with regard to the transfer. As noted, the sale took place on September 27, 2012.

Pursuant to Section 367.071(1), F.S., a sale, assignment, or transfer of a utility's certificate of authorization, facilities or any portion thereof, may occur prior to commission approval if the contract for sale, assignment, or transfer is made contingent upon commission approval. The original purchase agreement regarding the sale of the wastewater system did not

contain this specific contingency. This apparent violation of Section 367.071, F.S., is addressed in Issue 3.

Facility Description and Compliance

Colony Park has a 70,000-gallon per day annual average daily flow wastewater system, consisting of aeration, secondary clarification, chlorination and aerobic digestion of solids. The effluent is disposed of in percolation ponds. The collection system consists of 4 and 6 inch polyvinylchloride mains with two lift stations. Staff has verified that the wastewater system is currently in substantial compliance with all applicable standards set by the Florida Department of Environmental Protection.

Technical and Financial Ability

Pursuant to Rule 25-30.037(2)(j), F.A.C., the application contains a statement indicating that the transfer is in the public interest. According to the application, the transfer is in the interest of the customers because it allows for efficient operation of the wastewater system. In addition, the existing licensed operator will continue to operate and maintain the system. Colony Park Development has acknowledged that the Buyer does not have direct technical experience in operating a wastewater facility. However, Colony Park Development has attested to the fact that the Utility continues to maintain the same competent staff who have been contracted to perform all aspects required to maintain the Utility.

In support of financial ability, Colony Park Development has provided the closing statement evidencing the escrowed funds used for the sale in the instant docket. Further, Colony Park Development has provided a statement agreeing to maintain the books and records in conformance with the National Association of Regulatory Commissioners Uniform System of Accounts (NARUC USOA). Staff also reviewed the personal financial statements of the owners.³ The financial statements of the owners show sufficient financial support to maintain Utility operations. As a result, staff believes that Colony Park Development has demonstrated the financial and technical ability to operate the Utility pursuant to Rule 25-30.037(2)(j), F.A.C. Therefore, the transfer of utility assets and Certificate No. 137-S to Colony Park Development is in the public interest.

Rates and Charges

The Utility's rates and charges were last approved in a staff-assisted rate case in 2008.⁴ In 2013, the rates were subsequently reduced to reflect the expiration of rate case expense approved in 2008. The Utility is built out and has no approved service availability charges. The Utility's existing rates and charges are shown on Schedule No. 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

³ See Document Nos. 00469-14 (Confidential) and 05365-14, in Docket No. 120285-SU.

⁴ See Order No. PSC-08-0760-PAA-SU, issued November 17, 2008, in Docket No. 080104-SU, In re: Application for staff-assisted rate case in Brevard County by Colony Park Utility, Inc.

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 (RAFs) and Annual Reports

Staff has verified that the Utility is current on its annual report for 2013 including all prior years and there are no outstanding fines. Currently, there is a RAF refund of \$887.10 due to the Utility for overpayment of 2011 and 2012 RAFs (\$886.19 + \$0.91). This total amount is available as a credit for the Utility's 2014 RAFs. Colony Park Development should be responsible for filing all the Utility's future annual reports and RAFs.

Conclusion

Based on the above, staff recommends that the transfer of the Colony Park wastewater system and Certificate No. 137-S to Colony Park Development 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 Colony Park Development's wastewater 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. Colony Park Development will be responsible for annual reports and RAFs for 2014 and all future years.

Issue 2: What is the appropriate net book value for Colony Park Development for transfer purposes, and should an acquisition adjustment be approved?

Recommendation: The net book value (NBV) of Colony Park Development's wastewater system for transfer purposes is \$56,933, as of September 27, 2012. An acquisition adjustment should not be included in rate base. Within 30 days of the final order, Colony Park Development should be required to provide general ledgers that show its books have been updated to reflect the Commission-approved balances as of September 27, 2012, along with a statement that these adjustments will also be reflected in the Utility's 2014 Annual Report. (Norris)

Staff Analysis: The purpose of establishing NBV for transfers is to determine whether an acquisition adjustment should be approved. The NBV does not include normal ratemaking adjustments for used and useful plant or working capital. Pursuant to Rule 25-30.037(1), F.A.C., the utility must provide the proposed NBV of the system as of the date of the proposed transfer. However, given the Utility's foreclosure situation previously mentioned, accurate records are not available through September 27, 2012. In its application, the Buyer specified that the books and records of the Utility were unavailable due to the circumstances of the foreclosure. The Buyer also specified the numerous efforts made to acquire them.

