

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: March 24, 2005

TO: Director, Division of the Commission Clerk & Administrative Services (Bayó)

FROM: Division of Economic Regulation (Johnson, Brinkley, Rieger)
Office of the General Counsel (Vining)

RE: Docket No. 040173-WU – Application for transfer of majority organizational control of L W V Utilities, Inc., holder of Certificate No. 152-W in Pasco County from James A. Cochran Revocable Trust to James C. Weeks and Ricky A. Miller.

AGENDA: 04/05/05 – Regular Agenda – Proposed Agency Action Issue 2 – Interested Persons May Participate

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\ECR\WP\040173.RCM.DOC

Case Background

LWV Utilities, Inc. (LWV) is a Class C water utility located in Pasco County serving approximately 350 customers. LWV is located in the Southwest Florida Water Management District (SWFWMD). The SWFWMD has not imposed special water use restrictions in the utility's area. However, Pasco County has implemented a county wide one day per week irrigation water use restriction to encourage conservation. Wastewater service is provided by septic tanks. The utility's 2003 annual report reflects operating revenues of \$64,776 and an operating loss of (\$12,843).

Certificate No. 152-W was granted to Lakewood Villas, Inc. in 1972¹ and subsequently transferred to LWV in 1977.² The utility was part of the James A. Cochran Revocable Trust

¹ Certificate No. 152-W was granted by Order No. 5807, issued July 26, 1973, in Docket No. C-72587-W, In Re: Application of Lakewood Villas, Inc., for a certificate to operate an existing water system in Pasco County.

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with James Cochran as the trustee. Mr. Cochran died on August 10, 2002. Mr. James C. Weeks succeeded Mr. Cochran as trustee. During the probate of Mr. Cochran's estate the trust was dissolved and the stock in LWV was divided between Mr. James C. Weeks and Mr. Ricky Miller.

On February 27, 2004, Mr. James C. Weeks filed an application for transfer of majority organizational control of LWV Utilities, Inc. At the time the application was filed, Mr. Weeks had not resolved certain issues related to the dissolution of the trust and the deficiencies in the application. The deficiencies were corrected February 16, 2005. The Commission has jurisdiction to consider this matter pursuant to Section 367.071, Florida Statutes.

² Certificate issued pursuant to Order No. 8104, issued November 16, 1977, in Docket No. 770764-W, In Re: Joint Application for the transfer of Certificate No. 152-W from Lakewood Villas, Inc., to LWV Utilities, Inc., in Pasco County, Florida, pursuant to Section 367.071, Florida Statutes.

Discussion of Issues

Issue 1: Should the Commission approve the transfer of majority organizational control of LWV Utilities, Inc. from the James A. Cochran Revocable Trust to James C. Weeks and Ricky A. Miller?

Recommendation: Yes. The transfer of majority organizational control is in the public interest and should be approved. A description of the territory granted by Certificate No. 152-W is appended to this memorandum as Attachment A. The utility should be required to file a revised legal description, territory map and supporting documentation verifying that the revised legal description is consistent with the territory description in Docket No. 760618-W within 120 days of the order approving the transfer. (Johnson, Brinkley, Rieger)

Staff Analysis: As stated in the case background, the application for transfer of majority organizational control of LWV Utilities, Inc. from the James A. Cochran Revocable Trust to Mr. James C. Weeks and Mr. Ricky A. Miller was filed on February 27, 2004. The stock in LWV was transferred from the James A. Cochran Revocable Trust to James C. Weeks and Ricky A. Miller on September 16, 2004. The application is in compliance with the governing statute, Section 367.071, Florida Statutes, pertaining to an application for transfer of majority organizational control. A description of the territory granted by Certificate No. 152-W is appended to this memorandum as Attachment A.

The utility's current territory, which was approved in Docket No. 760618-W, is described in terms of recorded plats and tracts. However, staff does not have access to Pasco County records to verify whether the utility is serving only its authorized territory. To be consistent with the current Commission practice concerning territory descriptions, the utility should be required to provide a legal description that includes partial sections or metes and bounds, instead of tracts, as reflected in Rule 25-30.030(2), Florida Administrative Code, a territory map that reflects the approved territory, and supporting documentation verifying that the revised legal description is consistent with the territory approved in Docket No. 760618-W within 120 days of the order approving the transfer.

