Antonia Hover

From: Office of Commissioner Passidomo
Sent: Monday, February 13, 2023 8:51 AM
To: Commissioner Correspondence
Subject: Docket No. 20220156
Attachments: Re docket 20220156

Please place the attached in Docket No. 20220156.

Thank you!

Antonia Hover

From: Diana Danin <jeladi1@gmail.com>
Sent: Friday, February 10, 2023 11:47 PM
To: Sonica Bruce; Jennifer Crawford; Melinda Watts; Shaw Stiller
Cc: Diana Danin; Adam Teitzman; Office of Chairman Fay; Office of Commissioner Graham; Office of Commissioner Clark; Office of Commissioner La Rosa; Office of Commissioner Passidomo
Subject: Re: docket 20220156
Attachments: Lynch Response (2).pdf; Haffner -.pdf; Aug 31, 2000 Sorry we didn't know letter 09513-2000.pdf; docket 991889 Non compliance in 2001 -01104-2001.PDF; docket 001083 + 991889 - non-compliance rule 367.071 01105-2001.PDF

Follow Up Flag: Flag for follow up
Flag Status: Flagged

Please make this email and its attachments part of document filings for docket 20220156.

If the PSC is not going to enforce and penalize this utility I would like the PSC to send me a letter of explanation as to why they consistently let this utility violate its rules without consequence. Perhaps there is a reason that I am not comprehending. Because if I don't follow the rules, the utility would certainly charge me late fees and penalties. So I would like to understand why this company gets special consideration from the PSC when they have failed to notify the PSC of the sale/transfer of ownership of the utility that occurred in January 2019 and which also resulted in a failure to file proper required annual reports in the correct name since that time, and failure to comply with rules around billing. Each of these violations carry significant monetary penalties that the PSC has authority to implement.

With this email I renew my objections to the approval of a name change for Certificate Nos. 277-W and 223-S from CWS Communities LP dba Palm Valley Utilities to Hometown Palm Valley LLC dba Palm Valley Utilities for the following reasons:

1. As previously stated, if the PSC were to grant anything it would have to be approval of change in ownership (not a simple name change) since ownership of the utility company was transferred in January 2019 from CWS Communities LP to Hometown Palm Valley LLC without notification to or approval from PSC. Additionally, I believe based on documents submitted that there is also a change in majority organizational control which requires submission of a host of additional documents that have not been submitted by the utility. Both of these violations are subject to significant penalties.

2. More importantly, the PSC will find that PSC representative Sonica Bruce communicated with the utility in the attached letter and documented that

a. the utility filed a petition for name change in 2004 for the purpose of billing for utilities separate from rent and then, upon commission approval of that request, never separated out the billing.

b. Ownership of the utility in the same corporate name as the Manufactured Home Park - has led to overbilling of utilities to senior citizen residents, failure to prorate initial base charges, the turning-on of utility service and billing automatically on the same date as the land lease is signed without giving customer the right to select a turn-on or turn-off date, failure to comply with rule 25-30.335(1) that requires bills to provide dates of billing period and delinquent dates.

3. The accounting for the utilities being directly integrated into the accounting for the manufactured home park is not in compliance National Association of Regulatory Utility Commissioners (NARUC) Uniform System of Accounts (USOA).

This utility was previously cited for this violation and I allege they continue this violation today. The Aug 29, 2000 vote sheet stated the following:

> Should Alafaya be ordered to show cause, in writing within 21 days, why it should not be fined for its failure to obtain Commission approval prior to transferring its facilities to CWS, in apparent violation of Section 367.071, Florida Statutes?

Recommendation: No. A show cause proceeding should not be initiated, but the utility should be placed on notice that it is expected to know and comply with the Commission's rules and regulations.

Issue 2: Should Alafaya be ordered to show cause, in writing within 21 days, why it should not be fined up to $5000 per day for failure to maintain its accounts and records in conformance with the National Association of Regulatory Utility Commissioners (NARUC) Uniform System of Accounts (USOA), in apparent violation of Rules 25-30.115(1), FAC

Recommendation: No they should not be ordered to show cause at this time. However the utility should be ordered to maintain its books and records in conformance with the 1996 NARUC USOA, and submit a statement from its accountant by March 31, 2001, stating that its books and records are in conformance with NARUC USOA.

4. Because the PSC allows the utility to be owned by the real estate company, you are providing the real estate company with protection from being prosecuted under the Florida Unfair and Deceptive Business Practices Act which precludes any action against a company governed by the Public Service Commission.

When Palm Valley community residents have a complaint against Hometown Palm Valley LLC for unfair and deceptive business practices, unrelated to utilities, and we can't file suit under this Act because the PSC governs the company.

I do not believe the legislature intended the PSC to be a protective barrier in this manner.

501.212 Application.—This part does not apply to:

(5) Any activity regulated under laws administered by the Florida Public Service Commission.

4. On Feb 10th Hometown America sent the attached letter to one of their customers. In this letter the utility represents that the utility is "Hometown Palm Valley L.L.C. as the affiliate successor to CWS Communities LP dba Palm Valley Utilities".

This utility is once again using a name that the PSC has not yet approved in blatant violation of PSC rules and the FAC. Docket 20220156 has not been approved and the certificates are still in the name of CWS Communities LP.

The PSC should stop them from using a name not yet approved.

Summary/Conclusion/Recommendation:

Deny the transfer of the utility from CWS Communities LP to Hometown Palm Valley LLC. Make this utility FINALLY separate out the utility company from the real estate company so that there will be a clear deliniation between billing to utility customers and billing to real estate leasing customers.

Enforce and penalize for non-compliance of PSC rules. How many PSC rules is this Commission going to allow this utility company to violate without finally filing an order to show cause why they should not have to pay fines of $5000 a day for each of their violations. It is not as if this is a small utility company without resources. On the contrary - it is a **multi-billion-dollar** real estate company (they own over 70 Manufactured Home parks throughout the United States) with significant resources including attorneys and staff to ensure compliance with utility company rules that chooses to dabbles in its utility business - and has proven that it has little regard for operating within the rules.

I am in the process of compiling a list of all the Commission Orders and Dockets that show the violations, especially the multiple violations for failure to notify the PSC of change in ownership. In the past, the utility simply say, "oops sorry we didn't know" and the PSC consistently lets them slide. I will present this list in a separate email.

Companies like this only change when violations cost them money. The PSC, as the enforcing authority should penalize them. It is the only language they understand.

Respectfully,
Diana L. Danin
938 East Palm Valley Drive
Oviedo, Fl 32765
407-733-2662
jeladi1@gmail.com

COMMISSIONERS:
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STATE OF FLORIDA

DIVISION OF ECONOMICS
JUDY HARLOW
DIRECTOR
(850) 413-6410

Public Service Commission

January 19, 2023

Mr. Gregory Lynch, General Counsel
Hometown America
glynch@hometownamerica.net

Re: CWS Communities LP d/b/a Palm Valley (utility)

Dear Mr. Lynch:

I am writing you in response to your letter dated November 28, 2022. Staff has had an opportunity to review your letter and the information that has been provided by Ms. Danin. In your letter you explained that the base facility charge is billed on a monthly (i.e., the month of September) basis, while the usage charges for water and wastewater are billed based on the date the meter is read and the billing cycle the customer is on. Historically, the Commission views the billing cycle of the base facility charge (BFC) as coinciding with that of the usage. As you indicated, when the utility issues a bill, the usage is billed on a cycle that may overlap between months and the BFC is billed on a calendar month, which is not distinguishable on the bill. This appears to be creating the confusion as to whether a customer is being billed the appropriate BFC. In addition, the bill also includes the rent obligations.

In 2004, the utility filed a petition requesting a name change. In its petition, the utility explained that customers had been receiving one bill that included rent and the charges for water and wastewater services from Palm Valley, the owner of the utility and the manufactured home community. To allow for a separate bill for water and wastewater service from the rent bill, the water and wastewater utility billing would be made under the new name "Palm Valley Utilities." Pursuant to Order No. PSC-2004-1169-FOF-WS, issued November 23, 2004, in Docket No. 20040765-WS, the Commission approved the utility's request and a tariff which contained a copy of the bill that would be used for purposes of billing for water and wastewater services only. The Order approving the name change stated that "a name change would distinguish the water and wastewater billing from the rent invoice." This bill was in compliance with the requirements of Rule 25-30.335, Customer Billing, Florida Administrative Code, (F.A.C.).