As a result, staff determined the NBV as of September 27, 2012 by utilizing the Utility's annual reports for 2008 through 2011. Rate base for the Utility's wastewater system was established as of December 31, 2007, in a staff-assisted rate case (SARC) by Order No. PSC-08-0760-PAA-SU.⁵ Included in the Utility's application was a statement that there had been no adjustments made to the plant since the previously mentioned Order. After reviewing the annual reports, staff determined that no adjustments were made to plant. Staff's recommended NBV, as described below, is shown on Schedule No. 2.

Utility Plant in Service (UPIS)

In its 2011 Annual Report, the Utility reflected a plant balance of \$167,125.⁶ In its application, the Utility stated that there have been no additions to the plant since the 2008 SARC Order. After a review of the SARC Order and subsequent annual report filings, staff determined that the Commission-ordered adjustments from the Utility's last rate proceeding had not been properly made. To account for these adjustments, UPIS should be decreased by \$349. As such, the appropriate UPIS balance is \$166,776. The appropriate UPIS amount for the Utility's system is outlined on Schedule No. 2.

Land and Land Rights

In its 2011 Annual Report, Colony Park reflected a land balance of \$30,479. Again, the Utility has stated that there have been no adjustments made to the land balances since the 2008 SARC Order. Therefore, staff recommends the appropriate land balance is \$30,479.

⁵ See Order No. PSC-08-0760-PAA-SU, issued November 17, 2008, in Docket No. 080104-SU, In re: Application for staff-assisted rate case in Brevard County by Colony Park Utility, Inc.

⁶ This amount is derived from Schedule S-1 of the Utility's 2011 Annual Report (\$197,604 total wastewater plant minus \$30,479 land balance).

Accumulated Depreciation

As noted above, staff determined that the Utility did not make the plant adjustments required in its last rate proceeding. In its 2011 Annual Report, the Utility reflected an accumulated depreciation balance of \$147,197. Using the Commission-ordered UPIS balances and depreciation rates per Rule 25-30.140, F.A.C., accumulated depreciation should be \$140,322 as of September 27, 2012. This results in a recommended decrease of \$6,875. Staff's recommended accumulated depreciation balance is shown on Schedule No. 2.

Contribution in Aid of Construction (CIAC) and Accumulated Amortization

In the Utility's last rate proceeding, the Commission-ordered CIAC and amortization of CIAC balances each had a balance of \$23,500. Colony Park Development maintains that there have been no adjustments to either CIAC or amortization of CIAC. As such, staff recommends the balances for CIAC and amortization of CIAC remain the same.

Net Book Value

Based on the adjustments described above and shown on Schedule No. 2, staff recommends that the NBV of the Utility's wastewater system is \$56,933, as of September 27, 2012. The resulting NARUC USOA balances for UPIS and accumulated depreciation as of September 27, 2012 are shown on Schedule No. 2.

Acquisition Adjustment

An acquisition adjustment results when the purchase price of a utility differs from the original cost of the assets adjusted to the NBV. The Utility and its assets were purchased for \$169,000. As stated above, staff has determined the appropriate NBV to be \$56,933. Pursuant to Rule 25-30.0371(2), F.A.C., a positive acquisition adjustment may be appropriate when the purchase price is greater than the NBV, and a negative acquisition adjustment may be appropriate when the purchase price is less than NBV. Based on this methodology, a positive acquisition adjustment could be included in rate base. However, Rule 25-30.0371(2), F.A.C., also states that:

Any entity that believes that a full or partial positive acquisition adjustment should be made has the burden to prove the existence of extraordinary circumstances. In determining whether extraordinary circumstances have been demonstrated, the Commission shall consider evidence provided to the Commission such as anticipated improvements in quality of service, anticipated improvements in compliance with regulatory mandates, anticipated rate reductions or rate stability over a long-term period, anticipated cost efficiencies, and whether the purchase price was made as part of an arms-length transaction.

In this case, the Buyer stated in the application that Colony Park Development was not seeking an acquisition adjustment. Given that the Buyer did not request a positive acquisition

adjustment and there is no evidence of extraordinary circumstances, staff recommends an acquisition adjustment not be made in this case.

