

State of Florida



Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: March 24, 2022

TO: Adam J. Teitzman, Commission Clerk, Office of Commission Clerk

FROM: Ryan Sandy, Senior Attorney, Office of the General Counsel *RPS*

RE: Docket # 20210189-WU - Application for transfer of water facilities of Camachee Island Company, Inc. d/b/a Camachee Cove Yacht Harbor Utility and Certificate No. 647-W to Windward Camachee Marina Owner LLC, in St. Johns County.

Please place the attached correspondence from Charles J. Rehwinkel in the above referenced docket file.

Thank you.

RPS



WILTON SIMPSON
President of the Senate

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CHRIS SPROWLS
*Speaker of the House of
Representatives*

March 23, 2022

Ryan Sandy, Esq.
Office of General Counsel
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850

VIA E-Mail

Re: Docket no 20210189-WU; In re: Application for transfer of water facilities of Camachee Island Company, Inc. d/b/a Camachee Cove Yacht Harbor Utility and Certificate No. 647-W to Windward Camachee Marina Owner LLC, in St. Johns County.

Dear Mr. Sandy:

The Office of Public Counsel (OPC) is an interested party in this docket. We have reviewed the docket file and have identified some preliminary issues and questions related to the nature of the transaction leading to the application for certificate transfer. These issues loosely relate to questions arising in the nature of acquisition adjustment, land transactions, affiliate transaction and potentially the concept of "gain-on-sale."

Having said this, we have not identified a concern about the actual certificate transfer itself and it is not our objective to derail the transfer or the transaction. Nevertheless, given that the Commission has recently emphatically reaffirmed its policy that establishment of rate base is inseparable from the actual certificate transfer decision, we are raising these questions now in the hopes that we can have our questions

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answered consistent with long-standing Commission public interest policies so that we do not need to intervene or impose unnecessary cost or delay on the applicant.

We have drafted a set of questions (attached) that we would offer to the Staff for its consideration and perhaps for submission to the company. We would even go so far as to suggest that it might be even more efficient to have an informal meeting with the applicant so that these questions or a substantial subset of them could be discussed and answered informally. It would be our ultimate hope that such a discussion could lead to a productive resolution of our questions that could facilitate conclusion of the requested relief (transfer) without any formal intervention by the OPC.

If you have any questions about this submittal, please do not hesitate to contact me at 850.717.0328.

Sincerely,

S/Charles J. Rehwinkel
Charles J. Rehwinkel
Deputy Public Counsel

Attachment

Cc: Bart Fletcher
Andrew Maury
Kerri Maloy
Travis Staats (Camachee Cove)
Robert Finvarb (Windward Camachee)

OPC initial observations and Questions

Land

1. Purchase and Sale Agreement (PSA) was dated March 29, 2021
 - Seller: Camachee Island Company, Inc.
 - Seller: Camachee Cove Yacht Harbor, Inc.
 - Buyer: Windward Marina Group, Inc.
 - The PSA sold three groups of assets
 - 225.4345 acres of land in fee simple
 - The marina business
 - The water plant (no mention of other utility assets)
 - Purchase price was \$32,885,558 allocated as follows:
 - Land - \$4,000,000
 - Buildings - \$5,000,000
 - Docks and piers - \$10,000,000
 - Machinery and Equipment - \$1,000,000
 - Goodwill - \$9,885,558
 - Bulkhead and seawall - \$3,000,000
 - Question: When did this transaction close?
2. A Bill of Sale dated August 29, 2021 purports to be a receipt for payment from Windward Camachee Marina Owner LLC for assets that include the non-land portion of the water utility.
 - Question: Was any of the land associated with the water utility included in this bill of sale/receipt?
3. First Amendment to PSA was executed on June 30, 2021, adjusting closing date terms.
 - Seller: Camachee Island Company, Inc.
 - Seller: Camachee Cove Yacht Harbor, Inc.
 - Buyer: Windward Marina Group, Inc.

4. Second Amendment to PSA was executed on August 30, 2021 reflecting an assignment of the buyer's interests to Windward Camachee Marina Owner LLC, executed on Windward Camachee Marina Owner LLC's behalf by Windward Camachee Marina Manager LLC.

- Seller: Camachee Island Company, Inc.
- Seller: Camachee Cove Yacht Harbor, Inc.
- Buyer: Windward Camachee Marina Owner LLC

5. A Special Warranty Deed dated August 31, 2021 conveys 8 parcels of property that contain the same parcel numbers as those listed in the PSA. [Note: the signatures on the Deed are notarized on August 30, 2021.]

- Seller: Camachee Island Company, Inc.
- Seller: Camachee Cove Yacht Harbor, Inc.
- Buyer: Windward Camachee Marina Owner LLC [NOTE: different entity than buyer on original PSA; Delaware incorporation on 6.17.21 and Florida incorporation on 6.23.21]

6. March 1, 2022 Response to staff's February 12, 2022 letter indicates that the ownership percentage of the acquiring entities (greater than 5%) are as follows:

- RF Camachee, LLC - 12% (Robert Finvarb, Inc. in Fla/Delaware in 2019 under different name; current name 6.30.2021)
- WT St. Augustine Marina Group, LLC - 7% (Delaware incorporation, 10.18.19)
- Nalpak Marina IV Camachee, LLC - 44% (Northbrook, Illinois; Delaware incorporation 7.23.21)
- AMBAR V Holdings LLC - 7% (Aventura; Florida incorporation 6.16.21)
- Cumulative ownership interests <5% - 30%.
- **Question:** Who are the other owners of the utility comprising the remaining 30%?
- **Question:** Do any entities or individuals hold an interest in the utility in a percentage that is different than the interests that they hold for the balance of the "entire asset" as that term is used in Part II, A), 2)b) of the Application?