Rule 25-30.335(1), F.A.C., requires that each bill must indicate the billing period covered. Although not explicitly written, staff does not believe the rule contemplates two different billing periods for the base facility charge and the usage charge. The rule refers to "the billing period" and not billing periods. Furthermore, the utility's bill does not indicate that two different billing periods are being used.

In addition, Rule 25-30.335(1), F.A.C., requires that the bill must contain the delinquent date or the date after which the bill becomes past due; and any authorized late payment charge. This information is not shown on the bill that is rendered by the utility. Further, pursuant to the above-referenced rule, a bill for utility service is due 20 days after the bill date. Staff is not certain of the actual date a bill is sent. However, staff believes the due date of the first of the month is for rent, but would not be the due date for the utility service.

In order to aid in our continued review of any overbilling, please provide staff with an explanation as to why the utility is not billing the utility services separately from the rent, as approved by the Commission in Order No. PSC-04-1169-FOF-WS. Please also discuss why the utility does not bill the base facility charge and the charges for usage for the same billing period, as contemplated by Rule 25-30.335, F.A.C. Finally, please state the past due date for an invoice received in September for payments that are due October 1st.

There is no official docket for this matter at this time. When providing your response, please reference Docket No. 20230000-OT, which is for undocketed matters. Please provide your response by February 17, 2023 to Commission Clerk, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, FL or you may efile as prescribed on our website under Clerk's Office tab at www.floridapsc.com. If you have any questions, please feel free to contact me at 850-413-6994 or at sbruce@psc.state.fl.us. For legal matters, please feel free to contact Daniel Dose at (850) 413-6846 or at ddose@psc.state.fl.us.

Sincerely,

Sonica C. Bruce
Economic Analyst

cc: Gary Paugh (gpaugh@hometownamerica.net)
Rachel Zemke (rzemke@hometownamerica.net)
Diana Danin (seladi1@gmail.com)
Marty Deterding (mdeterding@sfflaw.com)

HOMETOWN AMERICA
COMMUNITIES

February 10, 2023

Ms. Karen Haffner
3796 Senegal Circle
Oviedo, Florida 32765
Email: on_time2@hotmail.com

Re: Response to Complaint filed with the Public Service Commission ("PSC") Regarding Billing at Palm Valley, Oviedo, Florida (the "Community")

Dear Ms. Haffner:

We are writing in response to the complaint you filed with the PSC on January 20, 2023, regarding the billing practices used by Hometown Palm Valley, L.L.C. (the affiliate successor to CWS Communities LP) d/b/a Palm Valley Utilities ("Palm Valley"). In your complaint, you expressed confusion over the due date of the various payments reflected on Palm Valley's monthly invoice.

As you pointed out in your complaint, Palm Valley does in fact provide a single invoice for all charges due from each resident, including both rent and utilities. This is done because we have found in practice that our residents prefer to receive a single invoice for all monthly amounts due. They find it easier to make a single payment each month. On each invoice, we do provide a breakdown of the various charges so that the water and sewer charges are separately identifiable. However, the invoice does in fact state a singular due date for all charges. Rule 25-30.335(6) of the Florida Administrative Code states that a resident may not be deemed delinquent on a utility payment until at least the 21st day following the date the invoice was mailed. We acknowledge that the due date reflected on our invoice is not consistent with the timeline prescribed by this Rule.

Administratively, we have not, in the past, charged late fees on the water and sewer fees based on the due date reflected on the invoice. That being said, we recognize how that policy is not noted on the invoice and thus the resident would have no reason to believe the 1st of the month due date is not also applicable to the utility related charges. To address this issue, we will work with our billing service provider to make changes to our form of invoice so as to clearly distinguish the due dates for rent and utilities. The 1st of the month will remain the due date for the base rent charges. However, we will separately identify a due date specific to the utility charges, which date will not be less than 20 days following the date of the invoice.

We apologize for the confusion that the current invoice has caused, and we hope the above addresses your concern. If you have any questions or would like to further discuss the above, please do not hesitate to reach out to the Community Manager, and a representative from the Community will get back to you promptly.

Sincerely,

Gena F Paugh, Regional Vice President Hometown America

DK 991984-WS

PALM VALLEY
ACTIVE RETIREMENT COMMUNITY

ORIGINAL

August 31, 2000

Public Service Commission
Atten: Cheryl Johnson
Capital Circle Office Center
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

991984-WS

Dear Ms. Johnson,

On behalf of CWS Communities LP, we were unaware that we needed the Public Service Commissions approval prior to closing on the Property and Utility. We thought that the application for transfer of certificate would need to be submitted after the closing. I apologize for this assumption and did try to process the application as soon as possible following the closing.

The Utility and the Palm Valley Community continue to be managed by the same management team that was in place when ownership transferred from Alafaya Palm Valley Associates, Ltd. to CWS Communities LP. Our plan is to keep the service and quality consistent with what our customer has become accustomed to.

Call if any questions.

Thanks again,

Sandra Seyffart
Community Director

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Division of Regulatory Oversight

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3700 Palm Valley Circle • Oviedo, Florida 32765 • 407-366-0733 • Toll Free 1 (800) 955-7256

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: JANUARY 25, 2001

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYÓ)

FROM: DIVISION OF REGULATORY OVERSIGHT (CLAPP, REDEMANN)
DIVISION OF LEGAL SERVICES (CROSBY, GERVASI)

RE: DOCKET NO. 991889-WS - APPLICATION FOR TRANSFER OF CERTIFICATES NOS. 525-W AND 454-S IN HIGHLANDS COUNTY FROM CRYSTAL LAKE CLUB TO CWS COMMUNITIES LP D/B/A CRYSTAL LAKE CLUB.
COUNTY: HIGHLANDS

AGENDA: FEBRUARY 6, 2001 - REGULAR AGENDA - PROPOSED AGENCY ACTION FOR ISSUES 4 AND 5 - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: COMMISSION MAY WANT TO CONSIDER DOCKETS NO. 001083-WU AND 991889-WS CONSECUTIVELY

FILE NAME AND LOCATION: S:\PSC\RGO\WP\991889WS.RCM

CASE BACKGROUND

Crystal Lake Club (Crystal Lake or utility) is a Class C utility serving 443 residential water and wastewater customers in Highlands County. The utility was granted Wastewater Certificate No. 454-S by Order No. 21515, issued July 7, 1989, in Docket No. 881002-SU and Water Certificate No. 525-W by Order No. 22300, issued December 12, 1989, in Docket No. 891011-WU. The utility's 1999 annual report lists total gross revenues of $59,290 for water and $51,512 for wastewater with net operating losses of $5,857 for water and $13,583 for wastewater.

On December 9, 1999, Crystal Lake submitted an application for transfer of the utility from Crystal Lake Community, Limited Partnership; Diamond Valley Associates, Ltd.; Friendly Village, Lancaster Associates, Ltd. d/b/a Crystal Lake Club (partners or

seller) to CWS Communities LP d/b/a Crystal Lake Club (CWS or buyer). Many deficiencies were found in this application. The final corrections were received on October 27, 2000. The transfer application is the subject of this recommendation.

According to the application, on March 6, 1998, the sellers and CWS entered into a real property exchange transaction, where CWS exchanged property (unnamed in the contract) that was not a mobile home park or a manufactured home community for the Crystal Lake Mobile Home Park and all improvements and easements including the Crystal Lake Club utility system. The contributed value (negotiated sales price) for the exchanged property is $10,131,149. The utility also provided an estimate of the rate base at the time of transfer, using the 1990 information formalized in transfer Docket No. 900527-WS and updated to August 30, 1999. This analysis resulted in a proposed value of the utility system as of the date of the proposed transfer of $172,900 for water and $258,600 for wastewater.

Section 367.071, Florida Statutes, requires that no utility shall sell, assign, or transfer its certificate of authorization, facilities or any portion thereof, or majority organizational control without prior approval of the Commission unless such sale, assignment, or transfer is made contingent upon Commission approval. The parties closed on the exchange of the utility on August 30, 1999, without having made the transfer contingent upon the approval of the Commission, which is an apparent violation of Section 367.071, Florida Statutes. This matter will be discussed further in Issue 1. The Commission has jurisdiction pursuant to Sections 367.071 and 367.061, Florida Statutes.