Conclusion

Based on the above, staff recommends that the NBV for the Utility's wastewater system is \$56,933, as of September 27, 2012. No acquisition adjustment should be included in rate base. Within 30 days of the date of the final order, Colony Park Development should be required to provide general ledger balances, which show its books have been updated to reflect the Commission-approved balances as of September 27, 2012, along with a statement that these numbers will also be reflected in the Utility's 2014 Annual Report.

Issue 3: Should Colony Park be required to show cause for why it should not be fined for an apparent violation of Section 367.071(1), F.S., for failing to obtain Commission approval prior to the transfer of its assets?

Recommendation: No. Staff recommends that the Utility's apparent violation of Section 367.071(1), F.S. does not rise to the level which warrants the initiation of a show cause proceeding. Therefore, Colony Park should not be required to show cause for failing to obtain Commission approval prior to closing on the sale of its facilities. (Lawson)

Staff Analysis: Pursuant to Section 367.071(1), F.S., no utility shall sell, assign or transfer its certificate of authorization, facilities, or any portion thereof, without prior 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, F.S. The Utility appears to have violated Section 367.071(1), F.S., by failing to obtain Commission approval prior to selling its facilities to the Buyer. Utilities are charged with the knowledge of the Commission's Rules and Statutes. Additionally, "[i]t 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). By failing to condition the transfer of its assets upon approval by the Commission, the Utility's acts were "willful" in the sense intended by Section 367.161, F.S. In Commission Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL, titled, 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., the Commission, having found that the company had not intended to violate the rule, 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 that this is distinct from an intent to violate a statute or rule."

Although the Utility's failure to condition the sale of its facilities contingent on Commission approval prior to the sale of its facilities is an apparent violation of Section 367.071(1), F.S., there are mitigating circumstances. The Seller is a bank that acquired the Utility as part of a foreclosure on a series of assets securing loans held by a developer who owned both the Utility and the property serviced by the Utility. Given the circumstances of the foreclosure, the prior holder of the Utility's certificate no longer exists and is no longer involved in the day-to-day operation of the Utility. As a bank, the Seller does not have the ability or expertise to operate a water or wastewater utility and therefore sought to transfer the Utility to a suitable owner as quickly as possible. Since the initial transfer, the Buyer has been operating the Utility for a reasonable period of time and has established their ability to operate the facilities. Staff believes that both the Buyer and Seller have made a good faith effort to effect a transfer of this Utility that is in the best interest of the customers in spite of these unique circumstances.

Based on the foregoing, staff recommends that the Utility's apparent violation of Section 367.071(1), F.S., does not rise to the level which warrants the initiation of a show cause proceeding. Therefore, Colony Park should not be required to show cause for failing to obtain Commission approval prior to closing on the sale of its facilities.

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. The docket should be closed~~ administratively after Colony Park Development has provided proof that its general ledgers have been updated to reflect the Commission-approved balances net book values and balances as of September 27, 2012. (Lawson, Norris)

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. The docket should be closed~~ administratively after Colony Park Development has provided proof that its general ledgers have been updated to reflect the Commission-approved balances net book values and balances as of September 27, 2012.

072
11-13-14

072
11-13-14

Colony Park Development Utilities, LLC
Brevard County
Description of Wastewater Territory

PER ORDER NO. PSC-07-0420-FOF-SU

In Township 23 South, Range 36 East, Brevard County, Florida

Section 15

Commence at the Southeast corner of said Section 15 for a Point of Beginning. Thence run North 0°39'04" West along the East line of said Section 15, 1236.97 feet; thence North 89°35'04" West, 477.46 feet; thence South 00°38'31" West, 25.00 feet; thence South 68°21'32" West, 84.30 feet; thence South 76°38'12" West, 83.63 feet; thence South 89°20'56" West, 234.00 feet; thence South 00°39'04" East, 150.00 feet; thence North 89°20'56" East, 5.00 feet; thence South 00°39'04" West, 489.79 feet; thence South 87°45'45" West, 358.30 feet; thence South 2°14'15" East, 150 feet to a point on the South boundary of St. Charles Avenue; thence Westerly 30 feet, more or less; thence South 2°14'15" East, 400 feet, more or less, to a point on the South boundary of said Section 15, thence North 87°45'45" East along the South boundary of said Section 15, 1250 feet, more or less, to the Point of Beginning.

