

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 7, 2006

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

FROM: Division of Economic Regulation (Clapp, Kaproth, Walden)
Office of the General Counsel (Fleming)

RE: Docket No. 060520-WU – Application for transfer of majority organizational control of Town and Country Utilities Company, holder of Certificate No. 613-W in Charlotte and Lee Counties, from Babcock Florida Company to MSKP III, Inc. Counties: Charlotte and Lee

AGENDA: 09/19/06 – Regular Agenda – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Carter

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: This recommendation should be placed immediately before the recommendation for Docket No. 060536-WU on the agenda.

FILE NAME AND LOCATION: S:\PSC\ECR\WP\060520.RCM.DOC

Case Background

Town and Country Utilities Company (Town and Country or utility) is a Class C utility providing water service to the Babcock Ranch (Ranch), which consists of approximately 16 residential and 11 general service customers in Charlotte and Lee Counties. The utility is in the Southwest Florida Water Management District and the South Florida Water Management District. The part of the utility that is situated in Lee County is in a water use caution area of the

South Florida Water Management District. The utility was originally certificated in 1999.¹ The utility's 2005 annual report shows gross revenue of \$130,430 and net operating losses of \$19,377.

On July 27, 2006, an application was filed for the transfer of majority organizational control of the utility from Babcock Florida Company (Company) to MSKP III, Inc. (buyer). Both parties are registered with the Florida Division of Corporations. The utility is wholly owned by Babcock Florida Company. MSKP III, Inc. is a wholly-owned subsidiary of MSKP Southwest Florida Investment Partners, Inc. The parties entered into an agreement in July 2005 for MSKP III, Inc. to purchase the stock of the Company. Subsequent to the purchase, the two entities merged with Babcock Florida Company being the surviving entity and wholly-owned by MSKP Southwest Florida Investment Partners, Inc. The actual closing on this agreement took place on July 31, 2006.

This is one of two dockets associated with the Babcock Ranch transfer. The other is Docket No. 060536-WU which is the transfer of 73,239 of the utility's 91,360 acre territory to the State of Florida and Lee County for preservation purposes. This acquisition by the State of Florida represents the single largest expenditure of State funds for acquisition of preservation lands in the history of Florida. The remaining 18,121 acres will be developed into approximately 19,500 residential units, 6 million square feet of nonresidential space (including hotel, office and retail), and a golf course. The owner anticipates submitting an application for an original wastewater certificate later this year.

The purpose of this recommendation is to address the application for transfer of majority organizational control. The Commission has jurisdiction to consider this matter pursuant to Section 367.071, Florida Statutes.

¹ Order No. PSC-99-2198-PAA-WU, issued November 8, 1999, in Docket No. 981288-WU, In re: Application for certificate to operate a water utility in Charlotte and Lee Counties, by Town and Country Utilities Company.

Discussion of Issues

Issue 1: Should the transfer of majority organizational control be approved?

Recommendation: Yes, the transfer of majority organizational control of Town and Country as a result of the merger of Babcock Florida Company with MSKP III, Inc. is in the public interest and should be approved effective the date of the Commission vote. The resultant order should serve as the utility's water certificate and should be retained by the utility. Town and Country should remain responsible for all regulatory assessment fees and annual reports for 2006 and the future. 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. (Clapp, Kaproth, Walden)

Staff Analysis: Pursuant to Section 367.071, Florida Statutes, on July 27, 2006, the buyer applied for a transfer of majority organizational control of Town and Country Utilities Company as a result of the merger of Babcock Florida Company with MSKP III, Inc. As stated in the case background, the agreement was executed in July 2005. The closing occurred on July 31, 2006. Pursuant to the Agreement for Application to Transfer Utility, the transfer of majority organizational control and merger, 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(3), Florida Administrative Code, pertaining to an application for transfer of majority organizational control. A description of the territory granted to Certificate No. 613-W is appended to this memorandum 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 this application were received, and the time for the filing of such objections has expired.

Pursuant to Rule 25-30.037(3)(i), Florida Administrative Code, the application is to contain evidence that the utility has control of the land upon which the utility facilities are located. A copy of the 99-year lease between Babcock Florida Company and the utility which was executed on May 17, 1999, was provided. A revised 99-year lease for a lesser amount of land was provided following the closing on the transfer to government mentioned in the case background.

Staff has verified that the utility is current on annual reports and regulatory assessment fees (RAFs) through 2005. The utility will continue to be responsible for filing the annual report and RAFs for 2006 and future years.

Pursuant to Rule 25-30.037(3)(h), Florida Administrative Code, the application contained a statement that the buyers 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.

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. The utility will remain a wholly-owned subsidiary of the surviving entity, Babcock Florida Company, and its operations and operating personnel will remain the same; therefore, the transfer should be transparent to the customers, who will continue to receive the same quality service. A showing of the buyer's financial ability to provide service was also provided. MSKP III, Inc. is an affiliate of Kitson & Partners, LLC (Kitson) and Morgan Stanley. Kitson is an international real estate developer. Morgan Stanley is a well-known investment banking firm. In addition, the buyer provided a statement of intent to fulfill the commitments, obligations, and representations of the seller with regard to utility matters.

According to the application, the buyer did not finance the purchase of the utility. However, the acquisition of the outstanding capital stock of Babcock Florida Company was financed through a combination of debt and equity. The application included statements that the buyer has the funding available to make the financial and operating commitment necessary for the utility to be successful in its endeavor to provide water services to the residents and businesses in the current and future developments within the utility's service territory.

