

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 7, 2022

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

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

RE: Docket No. 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*

April 1, 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. On March 23, 2022 we sent a letter to you containing questions and issues and requested an informal meeting with the Staff and Company. Thank you for setting up the meeting and we appreciate your willingness to facilitate it.

Attached is a more specific list of concerns that we hope can focus the conversation, at least from the public Counsel's standpoint. The OPC is supportive of the transaction and the transfer. We look forward to being part of a constructive conversation.

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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 Camachee Issues/Concerns

1. Most importantly, OPC is supportive of the transfer.
2. Our concerns lie in the unintended precedent that could be created here:
 - a. There is a large purchase price compared to NBV/original cost of utility.
 - b. Uncertainty about acquisition adjustment created by several factor:
 1. No allocation of purchase price to the utility entity.
 2. Indistinct attribution of land asset to the utility.
 3. Uncertainty about impact of the past mortgaging of the utility land and the utility assets.
 4. Uncertainty about who has majority organizational control.
 5. Whether the land is actually owned by the utility.
3. Why are these a concern?
 - a. It is unclear is there is a positive or a negative acquisition adjustment here. A negative acquisition adjustment results when the purchase price is less than the net book value (NBV) of the utility. If there is no allocation of transaction cost to the utility assets (including the land) it is impossible to determine if this occurred. The staff auditors were concerned that this might have been the case.
 - b. If the purchase price exceeds the traditional NBV, then a positive acquisition adjustment occurs. In this case an acquisition adjustment of between \$0 and \$32 million results depending on how much of the purchase price is allocated to the utility asset. Under the Commission policy of establishing ratebase at the time of transfer, this acquisition

adjustment issue needs to be resolved once and for all and not left indeterminate for re-visitation in the future.

c. Even though it appears that the 2021 Camachee transaction was never structured around the utility, without certain criteria it could provide a blueprint for a purchaser who intentionally structures the transaction in an indistinct way that (a) facilitates assigning an excessive appraised value to the utility for ratemaking purposes and then (b) provides an opportunity to transfer artificially overvalued land, post transaction, away from the utility without triggering a conventional gain on sale.

- In step (a), the subjective over-allocation of land cost to the utility could inflate an appraised value for ratemaking purposes in an environment where the original cost of the utility land is irrelevant for ratemaking purposes. This concern exists because there has never been a document provided to the commission that describes the precise land underlying the utility. In 2009, a deed was accepted by the Commission, but it appears to be for a piece of property far larger than what would reasonably lie under the utility plant. This is the source of a major concern related to future land transfers in the ratemaking context.
- In step (b), to the extent there is not a direct assignment of land cost at the time of sale (as is the case in Camachee), a post-sale, arbitrary allocation of a high utility land cost could facilitate a transfer of land away from the utility without triggering a gain-on-sale. In this scenario the “gain” would be subsumed in the allocation process and the appraisal valuation. For example, an original cost piece of

property that was allocated a \$10,000 cost years ago, is allocated \$100,000 in a purchase transaction or appraisal. If half of that land is sold for \$50,000, under conventional ratemaking, a \$45,000 gain results ($\frac{1}{2} \times \$10,000$ (conventional original cost) = \$5,000 deducted from $\frac{1}{2} \times \$100,000$ (post transaction land sale price) = \$50,000, resulting in \$45,000 gain). This would be credited to the customers in the ratemaking process under certain circumstances. Under the allocation/appraisal/fair market value process the “gain” is zero. ($\frac{1}{2} \times \$100,000$ (“new” FMV allocated original cost) = \$50,000 deducted from $\frac{1}{2} \times \$100,000$ (post-transaction land sale price) = \$50,000, resulting in \$0 gain.). Customers would not receive the benefit of any gain in future ratemaking.

- d. There are other issues related to the mortgaging of the utility plant and the utility land since 1976 and as recently as 2019 (Centerstate Bank). It is unclear how the mortgaging was related to the utility and for whose benefit these regulated utility assets were pledged as collateral (through mortgaging and UCC financing statements). This raises questions about the capital structure for ratemaking purposes. Though the transaction is described in the application as 100% cash, there is no recorded satisfaction/release of the 2019 mortgage.
- e. Ownership of the utility is cloudy in that in the application the largest single owner is shown as Nalpak Marina IV, Camachee, LLC at 44%, while 30% of the ownership is undisclosed. It is unclear whether transfer of majority organization control of the utility has already occurred and if so, when and to whom.

4. The OPC wishes to clear these issues up in a manner that facilitates the intended sale, while not creating any unintended precedent in future ratemaking. We would like to work with the Company and staff to resolve these concerns so that the Commission can finalize approval.