Section 14

Commence at the Southwest corner of said Section 14; thence run North 0°39'04" West along the West boundary of Section 14, 320 feet, more or less, to the Point of Beginning which is also the Southwest corner of the aforesaid parcel; thence North 0°39'04" West along the West line of said parcel, a distance of 947.98 feet; thence North 87°05'16" East, a distance of 710.58 feet; thence North 0°48'54" West, a distance of 10 feet to the North line of said parcel; thence North 89°11'06" East along the North line of said parcel, a distance of 569.57 feet; thence South 2°00'25" East, a distance of 985.11 feet to a point on the South line of said parcel; thence South 89°13'32" West along the South line of said parcel, a distance of 1302.88 feet to the Point of Beginning.

FLORIDA PUBLIC SERVICE COMMISSION

Authorizes

Colony Park Development Utilities, LLC

Pursuant to

Certificate Number 137-S

to provide water service in Brevard 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>
6365	12/02/1974	73391-S	Original Certificate
7296	06/28/1976	750664-S	Transfer
PSC-03-0320-FOF-SU	03/06/2003	020930-SU	Transfer of Majority Organizational Control
PSC-07-0420-FOF-SU	05/14/2007	060636-SU	Transfer of Majority Organizational Control
*	*	120285-SU	Transfer

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

Colony Park Development Utilities, LLC
Brevard County
Wastewater System

Residential Service

Base Facility Charge - All Meter Sizes \$10.75

Charge per 1,000 gallons
6,000 gallon cap \$2.87

General Service

Base Facility Charge by Meter Sizes

5/8"X3/4" \$10.75

3/4" \$16.12

1" \$26.87

1-1/2" \$53.73

2" \$85.97

3" \$171.93

4" \$268.64

6" \$537.28

Charge per 1,000 Gallons \$3.44

Bulk Service

Base Facility Charge - Colony Park Mobile Home Park \$1,289.47

Charge per 1,000 gallons
720,000 gallon cap \$3.44

Miscellaneous Service Charges

Schedule of Miscellaneous Service Charges

Initial Connection Charges \$ 15.00

Normal Reconnection Charges \$ 15.00

Violation Reconnection Charges Actual Cost

Premises Visit Charges (in lieu of disconnection) \$10.00

**Colony Park Development Utilities, LLC
 Wastewater System
 Net Book Value as of September 27, 2012**

**Utility Proposed and Staff Recommended
 Schedule of Net Book Value as of September 27, 2012**

Description	Utility Proposed	Adjustment		Staff Recommended
Utility Plant in Service	\$167,125	(\$349)	A	\$166,776
Land	30,479	0		30,479
Accumulated Depreciation	(147,197)	6,875	B	(140,322)
CIAC	(23,500)	0		(23,500)
Amortization of CIAC	<u>23,500</u>	<u>0</u>		<u>23,500</u>
Net Book Value	<u>\$50,407</u>	<u>\$6,526</u>		<u>\$56,933</u>

**Explanation of Staff's Recommended
 Adjustments to Net Book Value as of September 27, 2012
 Water**

Explanation	Amount
A. Utility Plant In Service (UPIS) To reflect adjustments from Order No. PSC-08-0760-PAA-SU.	(\$349)
B. Accumulated Depreciation To reflect the appropriate amount of Accumulated Depreciation.	<u>\$6,875</u>
Total Adjustments to Net Book Value as of September 27, 2012.	<u>\$6,526</u>

Colony Park Development Utilities, LLC
Wastewater System

Schedule of Staff Recommended Account Balances as of September 27, 2012

Acct. No.	Description	UPIS	Accumulated Depreciation
	Composite Account	\$57,354	\$57,354
354	Structures & Improvements	30,157	17,652
360	Collection Sewers Force	28,128	20,530
363	Service to Customers	500	322
364	Flow Measuring Device	3,500	3,500
370	Receiving Wells	13,066	10,346
371	Pumping Equipment	3,536	859
380	Treatment Disposal	27,546	27,546
389	Other Plant & Misc. Equipment	1,789	1,012
393	Tools Shop & Garage Equipment	<u>1,200</u>	<u>1,200</u>
	Total	<u>\$166,776</u>	<u>\$140,322</u>