

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: September 8, 2005

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

FROM: Division of Economic Regulation (Clapp, Redemann, Romig)
Office of the General Counsel (Brown)

RE: Docket No. 050313-WU – Application for transfer of majority organizational control of NHC Utilities, Inc., holder of Certificate No. 573-W in Charlotte County, from EMB/NHC, L.L.C. to MHC-Encore Holdings, L.P.
County: Charlotte

AGENDA: 09/20/05 – Regular Agenda – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Deason

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\ECR\WP\050313.RCM.DOC

Case Background

On May 6, 2005, an application was filed for the transfer of majority organizational control of NHC Utilities, Inc. (NHC or utility) from EMB/NHC, L.L.C. (EMB or Seller) to MHC-Encore Holdings, L.P. (MHC-Encore or Buyer). NHC is a Class C utility providing water service to approximately 459 residential and 4 general service water customers in Charlotte County. The water customers receive wastewater service from Riverwood Utilities, which is exempt from Commission regulation. NHC is located in the Southwest Florida Water Management District and is in a water use caution area. The utility's 2004 annual report indicated annual revenues of \$124,912, with a net operating loss of \$45,921.

The utility was granted Certificate No. 573-W in 1995 under the name of Harbor Lakes Water System, Inc¹. One transfer was subsequently approved.²

LEMB L.P. owns 100% of the outstanding stock of NHC. EMB owns all of the outstanding general and limited partnership interests of LEMB L.P. On February 17, 2004, the seller and buyer entered into a \$69 million contribution and assignment agreement for transfer of 28 manufactured home community and recreational vehicle resort properties in Florida, California and Texas. The transfer of majority organizational control of LEMB L.P. was part of the agreement.

Additional members of the corporate family tree of MHC include MHC Operating Limited Partnership (MHCOLP), MHC Trust (Trust), and Equity Lifestyle Properties, Inc. (ELS). MHCOLP owns 100% of MHC, Trust owns 80% of MHCOLP, and ELS owns 100% of the voting stock in Trust.

The purpose of this memorandum is to address the transfer of majority organizational control and rates and charges of the utility. The Commission has jurisdiction to consider this matter pursuant to Section 367.071, Florida Statutes.

¹ Order No. PSC-95-0867-FOF-WU, issued July 18, 1995, in Docket No. 941345-WU, In Re: Application for certificate to provide water service in Charlotte County by Harbor Lakes Water Systems, Inc. This order was amended by Order No. PSC-95-0867A-FOF-WU, issued August 22, 1995, to correct typographical errors.

² Order No. PSC-98-0024-FOF-WU, issued January 5, 1998, in Docket No. 970762-WU, In Re: Application for transfer of Certificate No. 573-W from Harbor Lakes Water System, Inc. to NHC Utilities, Inc. in Charlotte County.

Discussion of Issues

Issue 1: Should the transfer of majority organizational control of NHC Utilities, Inc., holder of water Certificate No. 573-W, from EMB/NHC, L.L.C. to MHC-Encore Holdings, L.P. be approved?

Recommendation: Yes. The transfer is in the public interest and should be approved effective the date of the Commission's vote. The territory being transferred is described in Attachment A. NHC should continue to be responsible for filing the utility's 2005 annual report and paying 2005 regulatory assessment fees on or before March 31, 2006. (Clapp, Redemann, Romig)

Staff Analysis: Pursuant to Section 367.071, Florida Statutes, on May 6, 2005, MHC applied for a transfer of majority organizational control. As stated in the case background, this transaction is included as part of a 28 property transfer in three states. No transfer price was established for the utility. The actual transfer of stock occurred on February 17, 2004. Pursuant to the Agreement as to Transfer of Florida Public Service Commission Certificated Utility, the transfer of majority organizational control, as it relates to the utility, was made contingent upon Commission approval.

The application is in compliance with the governing statute, Section 367.071, Florida Statutes, and Rule 25-30.037, Florida Administrative Code, pertaining to an application for transfer of majority organizational control. The original territory description granted in Docket No. 941345-WU did not have a valid Point of Beginning. A revised description of the territory has been provided and is appended to this recommendation as Attachment A.

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. The applicant provided a statement that it has and will continue to maintain its books and records in compliance with the National Association of Regulatory Utility Commissioners Uniform System of Accounts.

Pursuant to Rule 25-30.037(3)(i), Florida Administrative Code, a utility is to provide proof of ownership of the land upon which its facilities are located. However, NHC purchases bulk potable water from Charlotte County Utilities for resale to its customers. The utility's distribution facilities are located within authorized easements.

The utility is current on annual reports and RAFs through 2004. NHC will continue to be responsible for filing the annual report and RAFs for 2005 and future years.

Pursuant to Rule 25-30.037(3)(h), Florida Administrative Code, the application contained a statement that the buyer performed a reasonable investigation of the utility systems. Staff has confirmed with the Florida Department of Environmental Protection (DEP) that the utility system is currently in environmental compliance with respect to DEP standards.

Pursuant to Rule 25-30.037(3)(f), Florida Administrative Code, the application contained a statement of how the transfer is in the public interest. According to the applicant, the transfer

is in the public interest because it should be transparent to the customers, who will continue to receive the same quality service to which they are accustomed.

MHC-Encore states that it is committed to providing safe and reliable water service to its customers. The utility will continue to have the financial ability to provide service. According to the application, MHCOLP will provide funding to the utility as needed. The 2004 consolidated financial statement for Equity Lifestyle Properties, Inc., indicates that the company's total assets exceed \$1.8 billion with total equity of \$166 million. In addition, MHCOLP provided a statement that it will fulfill all of the utility's commitments, obligations, and representations with regard to utility matters.

