

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: April 23, 2015

TO: Office of Commission Clerk (Stauffer)

FROM: Division of Engineering (Ellis) *P&E*
Division of Accounting and Finance (T. Brown, Norris) *TB*
Office of the General Counsel (Brownless) *AMW* *BS* *ALM*

RE: Docket No. 140174-WU – Application for approval of transfer of Certificate No. 117-W from Crestridge Utility Corporation to Crestridge Utilities, LLC, in Pasco County.

Docket No. 140176-WU – Application for approval of transfer of Certificate No. 116-W from Holiday Gardens Utilities, Inc. to Holiday Gardens Utilities, LLC, in Pasco County.

AGENDA: 05/05/15 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

Crestridge Utility Corporation (Crestridge) is a Class C water utility located in Pasco County, serving approximately 615 residential customers. Holiday Gardens Utilities, Inc., (Holiday Gardens) is a Class C water utility also located in Pasco County, serving approximately 449 residential customers and 7 general service customers. Both Utilities are located in the Southwest Florida Water Management District (SWFWMD). Based on each Utility's 2013

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Annual Reports, Crestridge indicates a total gross revenue of \$93,421, while Holiday Gardens indicates a total gross revenue of \$72,921.

Both Utilities have provided water service since at least 1967. In 1973, Crestridge was issued Certificate No. 117-W and Holiday Gardens was issued Certificate No. 116-W.¹ Certificate 117-W has not been amended to include additional territory, but Certificate No. 116-W was last amended in Order No. PSC-93-1530-FOF-WU.² Rate base was last established for Crestridge by Order No. PSC-93-0012-FOF-WU and for Holiday Gardens by Order No. PSC-93-0013-FOF-WU.³

Crestridge and Holiday Gardens are jointly owned by Holiday-Gulf Homes, Inc. All three business entities are active corporations registered with the Florida Department of State's Division of Corporations. In addition to water service, Crestridge, and Holiday Gardens provide garbage collection and street lighting services to their respective service territories.

On September 10, 2014, separate applications were filed by Michael Smallridge for the transfer of Crestridge and Certificate No. 117-W, to Crestridge Utilities, LLC (Crestridge LLC) and for the transfer of Holiday Gardens, Inc. and Certificate No. 116-W to Holiday Gardens Utilities, LLC (Holiday Gardens LLC). Both Crestridge LLC and Holiday Gardens LLC (collectively, the LLCs) were registered with the Florida Department of State Division of Corporations on April 11, 2014.⁴ Simultaneous with the filing of the transfer docket, applications for staff-assisted rate cases (SARCs) for the LLCs were also filed by Mr. Smallridge.⁵

An informal meeting was held on February 26, 2015, regarding both the transfer and staff-assisted rate cases for both utilities. At this meeting, it was clarified that staff would only process the rate cases upon completion of the transfers.

This recommendation addresses the transfer of the water systems. The Commission has jurisdiction pursuant to Section 367.071, Florida Statutes (F.S.).

¹ Order No. 5674, issued March 8, 1973, in Docket No. 72589-W, In re: Application of Crestridge Utilities, Inc. for a certificate to operate a water utility in Pasco County and Order No. 5675, issued March 8, 1973, in Docket No. 72590-W, In re: Application of Holiday Gardens Utilities, Inc. for a certificate to operate a water utility in Pasco County.

² Order No. PSC-93-1530-FOF-WU, issued October 19, 1993, in Docket No. 930164-WU, In re: Application for Amendment of Certificate No. 116-W in Pasco County by Holiday Gardens Utilities, Inc.

³ Order PSC-93-0012-FOF-WU, issued January 5, 1993, in Docket No. 920417-WU, In re: Application for a staff-assisted case in Pasco County by Crestridge Utility Corporation. and Order No. PSC-93-0013-FOF-WU, issued January 5, 1993, in Docket No. 920418-WU, In re: Application for a staff-assisted rate case by Holiday Gardens Utilities, Inc., in Pasco County.

⁴ At this time both water services are being provided under the names of the LLCs. However, the certificated entities remain unchanged until the Commission approves the transfer of the certificates. Thus, for purposes of this recommendation, the name "Crestridge" and "Holiday Gardens" will apply to both the certificated entity and the LLC. Distinctions between the LLC and original certificated entities will be made in the text where necessary for clarity.

