

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: May 24, 2017

TO: Office of Commission Clerk (Stauffer)

FROM: Division of Engineering (Hill) *[Signature]*
Office of the General Counsel (Brownless) *[Signature]*

RE: Docket No. 170016-WS – Application for transfer of water and wastewater facilities to Babcock Ranch Community Independent Special District in Charlotte and Lee County, and cancellation of Certificate Nos. 613-W and 543-S, by MSKP Town and Country Utility, LLC.

AGENDA: 06/05/17 – Regular Agenda – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Brisé

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

MSKP Town and Country Utility, LLC (MSKP) is a Class C utility certificated to provide water and wastewater services in Charlotte and Lee Counties.¹ At this time there are no potable water

¹The Utility received its water certificate in 1999 (No. 613-W) and wastewater certificate (No. 543-S) in 2007. Order No. PSC-99-2198-PAA-WU, issued November 8, 1999, in Docket No. 981288-WU, *In re: Application for certificate to operate a water utility in Charlotte and Lee Counties, by Town and Country Utilities Company*; Order No. PSC-07-0076-PAA-SU, issued January 29, 2007, in Docket No. 060602-SU, *In re: Application for certificate to provide wastewater service in Lee and Charlotte Counties by Town and Country Utilities Company*. In 2006, majority organizational control of Babcock Florida Company, the original owner of the Utility, was transferred to MSKP III, Inc., and the two entities were merged. Order No. PSC-06-0809-FOF-WU, issued October 2, 2006, in Docket No. 060520-WU, *In re: Application for transfer of majority organizational control of Town and Country Utilities Company, holder of Certificate No. 613-W in Charlotte and Lee Counties, from Babcock Florida Company*

or sewer customers and only one commercial customer, a corporate affiliate of MSKP, who purchases only raw, non-potable water from a one inch well that is not connected to the rest of MSKP's water system.

On January 12, 2017, MSKP filed an application for the transfer of its water and wastewater facilities to a governmental authority, the Babcock Ranch Community Independent Special District (District), stating that the District took over the operation, management, and control of the Utility on December 15, 2016. MSKP states that pursuant to Section 367.071(4)(a), Florida Statutes (F.S.), the sale of a utility to a governmental entity must be approved as a matter of right and its certificates cancelled.

The Commission has jurisdiction over this matter pursuant to Chapter 367, F.S., including Section 367.071, F.S.

to MSKP III, Inc. In 2008, the Commission approved a corporate reorganization and changed the name of the Utility to MSKP Town and Country Utility, LLC d/b/a Town & Country Utility, its current name. Order No. PSC-08-0481-FOF-WS, issued July 23, 2008, in Docket No. 080242-WS, *In re: Application by Town and Country Utilities Company for acknowledgement of corporate reorganization, conversion to a limited liability corporation, and name change on Certificate Nos. 613-W and 543-S, in Charlotte and Lee Counties, to MSKP Town and Country Utility, LLC d/b/a/ Town & Country Utility.*

Discussion of Issues

Issue 1: Should the Commission acknowledge the transfer of MSKP Town & Country Utility, LLC to the Babcock Ranch Community Independent Special District as a matter of right and cancel Certificate Nos. 613-W and 543-S effective December 15, 2016?

Recommendation: Yes. MSKP Town and County Utility, LLC and the Babcock Ranch Community Independent Special District have fully complied with the requirements of Section 367.071(4)(a), F.S., and Rule 25-30.038, Florida Administrative Code (F.A.C.), and therefore have met all of the requirements for transfer as a matter of right. (Hill, Brownless)

Staff Analysis: Section 367.071, F.S., states, in part:

(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 that 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.

...

(3) An application for proposed sale, assignment, or transfer shall be accompanied by a fee as provided by s. 367.145. No fee is required to be paid by a governmental authority that is the buyer, assignee, or transferee.

(4) An application shall be disposed of as provided in s. 367.045, except that:

(a) The sale of facilities, in whole or part, to a governmental authority shall be approved as a matter of right; however, the governmental authority shall, prior to taking any official action, obtain from the Utility or commission with respect to the facilities to be sold the most recent available income and expense statement, balance sheet, and statement of rate base for regulatory purposes and contributions-in-aid-of-construction. Any request for rate relief pending before the commission at the time of sale is deemed to have been withdrawn. Interim rates, if previously approved by the commission, must be discontinued, and any money collected pursuant to interim rate relief must be refunded to the customers of the Utility with interest.