The application contained proof of compliance with the noticing provisions set forth in Rule 25-30.030, Florida Administrative Code. No objections to the notice of application have been received and the time for filing such has expired.

As a result of the dissolution of the James A. Cochran Revocable Trust and the discharge of Mr. Cochran's estate, the new stockholders, Mr. Weeks and Mr. Miller, are the owners of the LWV stock. The application included copies of the trust and court documents dissolving the trust.

A copy of a recorded deed and title insurance are included in the application as evidence that the utility owns the land upon which the utility facilities are located. In addition, the company provided a copy of the property tax receipt and the ad valorem tax assessment.

Staff has verified that the utility is current on annual reports and RAFs through 2003. The RAFs and annual report for 2004 were not due when this recommendation was drafted. Mr. Weeks and Mr. Miller are responsible for filing the annual report and the RAFs due on March 31, 2005, and for future years.

The application contained a statement that the new stockholders performed a reasonable investigation of the utility system. Staff has confirmed with the Florida Department of Environmental Protection (DEP) that the utility's water system is currently in environmental compliance with respect to DEP standards.

The application contained a statement of how the transfer is in the public interest, including a summary of the stockholders' experience in water operations and a showing of the stockholders' financial ability to provide service. According to the application, the transfer is in the public interest because the utility will be managed by an experienced full-time utility system operator. The President, James C. Weeks, has worked for the utility for over twenty years and is familiar with all aspects of operating the utility. Mr. Weeks has extensive knowledge of the plant operations and the water distribution system, as well as the office operations and customer relations. The customers will continue to receive the quality of service they are accustomed to receiving.

Mr. James C. Weeks and Mr. Ricky A. Miller will provide all needed funding to LWV. In addition, the new owners provided a statement of intent to fulfill the commitments, obligations, and representations of the prior owner with regard to utility matters.

Based on all of the above, staff recommends that the transfer of majority organizational control of LWV to James C. Weeks and Ricky A. Miller is in the public interest and should be approved. A description of the territory granted by Certificate No. 152-W is appended to this memorandum as Attachment A. The utility should be required to file a revised legal description, territory map and supporting documentation verifying that the revised legal description is consistent with the territory description in Docket No. 760618-W within 120 days of the order approving the transfer.

Issue 2: What is the rate base of LWV at the time of transfer?

Recommendation: The rate base for transfer purposes is \$30,097 for the water system as of December 31, 2003. (Johnson)

Staff Analysis: Rate base for this utility was last established by Order No. 8104, issued December 21, 1977, in Docket No. 750521-W, In Re: Petition of Lakewood Villas, Inc. for an increase in rates to water customers in Pasco County, as \$57,674 for the system.

Staff conducted an audit of the utility to determine the rate base as of December 31, 2003. The rate base was determined from the company's 2003 annual report and tax return and supporting source documentation. The audit report contained several audit disclosures. The utility did not file a response to the audit report. The following adjustments were made by staff as a result of the rate base audit.

Utility Plant-In-Service (UPIS)

Order No. 8104 established UPIS at \$72,275, as of December 31, 1976. The utility's balance at December 31, 1976, was \$73,879. Although the order required the utility to decrease UPIS by \$1,604, the adjustment was never made; therefore, the utility's balance should be reduced pursuant to that order.

The utility reflected a UPIS balance of \$112,103 for the system as of December 31, 2003, in its 2003 annual report. The utility also provided supporting documentation for plant additions of \$5,337 that were not recorded in 2003. Therefore, an adjustment of \$5,337 to increase UPIS should be made to the balance with a corresponding adjustment to accumulated depreciation. In addition, the utility failed to record retirements in 1988 and 2003. Therefore, adjustments totaling \$4,250 should be made to reduce plant and accumulated depreciation as discussed below.

Based on the above adjustments, staff recommends that UPIS balance be reduced by \$517, which results in a UPIS of \$111,586 for the system as of December 31, 2003.

Land

Staff recommends that the utility books reflect the appropriate land balance of \$1,000 for the system as of December 31, 2003.

Accumulated Depreciation

The utility's books reflect a balance of \$73,781 for accumulated depreciation as of December 31, 2003. The utility did not use the depreciation rate prescribed by Rule 25-30.140, Florida Administrative Code depreciation, on a consistent basis for calculating depreciation expense. The utility also failed to record retirements in 1988 and 2003 as discussed above. In addition, the utility failed to adjust accumulated depreciation by \$33 as required by Order No. 8104.