⁵ Docket Nos. 140175-WU (Crestridge Utilities, LLC) and 140177-WU (Holiday Gardens Utilities, LLC).

Discussion of Issues

Issue 1: Should the application for transfer of Certificate No. 117-W from Crestridge Utility Corporation to Crestridge Utilities, LLC and Certificate No. 116-W from Holiday Gardens Utilities, Inc. to Holiday Gardens Utilities, LLC be approved?

Recommendation: No. Given the delays and failures to respond to staff data requests, providing conflicting and incorrect information, delays in paying filing fees, and delays in filing customer notices, the applicant has failed to meet his burden of proof that the proposed transfers are in the public interest. Therefore, the applications for transfer of Certificate No. 117-W from Crestridge Utility Corporation to Crestridge Utilities, LLC, and of Certificate No. 116-W from Holiday Gardens Utilities, Inc., to Holiday Gardens Utilities, LLC, should be denied. (Ellis, Brownless, T. Brown, Norris)

Staff Analysis: On March 31, 2014, Michael Smallridge purchased the assets of both Crestridge and Holiday Gardens for \$450,000. Mr. Smallridge was required to make a down payment of \$25,000 at closing and execute a purchase money mortgage with owner financing in the amount of \$425,000 at 7.5 percent interest for 12 years with a monthly payment of \$4,484.71 until paid in full and to pay another \$20,000 on or before January 31, 2015. In addition to the Utilities, Mr. Smallridge also purchased the recorded street lighting and trash collection districts for the Crest Ridge Gardens Subdivision and Holiday Gardens Unit One.⁶ In the Agreement for Purchase and Sale of Water Assets (Purchase Agreement), the seller agreed to allow Mr. Smallridge to acquire title in the names "Holiday Gardens Utilities, LLC," and "Crestridge Utilities, LLC".⁷

On April 11, 2014, as contemplated by the Purchase Agreement, Mr. Smallridge did create and register Holiday Gardens Utilities, LLC, and Crestridge Utilities, LLC, with the Secretary of State. On August 8, 2014, the warranty deeds for all of the property on which both Utilities' facilities are located were executed in the names of the LLCs and subsequently recorded on September 18, 2014.⁸ Mr. Smallridge signed the Promissory Note for the purchase of the Utilities on August 22, 2014, and commenced paying the \$4,500 per month⁹ mortgage on or about September 14, 2014. Title insurance policies were also issued for each of the utilities' properties on September 18, 2014.

On September 10, 2014, Mr. Smallridge filed applications for the transfer of Certificates Nos. 117-W and 116-W from Crestridge and Holiday Gardens to the LLCs. The filing fees of \$1,500 for each utility as required by Rule 25-30.020, Florida Administrative Code (F.A.C.), were not provided at the time for either application.

Sections 367.045 and 367.071, F.S., and Rule 25-30.037, F.A.C., control the sale, assignment, or transfer of water and wastewater authorization (certificates), facilities or majority

⁶ Crest Ridge Gardens Restrictions, Book 341, p. 438, Pasco County Public Records; Holiday Gardens Restrictions, Book 378, P. 165, Pasco County Public Records.

⁷ Section 3.k.

⁸ The warranty deed for Lot 692 of the Crest Ridge Gardens Unit Seven was recorded again on October 17, 2014, to reflect the addition of a date for the notary's signature.

⁹ The Purchase Agreement and Promissory Note dated August 22, 2014, state that the monthly payment is \$4,484.71. In response to a Staff Data Request, Mr. Smallridge indicated that he increased it to \$4,500 per month.

operational control. In order for a sale or transfer to be approved, the applicant must demonstrate that the “proposed sale, assignment, or transfer is in the public interest and that the buyer, assignee or transferee will fulfill the commitments, obligations, and representations of the Utility.”¹⁰ Rule 25-30.037(j), F.A.C., further requires that the applicant demonstrate that the buyer has experience in water or wastewater utility operations and has the financial ability to provide service.