The District is a unit of special-purpose government, created pursuant to Chapter 2007-306, Laws of Florida, as amended by Chapter 2016-257, Laws of Florida. Special districts are included in the definition of “governmental authority” found in Section 1.01(8), F.S., and have been recognized by the Commission as falling within Section 367.071(4)(a), F.S.²

The District and MSKP entered into a Water and Sewer System and Irrigation Quality Water System Lease/Option to Purchase Agreement (Lease/Purchase Agreement) effective December 15, 2016. The Lease/Purchase Agreement was approved by the District on December 15, 2016, by Resolution Nos. 2017-03 and 2017-04.

Babcock Ranch Irrigation, LLC, a non-regulated company, is also a party to the Lease/Purchase Agreement and has been combined with MSKP to form the District’s new water, sewer and irrigation water utility, Babcock Ranch Water Utilities (Babcock Ranch).

On December 15, 2016, the District also approved Babcock Ranch’s budget (Resolution No. 2017-06) and established Babcock Ranch’s proprietary fund and receipts depository for the leased MSKP facilities (Resolution No. 2017-05). Babcock Ranch’s rates and charges were approved by the District on January 26, 2017, by Resolution No. 2017-08.

Pursuant to the Lease/Purchase Agreement MSKP will retain legal title to the water and sewer assets until October 1, 2040.³ Likewise, Babcock Ranch Irrigation, LLC will retain legal title to the irrigation system assets until October 1, 2040. MSKP and Babcock Ranch Irrigation, LLC have the right under the Lease/Purchase Agreement to sell the Utility and irrigation assets to the District at any time before October of 2040.⁴ The purchase price for Babcock Ranch is currently estimated at \$287.4 million in 2040.⁵ Until the sale, the District is required to pay base rent which currently is \$23,107.75 per month for water, sewer and irrigation assets (\$10,764.00 – water, \$9,866.67 – sewer and \$2,477.08 – irrigation).⁶

The District is solely responsible for the operation and maintenance of the Utility at this time and has contracted with Fishkind & Associates to provide billing, administrative and customer services. The District has also contracted with MSKP to provide maintenance and operation services for Babcock Ranch for which MSKP is paid “additional rent.”⁷

Pursuant to Section 367.071(4)(a), F.S., and Rule 25-30.038(2)(e), F.A.C., MSKP has provided a copy of its most recent Annual Report to the District. In accordance with Rule 25-30.038(2)(f), F.A.C., the MSKP has stated that it does not hold any customer deposits. MSKP has paid its outstanding regulatory assessment fees through December 15, 2016, and is not required to file its 2016 Annual Report.

²Order No. PSC-09-0164-FOF-WS, issued on March 23, 2009, in Docket No. 080610-WS, *In re: Application for transfer of water and wastewater utility asset of Ferncrest Utilities, Inc. in Broward County to Tindall Hammock Irrigation and Soil Conservation District, and cancellation of Certificate Nos. 13-W and 10-S.*

³3.1 Lease/Purchase Agreement.

⁴2.1, Lease/Purchase Agreement.

⁵Exhibit B, 14.2.

⁶However, the District has the option of deferring rental payments until such time as Babcock Ranch has sufficient customers to pay deferred rental payments. [Document No. 03706-17, filed March 20, 2017.]

⁷Exhibit C, 7.1.1.

Based on the above, staff has concluded that MSKP and the District have fully complied with the requirements of Section 367.071(4)(a), F.S., and Rule 25-30.038, F.A.C., and recommends that the Commission acknowledge the transfer of MSKP to the District as a matter of right and cancel Certificate Nos. 613-W and 543-S effective December 15, 2016.

Issue 2: Should this docket be closed?

Recommendation: Yes. If the Commission approves staff's recommendation in Issue 1, no further action is required by the Commission, and the docket should be closed upon the issuance of the final order. (Brownless)

Staff Analysis: If the Commission approves staff's recommendation in Issue 1, no further action is required by the Commission, and the docket should be closed upon the issuance of the final order.