Therefore, staff recommends that accumulated depreciation should be adjusted by \$540 to correct the balances as required by Order 8104, to record retirements, and to correct depreciation pursuant to Rule 25-30.140, Florida Administrative Code. Based on the above adjustments, staff recommends that the utility's accumulated depreciation balance as of December 31, 2003, is \$74,321.

Contribution-In-Aid-of-Construction (CIAC)

Order No. 8104 established the utility's CIAC balance at \$4,450 with 216 contributing customers as of December 31, 1976. The utility's 2003 annual report reflects a CIAC balance of \$10,900; however, the utility did not book an adjustment of \$50 to reduce CIAC as required by Order No. 8104. The audit investigation revealed that the CIAC records were not adequately maintained by the utility. According to the utility's 2003 annual report the utility had a total of 350 customers who should have paid a tap in charge of \$100 per connection. It appears that the utility did not collect the correct tap in charge from all of its customers. Staff recommends that CIAC should be increased by \$7,000 to impute the additional CIAC that was not collected from the customers. Based on the above adjustments, staff recommends a CIAC balance of \$17,850 as of December 31, 2003.

Accumulated Amortization of CIAC

The utility's accumulated amortization of CIAC balance is \$7,774 as of December 31, 2003. Staff recommends that accumulated amortization of CIAC should be adjusted by \$1,908 to reflect amortization on imputed CIAC. Based on the above adjustment, staff recommends that the utility's accumulated amortization of CIAC balance as of December 31, 2003 is \$9,682.

Rate Base

The calculation of rate base is shown on Schedule No. 1. The adjustments to rate base are itemized on Schedule No. 2. Based on these schedules, as of December 31, 2003, staff recommends that rate base for LWV is \$30,097. The rate base calculation is used solely to establish the net book value of the property being transferred and does not include the normal ratemaking adjustments for working capital and used and useful.

Issue 3: Should the existing rates and charges for the utility be continued?

Recommendation: Yes. The rates and charges approved for the utility should be continued. The tariff pages reflecting the transfer should be effective for services provided or connections made on or after the stamped approval date on the tariff sheets. (Johnson)

Staff Analysis: Rule 25-9.044(1), Florida Administrative Code, provides that in the case of a change of ownership or control of a utility which places the operation under a different or new utility company, the new operator must adopt and use the rates, classification, and regulations of the former operating company unless authorized to change by the Commission.

The utility's rates and service availability charges were originally approved by the Commission in Order No. 8104. The rates were increased in an administrative price index proceeding pursuant to Rule 25-30.420, Florida Administrative Code, effective June 15, 2001. The utility's approved rates and charges are listed in Attachment B to this recommendation.

LWV 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, LWV should continue operations under the existing tariff and apply the approved rates and charges until authorized to change by the Commission in a subsequent proceeding. Although the utility owners have indicated that the service territory is built out, the utility should be reminded that if any additional connections are added the utility must charge its approved rates and charges. 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 4: Should the utility be required to provide proof that it has adjusted its books for all the applicable National Association of Regulatory Utility Commissioners (NARUC) Uniform System of Accounts (USOA) primary accounts associated with the adjustments recommended herein?

Recommendation: Yes. To ensure that the utility adjusts its books in accordance with the Commission's decision, LWV should provide proof, within 30 days of issuance of the consummating order on this matter, that the utility's books and records have been set up using the NARUC USOA and the adjustments for all the applicable NARUC USOA primary accounts have been made. (Johnson)

Staff Analysis: To ensure that the utility adjusts its books in accordance with the Commission's decision, staff recommends that Mr. James C. Weeks and Mr. Ricky A. Miller provide proof, within 30 days of issuance of the consummating order on this matter, that the utility's books and records have been set up using NARUC USOA and the adjustments for all the applicable NARUC USOA primary accounts have been made. To assist the utility, the recommended 2003 year-end plant balances are shown by primary account in Schedule No. 3.

Issue 5: Should the docket be closed?