As discussed in more detail below, throughout this seven month process the applicant has repeatedly failed to provide requested relevant materials and documents necessary to evaluate his financial or managerial ability to operate these two utilities in accord with applicable Commission rules and regulations. In some instances, the applicant has provided responses that were incomplete or contained conflicting and incorrect information. As a result, the staff recommends that the applications for transfer of Certificate Nos. 116-W and 117-W be denied.

Failure to Respond to Staff’s Data Requests

The applications as filed failed to include the information required by Rule 25-30.037(2), F.A.C. On October 7, 2014, staff requested payment of the filing fee (\$1,500 for each utility) and additional data to clarify the applications and resolve several of the deficiencies. A due date for responses was set for November 5, 2014. However, no responses were received within the requested timeframe. Late-filed responses were received on November 10, 2014, which partially answered one deficiency. No filing fee was provided for either utility.

Without further responses from the applicant, staff again sent letters on January 12, 2015, requesting the payment of the filing fees and the additional information necessary to process the applications. A deadline for a response was set for January 22, 2015. Staff noted that the failure to pay the filing fees and provide the necessary information would result in a recommendation that the applications for transfer be denied. On January 23, 2015, partial responses were filed in the respective dockets and both filing fees were paid.

Staff continued a review of the filings, and determined that further information was necessary to approve the applications. On February 23, 2015, staff issued a second data request for each docket, including six questions, and requested responses by March 25, 2015. On March 18, 2015, the applicant filed responses to one question and provided information that rendered another question moot. No responses have been provided to date to the remaining four questions, including questions regarding financial information.

Staff sent a third set of data requests on March 4, 2015, with a total of 13 questions each, and requested responses by April 2, 2015. On March 10, 2015, staff amended the requests with an additional question that had been inadvertently omitted. On April 6, 2015, the applicant partially responded to Staff’s Third Data Requests, but failed to respond to certain questions regarding financial information. Specifically, staff requested information concerning Mr. Smallridge’s personal line of credit which was referenced in his meeting with Commission staff on February 26, 2015. Other than to confirm that he does have a line of credit, Mr. Smallridge did not provide the requested details regarding this account.

¹⁰ Section 367.071(1), F.S.

Conflicting Information

In addition to failing to file timely responses, many of the responses were incorrect and conflicted with previous responses. The following examples are illustrative. First, attempts to determine the amount of the total purchase price of \$450,000 allocated to each utility and to the street lighting and garbage collection rights were repeatedly asked. In response to Deficiency No. 3, the applicant replied that the total amount was pro-rated based on number of customers: \$269,375 for Crestridge and \$180,625 for Holiday Gardens. No dollar amount was assigned to the street lighting and trash “[s]ince the street lights and trash are in the deed restrictions and I had to take them as part of the deal, but they have no value because they have no assets nor do they produce any profit.” In response to the December 3, 2014, staff audit findings that the net book value at the time of transfer for Holiday Gardens was \$24,544 and for Crestridge was \$60,694, the applicant indicated that positive acquisition adjustments in the amount of \$156,081 and \$208,681 for each Utility, respectively, were appropriate.¹¹ In Staff’s Second Data Request no. 4, requests documentation to support these acquisition adjustments were made. However, on March 18, 2015, the applicant subsequently withdrew his requests for acquisition adjustments for each utility at which time the applicant also amended his allocation of the purchase price of the utilities to reflect a cost of \$60,694 for Crestridge, \$24,544 to Holiday Gardens and the balance of \$364,762 to street lighting and garbage collection rights. As noted above, Mr. Smallridge has asserted that these services are provided at cost and produce no profit. This assertion conflicts with the general ledger provided to audit staff which shows customers are billed approximately \$4,450 per month more than the utilities were charged for street lighting and garbage collection services. Staff has repeatedly requested additional information to verify the amount billed to customers for street lighting and garbage collection services. This information has not been provided to date.

Second, staff repeatedly asked about the closing date for the purchase of the utilities in order to determine the net book value of each utility. At various times the applicant either stated or provided documents indicating that closing took place: a) on April 11, 2014, per the terms of the Purchase Agreement; b) on August 22, 2014, as stated on the Closing Statement provided in response to Staff’s Third Data Request no. 9; or c) on August 27, 2014, as stated in response to staff’s third data request no. 7. Based upon filings in the SARC dockets, the closing date provided to SWFWMD was given as August 22, 2014.