Staff met with a representative of Kitson and the utility on July 12, 2006, in anticipation of the submission of the various applications mentioned in the case background. Though MSKP III, Inc. has no experience in running a regulated utility, it is retaining the current staff, and also contracting with other professionals with experience before the Commission.

Town and Country's rates and charges were established pursuant to Order No. PSC-99-2198-PAA-WU. Rule 25-9.044(1), Florida Administrative Code, provides that in the case of change of ownership or control of a utility, the rates, classification, and regulations of the former owner must continue unless authorized to change by the Commission. The new owner has not requested a change; therefore, the existing rates and charges shown on Attachment B should continue in effect.

Based on all of the above, staff recommends that the application for transfer of majority organizational control of Town and Country as a result of the merger of Babcock Florida Company with MSKP III, Inc. is in the public interest and should be approved effective the date of the Commission vote. The resultant order should serve as the utility's water certificate and should be retained by the utility. Town and Country should remain responsible for all regulatory assessment fees and annual reports for 2006 and the future. 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.

Docket No. 060520-WU
Date: September 7, 2006

Issue 2: Should this docket be closed?

Recommendation: Yes, because no further action is necessary, this docket should be closed.
(Fleming)

Staff Analysis: Because no further action is necessary, this docket should be closed.

TOWN AND COUNTRY UTILITIES COMPANY
WATER SERVICE AREA
CHARLOTTE AND LEE COUNTIES

All of Sections 1 through 36, Township 41 South, Range 26 East, Charlotte County, Florida. Less road right-of-way for S.R. 31 and C.R. 74.

AND

All of Sections 1 through 36, Township 42 South, Range 26 East, Charlotte County, Florida. Less road right-of-way for S.R. 31.

AND

All of Sections 1 through 19, Township 41 South, Range 27 East, Charlotte County, Florida.

AND

All of Sections 1 through 11, the west ½ of Section 12, and all of Sections 13 through 36, Township 42 South, Range 27 East, Charlotte County, Florida.

AND

All of Sections 1 through 7, the west ½ of Section 9, and all of Section 12, Township 43 South, Range 26 East, Lee County, Florida. Less the road right-of-way for S.R. 31 and C.R. 78.

AND

All of Sections 4 through 8, Township 43 South, Range 27 East, Lee County, Florida.

AND

Section 9, Township 43 South, Range 27 East, Lee County, Florida. Less the South ½ of the Southeast ¼ of 9-43-27.

AND

The Northwest ¼ and the North ½ of the Northeast ¼ of Section 17, Township 43 South, Range 27 East, Lee County, Florida.

AND

The North ½ of Section 18, Township 43 South, Range 27 East, Lee County, Florida.

FLORIDA PUBLIC SERVICE COMMISSION

authorizes

Town and Country Utilities Company
pursuant to
Certificate Number 613-W

to provide water service in Charlotte and Lee Counties in accordance with the provisions of Chapter 367, Florida Statutes, and the Rules, Regulations, and Orders of this Commission in the territory described by the Orders of this Commission. This authorization shall remain in force and effect until superseded, suspended, cancelled or revoked by Order of this Commission.

| <u>Order Number</u> | <u>Date Issued</u> | <u>Docket Number</u> | <u>Filing Type</u> |
|---------------------|--------------------|----------------------|--|
| PSC-99-2198-PAA-WU | 11/08/99 | 981288-WU | Original Certificate |
| * | * | 060520-WU | Transfer of Majority Organizational Control |

***Order Number and date to be provided at time of issuance.**

Town and Country Utilities Company

Monthly Service Rates

Residential Service and General Service

| | Meter Size: | | |
|--|--------------------------|--|---------|
| | 5/8" x 3/4" | | \$ 7.98 |
| | 1" | | 19.95 |
| | 1 1/2" | | 39.90 |
| | 2" | | 63.84 |
| | 3" | | 127.68 |
| | 4" | | 199.50 |
| | 6" | | 399.00 |
| | 8" | | 638.40 |
| | Charge per 1,000 gallons | | \$2.57 |

Non-Potable Agricultural Service

| | Well Size: | Flat Rate | |
|--|------------|-----------|--|
| | 1" | \$ 5.14 | |
| | 2" | 16.48 | |
| | 3" | 32.96 | |
| | 4" | 51.50 | |
| | 5" | 86.52 | |
| | 6" | 103.00 | |
| | 7" | 144.20 | |
| | 8" | 164.80 | |
| | 9" | 214.24 | |
| | 10" | 236.90 | |
| | 12" | 442.90 | |

Raw Water Service

| | | | |
|--|--------------------------|--------|--|
| | Charge per 1,000 gallons | \$0.50 | |
|--|--------------------------|--------|--|

| Miscellaneous Service Charges | | | | |
|--------------------------------------|--|--|---------|--|
| | | | | |
| | Initial Connection Fee | | \$15.00 | |
| | Normal Reconnection Fee | | 15.00 | |
| | Violation Reconnection Fee | | 15.00 | |
| | Premises Visit Fee (in lieu of disconnection) | | 10.00 | |

| Service Availability Charges | | | | |
|-------------------------------------|-------------------------------|--|----------|--|
| | Plant Capacity Charge | | | |
| | Per ERC (350 GPD) | | \$115.00 | |
| | Charge per gallon of capacity | | 0.33 | |