Recommendation: No. If no timely protest is received to the proposed agency action issue, the Order will become final upon the issuance of a Consummating Order. However, the docket should remain opened pending receipt of the revised legal description, territory map, and statement that the utility has established its books and records in compliance with the NARUC USOA and that its books have been adjusted to reflect the Commission approved rate base balances as of the date of the transfer. Upon receipt of the statement, the docket should be administratively closed. (Vining)

Staff Analysis: If no timely protest is received to the proposed agency action issue, the Order will become final upon the issuance of a Consummating Order. However, the docket should remain opened pending receipt of the revised legal description, territory map, and statement that the utility has established its books and records in compliance with the NARUC USOA and that its books have been adjusted to reflect the Commission approved rate base balances as of the date of the transfer. Upon receipt of the statement, the docket should be administratively closed.

LWV Utilities, Inc.

Pasco County

Water Territory Description

Utility Service Area

In Section 3, Township 26 South, Range 16 East, Pasco County, Florida
All of tracts 18, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, and 37.

ALSO

The West 440 feet of the South 1/2 of Tract 7, The North 400 feet of Tract 8. The North 400 feet of the West 1/4 of Tract 9. All of Tract 21, less the West 330 feet thereof; The East 120 feet of Tract 22.

ALSO

Tract "A" of Richey Lakes Unit One, as shown on plat recorded in Plat Book 4, Page 100, of the public records of Pasco County, Florida.

Bi-Monthly Water Service Rates

General & Residential Service

Meter Size:

Base Facility Charge (Includes 6,000 minimum)	
5/8" x 3/4"	\$ 23.95
1"	\$ 59.90
1 1/2"	\$ 119.83
Charge Per 1,000 Gallons	\$ 1.88

Service Availability Charges

Customer Connection (Tap-in) Charge 5/8" x 3/4"	\$ 100.00
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**LWV UTILITIES, INC.
 SCHEDULE OF WATER RATE BASE
 AS OF DECEMBER 31, 2003**

<u>DESCRIPTION</u>	<u>BALANCE PER UTILITY</u>	<u>STAFF'S ADJUSTMENTS</u>	<u>BALANCE PER STAFF</u>
Utility Plant in Service	\$ 112,103	(517)	\$ 111,586
Land	1,000	0	1,000
Accumulated Depreciation	(73,781)	(540)	(74,321)
Contributions in Aid of Construction (CIAC)	(10,900)	(6,950)	(17,850)
Amortization of CIAC	<u>7,774</u>	<u>1,908</u>	<u>9,682</u>
WATER RATE BASE	<u>\$ 36,196</u>	<u>(\$ 6,099)</u>	<u>\$ 30,097</u>

SCHEDULE NO. 2

**LWV UTILITIES, INC.
 SCHEDULE OF ADJUSTMENT TO RATE BASE
 AS OF DECEMBER 31, 2003**

EXPLANATION	ADJUSTMENTS
A) <u>Utility Plant-In-Service</u>	Water
1. To correct UPIS per Order 8104	\$ (1,604)
2. To record plant additions	5,337
2. To retire plant	<u>(4,250)</u>
Total adjustment	\$ <u><u>(517)</u></u>
B) <u>Accumulated Depreciation</u>	
1. To correct accumulated depr. per Order 8104	\$ (33)
2. To correct depreciation per Rule 25-30.140, F.A.C	(4,757)
3. To reflect plant retirements	<u>4,250</u>
Total adjustment	\$ <u><u>(540)</u></u>
C) <u>CIAC</u>	
1. To correct CIAC per Order 8104	\$ 50
2. To reflect imputed CIAC	<u>(7,000)</u>
Total adjustment	\$ <u><u>(6,950)</u></u>
D) <u>Accumulated Amortization</u>	
1. To record accumulated amortization on imputed CIAC	\$ <u>1,908</u>

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Date: March 24, 2005

LWV UTILITIES, INC.		SCHEDULE NO.3	
STAFF RECOMMENDED PLANT BALANCE AS OF DECEMBER 31, 2003			
ACCT NO.	ACCOUNT NAME	PLANT BALANCE	ACCUMULATED DEPRECIATION BALANCE
307	Source of Supply	8,186	6,518
311	Pumping Equipment	10,022	738
320	Water Treatment Plant	2,975	2,439
330	Distribution Reservoirs & Standp	7,818	4,919
331	Transmission & Distribution	59,130	43,214
333	Services	6,113	4,983
334	Meters & Meter Installation	17,342	11,510
	Total Water Plant	<u>\$111,586</u>	<u>\$ 74,321</u>