Third, as part of its required financial viability analysis, staff tried to verify the amount of the mortgage payment to the Sellers due each month pursuant to the Purchase Agreement. Depending on the documentation provided this amount was: a) \$4,484.71 per month as stated in Section 4 of the Purchase Agreement; b) \$4,500 per month as stated on the first page of the Promissory Note dated August 22, 2014, provided in response to Staff’s First Data Request no. 4; or c) \$4,484.71 per month as stated on the complete Promissory Note dated August 22, 2014, provided in response to Staff’s Third Data Request no. 8. The terms of the Promissory Note state that the monthly payment terms can only be changed with the written consent of the Seller. No such consent was provided.

¹¹ A closing date of April 11, 2014, was used by the auditors for each utility. This date was not contested by Mr. Smallridge in his subsequent responses to the audits filed on March 18, 2015.

Delays in Filing Customer Notices

Rule 25-30.030, F.A.C., requires a legal notice to be sent to state and local government agencies, nearby water utilities, and customers within seven days of the application, in addition to a newspaper publication for any transfer. At a utility's request, staff provides a listing for state and local government agencies and nearby water and wastewater utilities. This notice is allowed to be a late-filed exhibit in a transfer application, and was noted as such in the applications for both utilities. However, no such exhibits were provided by the time of staff's first data requests, nor had requests for the information been made. On October 7, 2014, as part of the first data request, staff provided examples of a legal notice and a list of entities to notify, including government agencies and other water utilities in Pasco County. On November 10, 2014, staff received a request for an electronic copy of the example legal notice, which was provided.

On January 12, 2015, staff sent reminder letters to the applicant that included another copy of the example legal notice and updated lists of government agencies and water utilities to contact, as the previous lists had expired. In his January 23, 2015, responses to Staff's First Data Request, legal notices were provided to staff for each proposed transfer. Staff assisted the applicant with attempts to resolve several flaws with the legal notices. On February 18, 2015, the applicant filed flawed notarized affidavits, including multiple incorrect dates for the filing and mailing of the notices, and both were missing affidavits from the publishing newspapers. On March 11, 2015, the applicant submitted proper affidavits of mailing customer notices and publications. Based upon these documents, customers were notified of the transfers on February 6, 2015, approximately five months after the applications were filed.

Section 367.1214, F.S., requires that a utility notify both the Commission and its customers before changing a utility's name. Mr. Smallridge has represented that he held meetings with customers in which he notified them of the name changes and change of ownership of the utilities prior to September 10, 2014, when the application for transfer was filed. However, the Commission was not notified of the name changes until the applications for transfer were filed.

Public Interest Standard

Rule 25-30.037(j) requires that an application for transfer demonstrate that it is in the public interest, including:

...summary of the buyer's experience in water or wastewater utility operations, a showing of the buyer's financial ability to provide service, and a statement that the buyer will fulfill the commitments, obligations and representations of the seller with regard to utility matters.

Mr. Smallridge has ample experience in the utility regulatory process. As stated in his application, he was appointed to the Citrus County Water and Wastewater Authority, the local regulatory body for Citrus County, and served for seven years. He served as the "Class C" representative for the Governors Study Committee for Investor Owned Water and Wastewater Utility Systems in 2013. He maintains a regular yearly schedule of training classes through the

Florida Rural Water Association and completed the NARUC Utility Rate School in 2001. He serves as the appointed circuit court receiver for Four Points Utility Corporation, Bimini Bay Utilities, and West Lakeland Wastewater, Inc., all of which have been involved in staff assisted rate cases, limited proceedings or certificate transfer cases in the last three years. Mr. Smallridge also owns Pinecrest Utilities, LLC, which was involved in a staff assisted rate case and limited proceeding to increase miscellaneous service charges in 2012. At this time, he is in the process of buying East Marion Sanitary Systems, Inc., for which he filed an application for transfer of certificate (Docket No. 150091-WU) on March 20, 2015. Further, Mr. Smallridge is the registered agent and owner of Lake Forest Utility, LLC and Charlie Creek Utilities, LLC.¹² In total, Mr. Smallridge, either owns, is the receiver of, or is the manager of a total of nine Class C water and wastewater facilities, seven of which are regulated by the Commission.