Based on all of the above, staff recommends that the application for transfer of majority organizational control of NHC is in the public interest and should be approved effective the date of the Commission's vote. NHC should remain responsible for all regulatory assessment fees and annual reports for 2005 and the future. A description of the territory being transferred is appended to this recommendation as Attachments A.

Issue 2: Should the rates and charges approved for NHC be continued?

Recommendation: Yes, the buyer should continue charging the rates and charges approved for NHC until authorized to change by the Commission in subsequent proceedings. The ownership changes did not affect the tariff issuing officers, therefore, revised tariff pages are not required. (Clapp)

Staff Analysis: NHC's rates and charges were approved as part of the utility's grandfather certificate application in Docket No. 941345-WU. The base facility charges and gallonage rates were adjusted on May 31, 1996, pursuant to a price index and pass through proceeding. The utility's approved rates and charges are as found on Attachment B.

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 that 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.

MHCOLP 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, NHC should continue charging the rates and charges approved for them until authorized to change by the Commission in subsequent proceedings. The ownership changes did not affect the tariff issuing officers, therefore, revised tariff pages are not required.

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Issue 3: Should this docket be closed?

Recommendation: Yes. No timely protest to this transfer of majority organizational control was filed within the time prescribed by section 367.045(3), Florida Statutes, and therefore this docket should be closed upon issuance of the Commission's final order. (Brown)

Staff Analysis: No timely protest to this transfer of majority organizational control was filed within the time prescribed by section 367.045(3), Florida Statutes, and therefore this docket should be closed upon issuance of the Commission's final order.

NHC Utilities, Inc.

Water Service Area

Charlotte County

A parcel of land lying in Section 21, Township 40 South, Range 21 East, Charlotte County, Florida, being more particularly described as follows:

A portion of Plan No. 1 of a part of Ward Seven El Jobean, as recorded in Plat Book 2, Page 37, of the Public Records of Charlotte County, Florida, and a portion Plan No.2 of a part of Ward Seven El Jobean, as recorded in Plat Book 2, Page 48, of the Public Records of Charlotte County, Florida, all being more particularly described as follows:

Commencing at the Northeast corner of said Section 21; run North 89° 32' 10" West along the North line of said Section 21, a distance of 12.03 feet to the intersection with the centerline of the C.H. & N. Railroad; thence South 12° 11' 23" West along said centerline, a distance of 4258.40 feet to the intersection of the centerline of the C.H. & N. Railroad and the Northerly right of way line of Russell Avenue, said point being the Point of Beginning,

Thence South 72° 11' 23" West along the Northerly right of way line said Russell Avenue, a distance of 1257.07 feet to a point on the arc of a curve whose radius point bears South 67° 00' 19" West from said point, and being the right of way line of Seminole Circle; thence, Northerly and Westerly, along the arc of said curve, having a radius of 332 feet and a central angle of 49° 37' 52", an arc distance of 287.59 feet, to the Easterly right-of-way line of Southland Avenue; thence North 12° 11' 23" East, along said Easterly right-of-way line, a distance of 2024.95 feet; thence North 77° 48' 37" West, a distance of 1390.0 feet, to the center of Lincoln Park; thence North 17° 22' 27" East radially a distance of 331.97 feet to the intersection of Lincoln Circle with the Easterly right-of-way line of Hamner Avenue; thence North 12° 11' 23" East along the Easterly right-of-way line of Hamner Avenue, a distance of 1222.32 feet to the intersection with the Southeasterly right-of-way line of Colonial Avenue; thence North 72° 11' 23" East along the Southeasterly right-of-way line of Colonial Avenue, a distance of 605.01 feet to the Southwesterly extension of the Southeasterly right-of-way line of Ward Road; thence North 12° 11' 23" East along the Southeasterly right-of-way line of Ward Road, a distance of 417.62 feet to a point on the North line of Section 21, Township 40 South, Range 21 East, Charlotte County, Florida; thence South 89° 32' 10" East along the North line of said Section 21, a distance of 2212.21 feet to the intersection with the centerline of the C.H. & N. Railroad; thence South 12° 11' 23" West along said centerline, a distance of 4258.40 feet to the Point of Beginning, containing 202.5285 acres, more or less.

NHC UTILITIES, INC.
 SCHEDULE OF WATER RATES

Water Monthly Service Rates

Residential, Multi-Residential and General Service

| Meter Sizes: | Base Facility Charge |
|--------------------------|----------------------|
| 5/8" x 3/4" | \$ 16.85 |
| 3/4" | 25.27 |
| 1" | 42.11 |
| 1 1/2" | 84.23 |
| 2" | 134.75 |
| 3" | 269.51 |
| Charge Per 1,000 gallons | \$ 4.84 |

Residential, Multi-Residential and General Service

| | |
|----------------------------------|--------|
| Monthly Fire Hydrant Maintenance | \$0.64 |
|----------------------------------|--------|

Residential, Multi-Residential and General Service

| | |
|-------------------|----------|
| Customer Deposits | \$100.00 |
|-------------------|----------|

Miscellaneous Service Charges

| Description | Charges |
|--|---------|
| Initial Connection | \$0.00 |
| Normal Reconnection | 35.00 |
| Violation Reconnection | 52.50 |
| Premises Visit (In lieu of disconnection) | 35.00 |
| Late Payment Charge | 3.00 |

Service Availability Charges

Customer Connection

Meter Sizes:

| | |
|-------------|-------------|
| 5/8" x 3/4" | \$430.00 |
| 1" | 480.00 |
| 1 1/2" | 864.00 |
| 2" | 1,056.00 |
| Over 2" | Actual Cost |