DISCUSSION OF ISSUES

ISSUE 1: Should Crystal Lake Club be ordered to show cause, in writing within 21 days, why it should not be fined for its failure to obtain Commission approval prior to transferring its facilities to CWS, in apparent violation of Section 367.071, Florida Statutes?

RECOMMENDATION: No. A show cause proceeding should not be initiated, but the utility should be placed on notice that it is expected to know and comply with the Commission's rules and regulations. (CROSBY)

STAFF ANALYSIS: Section 367.071(1), Florida Statutes, requires that:

> No utility shall sell, assign, or transfer its certificate of authorization, facilities or any portion thereof . . . , without determination and approval of the commission that the proposed sale, assignment, or transfer is in the public interest . . . . However, a sale, assignment, or transfer of its certificate of authorization, facilities . . . may occur prior to commission approval if the sale, assignment, or transfer is made contingent upon commission approval.

As stated in the case background, Crystal Lake Club closed on the transfer of its facilities to CWS on August 30, 1999, prior to obtaining Commission approval. In addition, the Real Estate Exchange and Contribution Agreement contained no provisions to make the agreement contingent upon Commission approval.

Section 367.161(1), Florida Statutes, 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, Florida Statutes. In closing on the transfer of its facilities prior to Commission approval, the utility's act was "willful" in the sense intended by Section 367.161, Florida Statutes. In 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 this is distinct from an intent to violate a statute or rule."

Although Crystal Lake Club's failure to obtain Commission approval prior to transferring facilities is an apparent violation of Section 367.071(1), Florida Statutes, there are circumstances that appear to mitigate the utility's apparent violation. Based on information provided by CWS, Crystal Lake Club was transferred on August 30, 1999 as part of a large property exchange which involved other time sensitive sale transactions. In addition to the large property exchange in this docket, CWS also purchased Alafaya Palm Valley Associates, Ltd. (Docket No. 991984-WS), and Route 19A North Joint Venture (Docket No. 001083-WU) at about the same time Crystal Lake Club was purchased. The circumstances are the same in each of

these transactions. Order No. PSC-00-1675-PAA-WS, issued on September 19, 2000, in Docket No. 991984-WS, placed CWS on notice that it is expected to know and comply with the Commission's rules and regulations.

Crystal Lake Club's failure to obtain the Commission's approval prior to transferring its facilities appears to be due to a lack of understanding and knowledge of the Commission's rules and regulations. Although Crystal Lake Club is held to know the Commission's rules and statutes under which it must operate, when this matter was brought to the utility's attention, the utility stated that it was not aware of the statutory requirement to obtain prior approval of the transfer from the Commission. Staff does not believe that the apparent violation of Section 367.071, Florida Statutes, rises in these circumstances to the level which warrants the initiation of a show cause proceeding. Staff recommends that Crystal Lake Club should not be ordered to show cause for failure to obtain Commission approval prior to transferring its facilities to CWS. CWS should again be placed on notice that it is expected to know and comply with the Commission's rules and regulations.

ISSUE 2: Should Crystal Lake be ordered to show cause, in writing within 21 days, why it should not be fined up to $5,000 per day for failure to maintain its accounts and records in conformance with the National Association of Regulatory Utility Commissioners (NARUC) Uniform System of Accounts (USOA), and for failure to maintain its books and records in-state, in apparent violation of Rules 25-30.115(1) and 25-30.110(1)(b), Florida Administrative Code, respectively?

RECOMMENDATION: No. Crystal Lake should not be ordered to show cause at this time. However, the utility should be ordered to maintain its books and records in conformance with the 1996 NARUC USOA. The utility should also be ordered to maintain its books and records in-state or request the requisite authorization from the Commission to continue to maintain them out-of-state. The utility should be ordered to submit a statement with its 2000 Annual Report from its accountant by March 31, 2001, stating that its books and records are in conformance with the 1996 NARUC USOA and indicating that its books and records are being maintained in-state or requesting authorization to maintain them out-of-state. (CROSBY, CLAPP)

STAFF ANALYSIS: Rule 25-30.115(1), Florida Administrative Code, states "Water and wastewater utilities shall, effective January 1, 1998, maintain their accounts and records in conformity with the 1996 NARUC Uniform Systems of Accounts adopted by the National Association of Regulatory Utility Commissioners." Accounting Instruction 2, of the NARUC USOA for Class C utilities states:

> Each utility shall keep its books of account, and all other books, records, and memoranda which support the entries in such books of account so as to be able to furnish readily full information as to any item included in any account. Each entry shall be supported by such detailed information as will permit a ready identification, analysis, and verification of all facts relevant thereto. (emphasis added)

Further, Accounting Instruction 4, of the NARUC USOA for Class C utilities states:

> Each utility shall keep its books on a monthly basis so that for each month all transactions applicable thereto, as nearly as may be ascertained, shall be entered in the books of the utility. Amounts applicable or assignable to specific utility departments shall be segregated monthly. Each utility shall close its books at the end

> of each calendar year unless otherwise authorized by the Commission. (emphasis added)
>
> Rule 25-30.450, Florida Administrative Code, states:
>
> In each instance, the utility must be able to support any schedule submitted, as well as any adjustments or allocations relied on by the utility. The work sheets, etc., supporting the schedules and data submitted must be organized in a systematic and rational manner so as to enable Commission personnel to verify the schedules in an expedient manner and minimum amount of time. The supporting work sheets, etc., shall list all reference sources necessary to enable Commission personnel to track to original source of entry into the financial and accounting system and, in addition, verify amounts to the appropriate schedules. (emphasis added)

During a staff audit of Crystal Lake's books and records in March 2000, staff learned that its accounts are commingled with those of the Crystal Lake Mobile Home Park and the books and records are maintained out-of-state. Even though the utility's books and records are commingled, staff was able to extract the necessary information for transfer purposes. The resulting audit report contained audit exceptions related to the utility's books and records.

Audit Exception No. 1. This exception was the audit opinion that the utility was not maintaining its books pursuant to Rule 25-30.115(1), Florida Administrative Code, which requires all water and wastewater utilities to maintain their accounts and records in conformance with the NARUC Uniform System of Accounts. The auditor further stated that: the utility accounts are commingled with those of the operation of the Crystal Lake community; documentation was not maintained at the utility location; the utility contracts with a CPA firm to prepare its Annual Report to the Commission; and, the Annual Report is prepared by extracting utility activity from its Crystal Lake community general ledger.

Moreover, documentation relative to utility operations and plant was located out-of-state, in apparent violation of Rule 25-30.110(1)(b), Florida Administrative Code. That rule requires that "[u]nless otherwise authorized by the Commission, each utility shall maintain its records at the office or offices of the utility within this state and shall keep those records open for inspection during business hours by Commission staff."

Section 367.161, Florida Statutes, authorizes the Commission to assess a penalty of not more than $5,000 per day for each offense, if a utility is found to have knowingly refused to comply with, or to have willfully violated any Commission rule, order, or provision of Chapter 367, Florida Statutes. 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). Thus, any intentional act, such as the utility's failure to maintain its accounts and records in conformance with the NARUC USOA, or its failure to maintain its accounts and records in-state, would meet the standard for a "willful violation." In 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, F.A.C., 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 "'willful' implies an intent to do an act, and this is distinct from an intent to violate a statute or rule." Id. at 6.

The seller's failure to maintain the utility's books and records in accordance with 1996 NARUC USOA is in apparent violation of Rule 25-30.115, Florida Administrative Code. However, the sellers do not operate the utility anymore because CWS has acquired its facilities and is currently operating the utility. Staff has received a verbal commitment from CWS of its intention to bring the books and records into compliance with the 1996 NARUC USOA. Moreover, with respect to the utility's practice of maintaining its books and records out-of-state, during the course of this proceeding, the utility endeavored to make the necessary information available to staff for the purposes of the audit. In light of these circumstances, staff believes that a show cause proceeding should not be initiated at this time.