In addition to owning several Commission-regulated water and wastewater utilities, Mr. Smallridge owns and operates Florida Utility Services 1, LLC providing utility accounting, billing, consulting and operational services for each of his own utilities as well as other non-affiliated utilities.

Notwithstanding all of his training and experience with both the Commission and the regulatory process, Mr. Smallridge has failed to respond or to comply with even the most basic Commission rules and procedures after repeated attempts by staff to assist him in doing so. For example, Mr. Smallridge did not file the required filing fees until warned of the possibility that the transfers would be denied.

Impact of Denial

Section 367.071(1), F.S., states as follows:

(1) No utility shall sell, assign, or transfer its certificate of authorization, facilities or any portion thereof, or majority organizational control without determination and approval of the commission that the proposed sale, assignment, or transfer is in the public interest and the buyer, assignee, or transferee will fulfill the commitments, obligations, and representations of the utility. However, a sale, assignment, or transfer of its certificate of authorization, facilities or any portion thereof, or majority organizational control may occur prior to commission approval if the contract for sale, assignment, or transfer is made contingent upon commission approval.

[Emphasis added.]

The certificate must be issued in the name of the legal entity doing business as the utility, in this case, in the names of Holiday Gardens Utilities, Inc. (Certificate No. 116-W) and Crestridge Utility Corporation (Certificate No. 117-W). The LLCs created by Mr. Smallridge are separate legal entities under which Mr. Smallridge is currently providing water services to these same water customers without having received authorization from the Commission to do so under that

¹² Florida Department of State, Division of Corporations.

legal structure and under that legal name. The language of Section 367.071, F.S., does not authorize this type of action.

In this case the Purchase Agreement does contain language conditioning the sale upon Commission approval.¹³ However, the language of Section 367.071(1), F.S., does not allow the transfer of assets into another separate legal entity prior to the Commission's approval. Thus, in this case, Mr. Smallridge can purchase and operate Holiday Gardens Utilities, Inc and Crestridge Utility Corporation contingent on later Commission approval. Mr. Smallridge cannot transfer all real and personal property out of the certificated entities until Commission approval is secured and the certificates officially transferred.

Section 10 of the Purchase Agreement states:

Seller shall cooperate in Purchaser's continued operation of the system, until the expiration of such time as the FPSC approves said transfer to Purchaser, or any other applicant proposed by Purchaser or 2 years elapses from date of closing to approve such sale and transfer, whichever event occurs first. During such time the note and mortgage shall be paid as scheduled herein.

At this time, the current owners, Holiday Gulf-Homes, Inc., remain responsible for the continued operation of the certificated entities. Based upon the Purchase Agreement provision, Mr. Smallridge is required to continue to operate both Utilities until either transfers to Mr. Smallridge or another person/entity are approved by the Commission, or until two years from the closing date, whichever occurs first. In sum, should the Commission deny these applications for transfer Mr. Smallridge would continue to operate the utility systems pursuant to the terms of the Purchase Agreement under the certificated names of Crestridge Utility Corporation and Holiday Gardens Utilities, Inc.

Conclusion

Given the delays and failures to respond to staff data requests, providing conflicting information, delays in paying filing fees, and delays in filing customer notices, the applicant has failed to meet his burden of proof that the proposed transfers are in the public interest. Therefore, the applications for transfer of Certificate No. 117-W from Crestridge Utility Corporation to Crestridge Utilities, LLC, and of Certificate No. 116-W from Holiday Gardens Utilities, Inc., to Holiday Gardens Utilities, LLC, should be denied.

¹³ "This contract is contingent upon the Florida Public Service Commission (FPSC) agreeing to the transfer of [the] application for Holiday Gardens Utilities and Crestridge Utilities Corporation. The sale, assignment and transfer of the utility's certificate of authorization, facilities and equipment is contingent upon FPSC approval." Section 10.b.

Issue 2: Should this docket be closed?

Recommendation: Yes. If no protest to the proposed agency action is filed by a substantially affected person within 21 days of the date of the order, a consummating order should be issued and the docket should be closed administratively. (Brownless)

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