7. Exhibit 4 to the PSA states that “Windward Camachee Marina Owner LLC will be using it’s [sic] sister company Windward Marina St. Augustine to provide funding to the utility. Windward Camachee Marina LLC [omits word “Owner”] does not have any financial agreement between Windward Marina St. Augustine and the utility.” [Note the last sentence of this statement does not make sense. Additionally, there is no description of how these companies are related to each other and how they are related to the utility.]
- **Question:** What ownership interest, if any, will Windward Marina St. Augustine hold in the utility?
 - **Question:** On the Consolidated balance sheet shown in Exhibit 4 to the Application, please state whether the land associate underlying the water utility facilities is included in the \$3,000,000 balance shown under the “Consolidated” column?
 - **Question:** Please clarify the last sentence in the response to Exhibit 4 of the Application by stating whether no such “financial agreement” exists or whether you are saying that an entity called “Windward Camachee Marina LLC” (which is not the applicant) does not possess such agreement. In your response, please state definitively whether such an agreement exists and who possesses it?
8. Was any specific parcel of land ever dedicated to the utility? If so, please provide a legal description of such dedicated land and identify which of the Parcel Nos. in the Special Warranty Deed dated August 30, 2021 holds such dedicated utility land?
9. Was any land that was dedicated to the utility in 2009, as acknowledged by the grandfather certificate order (Order No. PSC-2009-0752-PAA-WU), transferred away from the utility prior to the requested approval of the certificate transfer that is pending in this case?
10. What was the role of the land underlying the water facility in facilitating the overall \$32.8 million PSA?
11. Please identify what steps were taken as a part of preparing to consummate the PSA transaction to provide clear title to the buyer, including performing an appraisal, abstract(s) of title, and obtaining a title opinion, including

identification of any encumbrances on the land resulting from the existence of the utility and Order No. PSC-2009-0752-PAA-WU.

12. If the utility was to be sold by CIC (or the legal owners) in the future, how would the land be partitioned?
13. In the PSA under the preliminary statement, is it true that the land underlying the water utility facilities is included in the parcels listed in section "A" on page 1?
14. In the PSA under the preliminary statement, are any of the water utility facilities included in the description in section "B" statement on pages 1 and 2?
15. In the PSA under the preliminary statement, are all of the water utility facilities included in the description in section "C" statement on page 2?
16. In the PSA under the preliminary statement, is any of the land underlying the water utility facilities included in the description in section "C" statement on page 2?
17. In Schedule 4 attached to the PSA, is any of the land underlying the water utility facilities included in the \$4,000,000 allocation to land?
18. What is the percentage of the 225.45 acres included in the PSA transaction that comprises the land dedicated to the water utility facilities?
19. In Schedule 4 attached to the PSA, is the land dedicated to the water utility facilities included in any of the categories other than "Land"? If so, where?
20. In Schedule 4 attached to the PSA, are the water utility facilities included in the \$1,000,000 allocation to "Machinery and Equipment"?
21. In Schedule 4 attached to the PSA, are any of the water utility facilities included in a category other than "Machinery and Equipment"? If so, where?
22. In Schedule 4 attached to the PSA, what portion, if any, of the \$9,885,558 in "Goodwill" is attributable to the water utility?

Acquisition adjustment

23. In the applicant's opinion, is there an acquisition adjustment resulting from the PSA transaction?
24. In the applicant's opinion is any acquisition adjustment resulting from the PSA transaction positive or negative?
25. Is the applicant requesting recognition of a positive acquisitions adjustment or asking the commission to ignore a negative acquisition adjustment?
26. If the applicant believes that a positive acquisition adjustment results from the PSA transaction, will the applicant nevertheless state in writing that it is not now nor will it in the future be, seeking recognition of a positive acquisition adjustment?
27. If the applicant believes that a negative acquisition adjustment has resulted but that it should be ignored, what are the reasons offered by applicant supporting the commission taking this action?
28. In the application at D(2), the applicant states that "the overall property is falling into disrepair." Does this apply to the utility specifically? If so, please describe how the state of disrepair manifests itself.
29. Did the purchaser(s) of the utility rely in any way on a state of disrepair of the utility specifically and any Commission policy established to provide an incentive for buyers to take over failing systems as a reason for making the purchase under the PSA?
30. Please identify the percentage of the overall \$32.8 million purchase represented by the value of the utility (including the land).
31. How, if at all, did the state of disrepair of the utility factor into the decision to consummate the PSA transaction?
32. Please provide an organizational chart showing all affiliated entities up to and including the ultimate parent of the applicant.

33. Please identify the portion of the purchase price allocated to the utility and how that relates or is broken down into the categories shown on Schedule 4, Page 38 of the original Purchase and Sale Agreement attached to the application filed with the Commission
34. In Order No. PSC-2009-0752-PAA-WU, issued November 16, 2009, the Commission states that “the application contains a warranty deed as proof of ownership of the land on which the water facilities are located.” Please identify what circumstances, if any, have changed since November 16, 2009 that have caused this statement to not be accurate?

Connections

35. How is the discrepancy between PSC-reported connections (98) and connections reported to DEP (102) reconciled?
36. Are there any unmetered and/or unbilled transfers of water to any affiliate?