For the foregoing reasons, staff recommends that Crystal Lake should not be ordered to show cause at this time, in writing within 21 days, why it should not be fined up to $5,000 per day for failure to maintain its accounts and records in conformance with the NARUC USOA or for failure to maintain its books and records in-state, in apparent violation of Rules 25-30.115(1) and 25-30.110(1)(b), Florida Administrative Code, respectively. However, the utility should be ordered to maintain its books and records in conformance with the 1996 NARUC USOA. The utility should also be ordered to maintain its books and records in-state or request the requisite authorization from the Commission to

continue to maintain them out-of-state.[1] The utility should be ordered to submit a statement with its 2000 Annual Report from its accountant by March 31, 2001, stating that its books and records are in conformance with the 1996 NARUC USOA and indicating that its books and records are being maintained in-state or requesting authorization to maintain the books and records out-of-state.

[1]In determining whether to request such authorization from the Commission, the utility should be aware that Section 367.121(1)(k), Florida Statutes, authorizes the Commission "[to] assess a utility for reasonable travel costs associated with reviewing the records of the utility and its affiliates when such records are kept out-of-state." And Rule 25-30.110(1)(c), Florida Administrative Code, defines reasonable travel expenses as "those travel expenses that are equivalent to travel expenses paid by the Commission in the ordinary course of its business."

ISSUE 3: Should the transfer of Certificates Nos. 525-W and 454-S from Crystal Lake Community, Limited Partnership; Diamond Valley Associates, Ltd.; Friendly Village, Lancaster Associates, Ltd. d/b/a Crystal Lake Club to CWS Communities LP d/b/a Crystal Lake Club be approved?

RECOMMENDATION: Yes, the transfer of Certificates Nos. 525-W and 454-S from Crystal Lake Community, Limited Partnership; Diamond Valley Associates, Ltd.; Friendly Village, Lancaster Associates, Ltd. d/b/a Crystal Lake Club to CWS Communities LP d/b/a Crystal Lake Club should be approved. A description of the territory being transferred is appended to this memorandum as Attachment A. (CLAPP, REDEMANN)

STAFF ANALYSIS: As stated in the case background, Crystal Lake applied for a transfer of its Water Certificate No. 525-W and Wastewater Certificate No. 454-S in Highlands County to CWS on December 9, 1999. Staff identified numerous deficiencies in the utility's application. Those deficiencies were corrected on October 27, 2000. The application is in compliance with the governing statute, Section 367.071, Florida Statutes, and other pertinent statutes and administrative rules concerning an application for transfer. The application contains a check in the amount of $1,500, which is the correct filing fee pursuant to Rule 25-30.020, Florida Administrative Code. The applicant has provided evidence, in the form of a recorded affidavit, that the utility facilities are located on real property dedicated to the utility and located within the boundaries of the land known as Crystal Lake Club, which is owned by CWS Communities LP, as required by Rule 25-30.037(2)(q), Florida Administrative Code.

In addition, the application contains proof of compliance with the noticing provisions set forth in Rule 25-30.030, Florida Administrative Code. No objections to the application were received, and the time for the filing of such objections has expired. A description of the territory served by the utility is appended to this memorandum as Attachment A. The service area attached is the original service area granted to the utility in Order No. 21515, issued July 7, 1989 and Order No. 22300, issued December 12, 1989.

Regarding the Buyer's technical ability, CWS will continue with the management team that has operated the water and wastewater utility for the past ten years. At the present time, the utility provides safe and reliable water and wastewater service to its customers, according to the application. CWS has the financial resources to maintain consistent compliance with environmental

regulations. Staff has contacted the Department of Environmental Protection (DEP) and has learned that there are no outstanding notices of violation against the utility.

According to the application, the Buyer's financial ability will not be affected by this transfer. CWS has provided the company's consolidated financial statements. The financial statements disclosed assets of $369,840,000 and equity of $290,328,000. CWS has indicated that it will provide the financial stability required to maintain the utility systems in accordance with Commission standards.

The application contains a copy of the real estate exchange and contribution agreement which includes the contributed value (negotiated sales price), terms of payment and a list of the assets purchased and liabilities assumed of Crystal Lake Mobile Home Park. The application also contains a statement that the transfer is in the public interest because the Crystal Lake Mobile Home Park will continue to receive the same quality and service as in the past since the same team will continue to operate the water and wastewater facilities.

Supplemental information from the applicant stated that at the time of closing there were no outstanding or pending customer deposits, guaranteed revenue contracts, developer agreements, or customer advances related to the utility. Additionally, the applicant stated that the buyer will fulfill the commitments, obligations and representations of the seller with regard to utility matters. The buyer stated that the existing debts of the utility will be paid by the utility.

According to our records, the utility is current on its regulatory assessment fees and has filed an annual report for 1999 and all prior years. CWS will be responsible for future annual reports and the payment of all regulatory assessment fees for the year 2000. The application states that CWS's representative has performed a reasonable investigation of the utility system. The water and wastewater plant facilities appear to be in satisfactory condition and in compliance with all applicable standards set by the Florida Department of Environmental Protection (DEP).

Based on the above, staff recommends that the transfer of assets and facilities from the seller to the buyer and the transfer of Water Certificate No. 525-W and Wastewater Certificate No. 454-S is in the public interest and should be approved.

Attachment A

CWS COMMUNITIES LP d/b/a CRYSTAL LAKE CLUB

HIGHLANDS COUNTY
WATER AND WASTEWATER SERVICE AREA

In Section 2, Township 34 South, Range 28 East

All that part of the SE 1/4 and the SE 1/4 of the NE 1/4 of Section 2, Township 34 South, Range 28 East, lying West of the A.C.L. Railroad right-of-way together with that part of lots 9 to 14 inclusive, of WARREN AND MONDAY'S SUBDIVISION as recorded in P.B. 1, Page 10, Highlands County, Florida, lying within the following described boundary.

Commence at the SE corner of Sec. 2, T. 34 S., R. 28 E.; run thence N. 1° 08' 50" W. along the line between Section 1 and 2 for 242.14 feet for a point of beginning, thence N. 89° 48' 08" W., 2042.29 feet; thence N. 1° 16' 18" W. in and parallel with the West line of said SE 1/4 for 2352.93 feet to intersect the North line of said SE 1/4 (being also the South line of said WARREN AND MONDAY SUBDIVISION); thence run N. 20° 20' 23" W. 899.56 feet to a point herein designated point "A" which is the Westerly end of a control line along Lake Denton; thence continue N. 20° 20' 23" W. 30 feet, more or less, to the shore of Lake Denton, thence Easterly along the meanders of Lake Denton, 370 feet, more or less to intersect the North line of lot 9 of WARREN AND MONDAY SUBDIVISION; thence N. 88° 38' 32" E., 50.0 feet, more or less along said North line to a point of the aforesaid control line which bears N. 68° 29' 12" E., 417.65 feet from said point "A", thence continue N. 88° 38' 32" E. along said North line of Lot 9, 626.48 feet to intersect the East line of SW 1/4 of NE 1/4, thence N. 1° 12' 34" W., 331.46 feet to the NW corner of SE 1/4 of NE 1/4, thence N. 88° 38' 48" E. along North line of SE 1/4 of NE 1/4, 220.95 feet to the Westerly R/W line of the A.C.L. Railroad R/W, thence S. 18° 16' 58" E. along said Westerly R/W, 3746.87 feet to the East line of Section 2; thence S. 1° 08' 50" E., along the section line 149.60 feet to the point of beginning. Lying in Section 2, Township 34 South, Range 28 East, Highlands County, Florida. Also a 50 foot easement whose centerline is described as beginning at a point 437.82 feet North and 2051.50 feet West of the Southeast corner of Section 2, Township 34 South, Range 28 East, Highlands County, Florida, run N. 89° 48' 08" W., 1548.40 feet, to the beginning of a 100 foot

easement, thence continue N. 89° 48' 08" W., 300.0 feet to a point in the East right-of-way boundary of SR-17A.

ISSUE 4: What is the rate base of Crystal Lake at the time of transfer?

RECOMMENDATION: The rate bases, which for transfer purposes reflect the net book value, are $161,702 for the water system and $223,687 for the wastewater system as of August 30, 1999. (CLAPP)

STAFF ANALYSIS: Rate base for the utility was established by Order No. PSC-94-0243-FOF-WS, issued March 4, 1994, in Docket No. 930572-WS, at $164,461 for the water system and $186,580 for the wastewater system. According to the application, the proposed rate base is $162,209 for the water system and $231,261 for the wastewater system. Rate base was determined by starting with the 1998 Annual Report and updating the information to the August 30, 1999 transfer date.

An audit of the utility's books was performed and the resulting report contained three audit exceptions concerning the utility's books and records. In Audit Exception No. 1, the auditor stated that the utility did not maintain its books and records in conformance with the NARUC USOA. This Exception is discussed in Issue 2.

Audit Exception No. 2. This exception was the audit opinion that Plant-in-Service and Accumulated Depreciation were incorrect. The audit balances from the previous audit were used for the beginning balances and verified Annual Report additions plus other additions and retirements were used to determine the depreciable plant balances. A water storage tank rehabilitation was attributed to Plant-in-Service instead of to expenses. An item was incorrectly posted to wastewater Plant-in-Service. The resulting Plant-in-Service should be decreased by $9,482 for the water system and decreased by $212 for the wastewater system. Staff applied Rule 25-30.140, Florida Administrative Code, depreciation rates to the audited plant subaccount balances from July 1993 to August 30, 1999. The resulting Accumulated Depreciation should be decreased by $7,029 for the water system and increased by $11,799 for the wastewater system.

Audit Exception No. 3. This exception was the audit opinion that the contributions-in-aid-of-construction (CIAC) and Amortization of CIAC were incorrect. Using the audit balances from the previous audit and verified Annual Report additions, the per audit CIAC and CIAC amortization were recalculated. The resulting CIAC is $475 more for the water system and $325 less for the wastewater system. The resulting Amortization of CIAC is $2,421 more for the water system and $4,112 more for the wastewater system.

Staff recommends that, as of August 30, 1999, rate base for the Crystal Lake system is $161,702 for the water system and $223,687 for the wastewater system. The schedule of water rate base is shown on Schedule No. 1, with adjustments set forth on Schedule No. 2. The schedule of wastewater rate base is shown on Schedule No. 3, with adjustments set forth on Schedule No. 4. The rate base calculations are used solely to establish the net book value at the time the property is transferred. As such, the calculations do not include the normal ratemaking adjustments of working capital calculations and used and useful adjustments.

SCHEDULE 1

CRYSTAL LAKE CLUB
SCHEDULE OF WATER RATE BASE
AS OF AUGUST 30, 1999

DESCRIPTION	BALANCE PER UTILITY	STAFF ADJUSTMENTS	BALANCE PER STAFF
Utility Plant in Service	$ 398,816	$(9,482)	$ 389,334
Land	3,403	0	3,403
Accumulated Depreciation	(121,107)	7,029	(114,078)
Contributions in Advance of Construction (CIAC)	(165,450)	(475)	(165,925)
Amortization of CIAC	46,547	2,421	48,968
WATER RATE BASE	$ 162,209	$(507)	$ 161,702

SCHEDULE 2

CRYSTAL LAKE CLUB
SCHEDULE OF WATER RATE BASE ADJUSTMENTS

EXPLANATION	STAFF RECOMMENDED ADJUSTMENT
Utility Plant-in-Service	
1) To account for verified additions and retirements from June 1993 through August 30, 1999	$(9,482)
Accumulated Depreciation	
1) To recalculate depreciation based on service life pursuant to Rule 25-30.140(2)	7,029
Contributions in Advance of Construction (CIAC)	
1) To account for CIAC from June 1993 through August 1999.	(475)
Accumulated Amortization of CIAC	
1) To account for amortization of CIAC from June 1993 through August 1999	2,421
TOTAL ADJUSTMENT	$(507)

SCHEDULE 3

CRYSTAL LAKE CLUB
SCHEDULE OF WASTEWATER RATE BASE
AS OF AUGUST 30, 1999

DESCRIPTION	BALANCE PER UTILITY	STAFF ADJUSTMENTS	BALANCE PER STAFF
Utility Plant in Service	$ 544,618	$(212)	$ 544,406
Land	7,914	0	7,914
Accumulated Depreciation	(200,912)	(11,799)	(212,711)
Contributions in Advance of Construction (CIAC)	(175,350)	325	(175,025)
Amortization of CIAC	54,991	4,112	59,103
WASTEWATER RATE BASE	$ 231,261	$(7,574)	$ 223,687

SCHEDULE 4

CRYSTAL LAKE CLUB
SCHEDULE OF WASTEWATER RATE BASE ADJUSTMENTS

EXPLANATION	STAFF RECOMMENDED ADJUSTMENT
Utility Plant-in-Service	
1) To account for verified additions and retirements from June 1993 through August 1999	$(212)
Accumulated Depreciation	
1) To recalculate depreciation based on service life pursuant to Rule 25-30.140(2)	(11,799)
Contributions in Advance of Construction (CIAC)	
1) To account for CIAC from June 1993 through August 1999.	(325)
Accumulated Amortization of CIAC	
1) To account for amortization of CIAC from June 1993 through August 1999	4,112
TOTAL ADJUSTMENT	$(7,574)

ISSUE 5: Should an acquisition adjustment be approved?

RECOMMENDATION: No. An acquisition adjustment was not requested. Moreover, an acquisition adjustment cannot be determined at this time. (CLAPP)

STAFF ANALYSIS: An acquisition adjustment results when the purchase price differs from the original cost calculation adjusted to the time of the acquisition. The buyer stated in the application that it was not seeking an acquisition adjustment. However, as previously noted, the Buyer acquired the utility as part the manufactured home community commonly know as Crystal Lake Club in a property exchange transaction, valued at $10,131,149. Neither party to the overall sales transaction was able to place a separate value on the purchase of the utility facilities.

Moreover, in the absence of extraordinary circumstances, it has been Commission practice that a subsequent purchase of a utility system at a premium or discount shall not affect the rate base calculation. There are no extraordinary circumstances regarding this purchase that would justify an acquisition adjustment to rate base. The treatment of the acquisition adjustment in this instance is consistent with previous Commissions decisions. See Order No. PSC-00-1675-PAA-WS, issued September 19, 2000, in Docket No. 991984-WS; Order No. PSC-00-1659-PAA-WU, issued September 18, 2000, in Docket No. 000334-WU; Order No. PSC-00-1515-PAA-WU, issued August 21, 2000, in Docket No. 000333-WU; and Order No. PSC-00-1389-PAA-WU, issued July 31, 2000, in Docket No. 991001-WU.

In summary, the buyer is not requesting an acquisition adjustment. The buyer was unable to provide a separate purchase price for the utility's assets because the utility assets were included, non-specifically, in the overall sales transaction for the mobile home community. Therefore, staff recommends that an acquisition adjustment cannot be determined at this time.

ISSUE 6: Should the rates and charges approved for this utility be continued?

RECOMMENDATION: Yes, CWS should continue charging the rates and charges approved for this utility system until authorized to change by the Commission in a subsequent proceeding. The tariff reflecting the change in ownership should be effective for services provided or connections made on or after the stamped approval date on the tariff sheets. (CLAPP)

STAFF ANALYSIS: Crystal Lake's current rates for service were approved by the Commission in a administrative price index proceeding effective January 14, 2000. The remainder of the utility's charges were approved effective October 1, 1994, pursuant to the staff-assisted rate case Order No. PSC-94-0243-FOF-WS, issued March 4, 1994, in Docket No. 930572-WS. The utility's approved rates and charges are as follows:

Water Monthly Service Rates
Residential and General Service

Base Facility Charge	
Meter Sizes:	
5/8" x 3/4"	$ 2.78
3/4"	4.16
1"	6.94
1 1/2"	13.87
2"	22.19
3"	44.40
4"	69.37
6"	138.76
Gallonage Charge	
Per 1,000 gallons	$ 1.29

Wastewater Monthly Service Rates
Residential and General Service

Base Facility Charge	
Meter Sizes:	
5/8" x 3/4"	$ 3.63
3/4"	5.44
1"	9.06
1 1/2"	18.11
2"	28.99
3"	57.96

4"	90.57
6"	181.13

Gallonage Charge
Per 1,000 Gallons
(Maximum charge of 6,000 gallons)

Residential	$ 1.42
General Service	1.71

Miscellaneous Service Charges

	Water	Wastewater
Initial Connection	$15.00	$15.00
Normal Reconnection	$15.00	$15.00
Violation Reconnection	$15.00	Actual Cost
Premises Visit (in lieu of disconnection)	$10.00	$10.00

Service Availability Charges

Water	
System Capacity Charge Residential-per ERC	$375.00
Meter Installation Fee	100.00
Wastewater	
System Capacity Charge Residential-per ERC	$700.00

Rule 25-9.044(1), Florida Administrative Code, provides that:

> In case of change of ownership or control of a utility which places the operation under a different or new utility . . . the company which will thereafter operate the utility business must adopt and use the rates, classification and regulations of the former operating company (unless authorized to change by the commission) . . . .

CWS has not requested a change in the rates and charges of the utility. Accordingly, staff recommends that, pursuant to Rule 25-9.044(1), Florida Administrative Code, the utility continue operations under the existing tariff and apply the approved rates and charges until authorized to change by the Commission in a subsequent proceeding. The utility has filed a revised tariff reflecting the change in issuing officer due to the transfer. If

the Commission approves staff's recommendation, the tariff filing should be effective for services rendered or connections made on or after the stamped approval date.

ISSUE 7: Should this docket be closed?

RECOMMENDATION: Yes, if no timely protest is received to the proposed agency action issues, the Order should become final and effective upon the issuance of a Consummating Order and the docket should be closed. (CROSBY)

STAFF ANALYSIS: If no timely protest is received to the proposed agency action issues, upon the expiration of the protest period, the Order should become final and effective upon the issuance of a Consummating Order and the docket should be closed.

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: JANUARY 25, 2001

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYÓ)

FROM: DIVISION OF REGULATORY OVERSIGHT (CLAPP, REDEMANN)
DIVISION OF LEGAL SERVICES (CROSBY, GERVASI)

RE: DOCKET NO. 001083-WU - APPLICATION FOR TRANSFER OF CERTIFICATE NO. 518-W IN LAKE COUNTY FROM CENTURY REALTY FUNDS, INC. AND HASELTON ASSOCIATES, LTD. D/B/A ROUTE 19A NORTH JOINT VENTURE TO CWS COMMUNITIES LP.
COUNTY: LAKE

AGENDA: FEBRUARY 6, 2001 - REGULAR AGENDA - PROPOSED AGENCY ACTION FOR ISSUES 4 and 5 - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: COMMISSION MAY WANT TO CONSIDER DOCKET NOS. 001083-WU AND 991889-WS CONSECUTIVELY

FILE NAME AND LOCATION: S:\PSC\RGO\WP\001083WU.RCM

CASE BACKGROUND

Route 19A North Joint Venture (North Joint Venture or utility) is a Class C utility serving 147 unmetered residential water and wastewater customers in Lake County. The utility was granted Water Certificate No.518-W and Wastewater Certificate No. 451-S by Order No. 21342, issued June 6, 1989, in Docket No. 880936-WS. After the utility's wastewater system was interconnected with the City of Eustis, the utility was found to be an exempt reseller, and Wastewater Certificate No. 451-S was canceled by Order No. PSC-96-1470-FOF-SU, issued December 3, 1996, in Docket No. 961146-SU. The utility's 1999 annual report lists total gross revenue of $18,637 with net operating income of $1,360.

On August 9, 2000, North Joint Venture submitted an application for transfer of the utility from Century Realty Funds,

Inc. and Haselton Associates, Ltd. d/b/a Route 19A North Joint Venture (partners or seller) to CWS Communities LP (CWS or buyer). Deficiencies were found in this application. The final corrections were received on October 20, 2000. The transfer application is the subject of this recommendation.

According to the application, on December 10, 1998, the sellers and CWS entered into an agreement of purchase and sale, where CWS contracted to buy six mobile home parks or manufactured home communities, which were owned in part by Century Realty Funds, Inc. Included in this large property transaction, CWS received Haselton Village and the North Joint Venture utility system. According to the agreement, the allocated purchase price for the Haselton Village property is $4,961,488. The application gave the proposed value of the utility system as of the date of the proposed transfer as $111,243, based upon the 1999 Annual Report.

Section 367.071, Florida Statutes, requires that no utility shall sell, assign, or transfer its certificate of authorization, facilities or any portion thereof, or majority organizational control without prior approval of the Commission unless such sale, assignment, or transfer is made contingent upon Commission approval. The parties closed on the sale of the utility on March 30, 1999, without having made the transfer contingent upon the approval of the Commission, which is an apparent violation of Section 367.071, Florida Statutes. This matter will be discussed further in Issue 1. The Commission has jurisdiction pursuant to Sections 367.071 and 367.061, Florida Statutes.

DISCUSSION OF ISSUES

ISSUE 1: Should North Joint Venture be ordered to show cause, in writing within 21 days, why it should not be fined for its failure to obtain Commission approval prior to transferring its facilities to CWS, in apparent violation of Section 367.071, Florida Statutes?

RECOMMENDATION: No. A show cause proceeding should not be initiated, but the utility should be placed on notice that it is expected to know and comply with the Commission's rules and regulations. (CROSBY)

STAFF ANALYSIS: Section 367.071(1), Florida Statutes, requires that:

> No utility shall sell, assign, or transfer its certificate of authorization, facilities or any portion thereof . . . , without determination and approval of the commission that the proposed sale, assignment, or transfer is in the public interest . . . . However, a sale, assignment, or transfer of its certificate of authorization, facilities . . . may occur prior to commission approval if the contract for sale, assignment, or transfer is made contingent upon commission approval.

As stated in the case background, North Joint Venture closed on the sale of its facilities to CWS on March 30, 1999, prior to obtaining Commission approval. In addition, the Agreement of Purchase and Sale contained no provisions to make the agreement contingent upon Commission approval.

Section 367.161(1), Florida Statutes, 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, Florida Statutes. In closing on the transfer of its facilities prior to Commission approval, the utility's act was "willful" in the sense intended by Section 367.161, Florida Statutes. In 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 this is distinct from an intent to violate a statute or rule."

Although North Joint Venture's failure to obtain Commission approval prior to transferring its facilities is an apparent violation of Section 367.071(1), Florida Statutes, there are circumstances that appear to mitigate the utility's apparent violation. Based on information provided by CWS, North Joint Venture was transferred on March 30, 1999 as part of a large property purchase which involved other time sensitive sale transactions. In addition to the large property exchange in this Docket, CWS also purchased Alafaya Palm Valley Associates, Ltd. (Docket No. 991984-WS), and Crystal Lake Club (Docket No. 991889-WS) at about the same time North Joint Venture was purchased. The

circumstances are similar in each of these transactions. Order No. PSC-00-1675-PAA-WS, issued on September 19, 2000, in Docket No. 991984-WS, placed CWS on notice that it is expected to know and comply with the Commission's rules and regulations.

North Joint Venture's failure to obtain the Commission's approval prior to transferring its facilities appears to be due to a lack of understanding and knowledge of the Commission's rules and regulations. Although North Joint Venture is held to know the Commission's rules and statutes under which it must operate, when this matter was brought to the utility's attention, the utility stated that it was not aware of the statutory requirement to obtain prior approval of the transfer from the Commission. Staff does not believe that the apparent violation of Section 367.071, Florida Statutes, rises in these circumstances to the level which warrants the initiation of a show cause proceeding. Staff recommends that North Joint Venture should not be ordered to show cause for failure to obtain Commission approval prior to transferring its facilities to CWS. CWS should again be placed on notice that it is expected to know and comply with the Commission's rules and regulations.

ISSUE 2: Should North Joint Venture be ordered to show cause, in writing within 21 days, why it should not be fined up to $5,000 per day for failure to maintain its accounts and records in conformance with the National Association of Regulatory Utility Commissioners (NARUC) Uniform System of Accounts (USOA), and for failure to maintain its books and records in-state, in apparent violation of Rules 25-30.115(1) and 25-30.110(1)(b), Florida Administrative Code, respectively?

RECOMMENDATION: No. North Joint Venture should not be ordered to show cause at this time. However, the utility should be ordered to maintain its books and records in conformance with the 1996 NARUC USOA. The utility should also be ordered to maintain its books and records in-state or request the requisite authorizatin from the Commission to continue to maintain them out-of-state. The utility should be ordered to submit a statement from its accountant by March 31, 2001, with its 2000 Annual Report stating that its books and records are in conformance with NARUC USOA and indicating that its books and records are being maintained in-state or requesting authorization to maintain them out-of-state. (CROSBY, CLAPP)

STAFF ANALYSIS: Rule 25-30.115(1), Florida Administrative Code, states "Water and wastewater utilities shall, effective January 1, 1998, maintain their accounts and records in conformity with the 1996 NARUC Uniform Systems of Accounts adopted by the National Association of Regulatory Utility Commissioners." Accounting Instruction 2, of the NARUC USOA for Class C utilities states:

> Each utility shall keep its books of account, and all other books, records, and memoranda which support the entries in such books of account so as to be able to furnish readily full information as to any item included in any account. Each entry shall be supported by such detailed information as will permit a ready identification, analysis, and verification of all facts relevant thereto. (emphasis added)

Further, Accounting Instruction 4, of the NARUC USOA for Class C utilities states:

> Each utility shall keep its books on a monthly basis so that for each month all transactions applicable thereto, as nearly as may be ascertained, shall be entered in the books of the utility. Amounts applicable or assignable to specific utility departments shall be segregated monthly. Each utility shall close its books at the end

> of each calendar year unless otherwise authorized by the Commission. (emphasis added)
>
> Rule 25-30.450, Florida Administrative Code, states:
>
> In each instance, the utility must be able to support any schedule submitted, as well as any adjustments or allocations relied on by the utility. The work sheets, etc., supporting the schedules and data submitted must be organized in a systematic and rational manner so as to enable Commission personnel to verify the schedules in an expedient manner and minimum amount of time. The supporting work sheets, etc., shall list all reference sources necessary to enable Commission personnel to track to original source of entry into the financial and accounting system and, in addition, verify amounts to the appropriate schedules. (emphasis added)

During a staff audit of North Joint Venture's books and records in September 2000, staff learned that its accounts are commingled with those of the Haselton Village community and the books and records are maintained out-of-state. The resulting audit report contained audit exceptions related to the utility's books and records.

Audit Exception No. 1. This exception was the audit opinion that the utility was not maintaining its books pursuant to Rule 25-30.115(1), Florida Administrative Code, which requires all water and wastewater utilities to maintain their accounts and records in conformance with the NARUC Uniform System of Accounts. The auditor further stated that: the utility accounts are commingled with those of the operation of the Haselton Village community; documentation was not maintained at the utility location for plant additions, and no retirement entries were made; the utility contracts with a CPA firm to prepare its Annual Report to the Commission; and, the Annual Report is prepared by extracting utility activity from its Haselton Village community general ledger.

Moreover, documentation relative to utility operations and plant was located out-of-state, in apparent violation of Rule 25-30.110(1)(b),Florida Administrative Code. That rule requires that "[u]nless otherwise authorized by the Commission, each utility shall maintain its records at the office or offices of the utility within this state and shall keep those records open for inspection during business hours by Commission staff."

Section 367.161, Florida Statutes, authorizes the Commission to assess a penalty of not more than $5,000 per day for each offense, if a utility is found to have knowingly refused to comply with, or to have willfully violated any Commission rule, order, or provision of Chapter 367, Florida Statutes. 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). Thus, any intentional act, such as the utility's failure to maintain its accounts and records in conformance with the NARUC USOA, or its failure to maintain its accounts and records in-state, would meet the standard for a "willful violation." In 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, F.A.C., 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 "'willful' implies an intent to do an act, and this is distinct from an intent to violate a statute or rule." Id. at 6.

The sellers' failure to maintain the utility's books and records in accordance with 1996 NARUC USOA is in apparent violation of Rule 25-30.115, Florida Administrative Code. However, the sellers do not operate the utility anymore because CWS has acquired its facilities and is currently operating the utility. Staff has received a verbal commitment from CWS of its intention to bring the books and records into compliance with the 1996 NARUC USOA. Moreover, with respect to the utility's practice of maintaining its books and records out-of-state, during the course of this proceeding, the utility endeavored to make the necessary information available to staff for purposes of the audit. In light of these circumstances, staff believes that a show cause proceeding should not be initiated at this time.

For the foregoing reasons, staff recommends that North Joint Venture should not be ordered to show cause at this time, in writing within 21 days, why it should not be fined up to $5,000 per day for failure to maintain its books and records in conformance with the NARUC USOA or for failure to maintain its accounts and records in-state , in apparent violation of Rules 25-30.115(1) and 25-30.110(1)(b), Florida Administrative Code, respectively. However, the utility should be ordered to maintain its books and records in conformance with the 1996 NARUC USOA. The utility should also be ordred to maintain its books and records in-state or request the requisite authorization from the Commission to continue

to maintain them out-of-state.[1] The utility should be ordered to submit a statement from its accountant by March 31, 2001, with its 2000 Annual Report stating that its books and records are in conformance with 1996 NARUC USOA and indicating that its books and records are being maintained in-state or requesting authorization to maintain the books and records out-of-state.

[1] In determining whether to request such authorization from the Commission, the utility should be aware that Section 367.121(1)(k), Florida Statutes, authorizes the Commission"[to] assess a utility for reasonable travel costs associated with reviewing the records of the utilty and its affiliates when such records are kept out-of-state." And Rule 25-30.110(1)(c), Florida Administrative Code, defines reasonable travel expenses as "those travel expenses that are equivalent to travel expenses paid by the Commission in the ordinary course of its business."

ISSUE 3: Should the transfer of Certificate No. 518-W from Century Realty Funds, Inc. and Haselton Associates, LTD. d/b/a Route 19A North Joint Venture to CWS Communities LP be approved?

RECOMMENDATION: Yes, the transfer of Certificate No. 518-W from Century Realty Funds, Inc. and Haselton Associates, LTD. d/b/a Route 19A North Joint Venture to CWS Communities LP should be approved. A description of the territory being transferred is appended to this memorandum as Attachment A. (CLAPP, REDEMANN)

STAFF ANALYSIS: As stated in the case background, North Joint Venture applied for a transfer of its Water Certificate No. 518-W in Lake County to CWS on August 9, 2000. Deficiencies were found and final corrections were received on October 20, 2000. The application is in compliance with the governing statute, Section 367.071, Florida Statutes, and other pertinent statutes and administrative rules concerning an application for transfer. The application contains a check in the amount of $750, which is the correct filing fee pursuant to Rule 25-30.020, Florida Administrative Code. The applicant has provided evidence, in the form of a recorded special warranty deed, that the utility facilities are located on real property which is owned by CWS Communities LP, as required by Rule 25-30.037(2)(q), Florida Administrative Code.

In addition, the application contains proof of compliance with the noticing provisions set forth in Rule 25-30.030, Florida Administrative Code. No objections to the application were received, and the time for the filing of such objections has expired. A description of the territory served by the utility is appended to this memorandum as Attachment A. This is the original service area that was granted to the utility in Order No. 21342, issued June 6, 1989.

The application contained a statement of how the transfer would be in the public interest, pursuant to Rule 25-30.037(2)(j), Florida Administrative Code. The statement provides that the transfer is in the public interest because the Haselton Village customers would continue to receive the quality and service to which they have become accustomed. Regarding the buyer's technical ability, CWS will continue with the management team that has operated the water utility for many years. At the present time, the utility provides safe and reliable water service to its customers, according to the application. CWS has the financial resources to maintain consistent compliance with environmental regulations. Staff has contacted the Department of Environmental Protection (DEP) and has learned that there are no outstanding

notices of violation against the utility. Staff believes that the buyer has demonstrated the overall financial and technical ability to insure the continued operations of the water system.

According to the application, the buyer's financial ability will not be affected by this transfer. CWS has provided the company's consolidated financial statements. The financial statements disclosed assets of $369,840,000 and equity of $290,328,000. CWS has indicated that it will provide the financial stability required to maintain the utility systems in accordance with Commission standards.

The application contains a copy of the agreement for purchase and sale which includes the purchase price, terms of payment and a list of the assets purchased and liabilities assumed. The buyer will assume responsibility for the seller's existing mortgage on the Haselton Village property in the amount of approximately $3,152,955.

The applicant stated that at the time of closing there were no outstanding or pending customer deposits, guaranteed revenue contracts, developer agreements, or customer advances related to the utility. Additionally, the applicant stated that the buyer will fulfill the commitments, obligations and representations of the seller with regard to utility matters. The buyer stated that it would pay any outstanding regulatory assessment fees or fines.

According to our records, the utility is current on its regulatory assessment fees and has filed an annual report for 1999 and all prior years. CWS will be responsible for future annual reports and the payment of all regulatory assessment fees for the year 2000. The application states that CWS's representative has performed a reasonable investigation of the utility system and it appears to be in satisfactory condition and in compliance with all applicable standards set by the DEP.

Based on the above, staff recommends that the transfer of assets and facilities from the seller to the buyer and the transfer of Water Certificate No. 518-W is in the public interest and should be approved.

Attachment A

CWS Communities LP

Lake County - Water Service Area
Serving Haselton Village Mobile Home Park

Township 18 South, Range 26 East
Section 34

PARCEL A: Beginning at the East 1/4 corner of Section 34, Township 18 South, Range 26 East, Lake County, Florida, run thence South 01 degrees 48' 30" West a distance of 600.06 feet, thence South 60 degrees 02'15" East a distance of 258.75 feet to the Westerly right of way of County Road No. 19A, thence South 27 degrees 20' 27" West along said right of way, a distance of 529.11 feet to the beginning of a curve having a radius of 510.46 feet and being concave Easterly, thence along the arc of said curve and through a central angle of 23 degrees 49' 40" an arc length of 212.28 feet, thence South 01 degrees 43' 53" West along said Westerly right of way of County Road No. 19-A, a distance of 369.71 feet to the Northerly right of way of County Road No. 452-A, thence South 89 degrees 58' 57" West along said Northerly right of way a distance of 806.22 feet, thence North 01 degrees 52' 26" East, a distance of 514.53 feet, thence North 89 degrees 19' 12" West a distance of 9.49 feet, thence North 01 degrees 50' 47" East a distance of 39.32 feet, thence South 89 degrees 37' 31" West a distance of 339.62 feet, thence North 01 degrees 51' 37" East a distance of 641.18 feet to the Southwest bank of a dug canal, thence North 25 degrees 58' 09" West along said Southwest bank of dug canal, a distance of 304.55 feet, thence North 01 degrees 51' 37" East a distance of 340.00 feet to the East-West Mid-Section line, thence South 88 degrees 35' 32" East along said East-West Mid-Section line, a distance of 1315.80 feet to the Point of Beginning.

PARCEL B: (Wastewater Treatment Plant Site) That part of the Northeast 1/4 of Section 34, Township 18 South, Range 26 East, Lake County, Florida, described as follows: Begin at the Southeast corner of said Northeast 1/4 of Section 34, run thence North 01 degrees 54' 49" East along the East line of said Northeast 1/4 a distance of 202.01 feet, thence North 42 degrees 18' 58" West 524.11 feet, thence South 22 degrees 28' 22" West 621.10 feet to a point on the South line of said Northwest 1/4 of Section 34, thence South 88 degrees 28' 40" East along the said South line of the Northeast 1/4 Section 34, a distance of 583.71 feet to the Point of Beginning and Point of Terminus.

ISSUE 4: What is the rate base of the utility at the time of transfer?

RECOMMENDATION: The rate base of the utility could not be determined at this time. CWS should be put on notice that an original cost study may be required at the time of filing a rate petition, if the utility cannot provide the original cost documentation. (CLAPP)

STAFF ANALYSIS: As discussed in Issue 2, North Joint Venture did not maintain its books and records in compliance with 1996 NARUC USOA. The utility accounts are commingled with operating records of Haselton Village. In addition, there has never been a Commission audit of the North Joint Venture system books and records and documentation relative to utility operations and plant was located out-of-state. Therefore, staff was unable to obtain sufficient information to determine the utility's rate base at the time of transfer. Further, two additional audit exceptions should be noted.

Audit Exception No. 2. This exception was the audit opinion that without an official starting point, a per audit balance could not be established for land, plant, and accumulated depreciation. The staff auditor recommended that an original cost study be performed in conjunction with the next rate proceeding for the utility.

Audit Exception No. 3. This exception was the audit opinion that the CIAC and Amortization of CIAC were incorrect. Based upon the existing rates approved in the certification docket, by Order No. 21342 mentioned earlier, the utility had charged its 143 customers a tap-in fee of $325. From June 30, 1988, to March 31, 1999, the utility has added four customers. The resulting CIAC (147 x $325) is $47,775. The auditor calculated CIAC amortization to be $20,686.

Although, pursuant to Section 367.071(5), Florida Statutes, which states, "The commission by order may establish the rate base for a utility or its facilities or property when the commission approves a sale, assignment, or transfer thereof..." staff recommends that rate base at the time of the transfer cannot be set at this time since staff was unable to obtain sufficient information to determine the utility's rate base at the time of transfer. Staff further recommends that the utility be put on notice that an original cost study may be required at the time of filing a rate petition, if the utility cannot provide the original cost documentation. If the filing is a Staff Assisted Rate Case (SARC), then Commission staff may prepare the original cost study if appropriate at that time.

ISSUE 5: Should an acquisition adjustment be approved?

RECOMMENDATION: No. An acquisition adjustment was not requested. Moreover, an acquisition adjustment cannot be determined at this time. (CLAPP)

STAFF ANALYSIS: An acquisition adjustment results when the purchase price differs from the original cost calculation adjusted to the time of the acquisition. The buyer stated in the application that it was not seeking an acquisition adjustment. As previously noted, the buyer acquired the utility facilities along with a mobile home community as part of a large acquisition of six mobile home and manufactured housing communities. Haselton Village, including the utility, had an allocated purchase price of $4,961,488. Neither party to the overall sales transaction was able to place a separate value on the purchase of the utility facilities. In addition, as discussed in Issue 4, staff recommends that rate base cannot be established at this time. Therefore, without the rate base or purchase price associated with utility facilities the amount of an associated acquisition adjustment cannot be determined at this time.

Moreover, in the absence of extraordinary circumstances, it has been Commission practice that a subsequent purchase of a utility system at a premium or discount should not affect the rate base calculation. There are no extraordinary circumstances regarding this purchase that would justify an acquisition adjustment to rate base. The treatment of the acquisition adjustment in this instance is consistent with previous Commission decisions. See Order No. PSC-00-1675-PAA-WS, issued September 19, 2000, in Docket No. 991984-WS; Order No. PSC-00-1659-PAA-WU, issued September 18, 2000, in Docket No. 000334-WU; Order No. PSC-00-1515-PAA-WU, issued August 21, 2000, in Docket No. 000333-WU; and Order No. PSC-00-1389-PAA-WU, issued July 31, 2000, in Docket No. 991001-WU.

In summary, the buyer is not requesting an acquisition adjustment. The buyer was unable to provide a separate purchase price for the utility's assets because the utility assets were included, non-specifically, in the overall sales transaction for the mobile home community. Staff recommends that rate base cannot be determined at this time.

ISSUE 6: Should the rates and charges approved for this utility be continued?

RECOMMENDATION: Yes, CWS should continue charging the rates and charges approved for this utility system until authorized to change by the Commission in a subsequent proceeding. The tariff reflecting the change in ownership should be effective for services provided or connections made on or after the stamped approval date on the tariff sheets. (CLAPP)

STAFF ANALYSIS: The North Joint Venture's current rates for service were approved by the Commission pursuant to Order No. 21342, issued June 6, 1989, in Docket No. 880936-WS. The utility's approved rates and charges are as follows:

Water Monthly Service Rates
Residential and General Service

Flat Base Facility Charge	Approved
Occupied Unit	$7.00
Unoccupied Unit	$3.00

If Unoccupied for 60 consecutive days.

Miscellaneous Service Charges

None

Service Availability Charges

Residential Tap in Fee - per ERC $325.00

Rule 25-9.044(1), Florida Administrative Code, provides that:

> In case of change of ownership or control of a utility which places the operation under a different or new utility . . . the company which will thereafter operate the utility business must adopt and use the rates, classification and regulations of the former operating company (unless authorized to change by the commission) . . . .

CWS has not requested a change in the rates and charges of the utility. Accordingly, staff recommends that the utility continue operations under the existing tariff and apply the approved rates and charges until authorized to change by the Commission in a subsequent proceeding. The utility has filed a revised tariff

reflecting the change in issuing officer due to the transfer of control. If the Commission approves staff's recommendation, the tariff filing should be effective for services rendered or connections made on or after the stamped approval date.

ISSUE 7: Should this docket be closed?

RECOMMENDATION: Yes, if no timely protest is received to the proposed agency action issues, the Order should become final and effective upon the issuance of a Consummating Order and the docket should be closed. (CROSBY)

STAFF ANALYSIS: If no timely protest is received to the proposed agency action issues, upon the expiration of the protest period, the Order should become final and effective upon the issuance of a Consummating Order and the docket should be closed.