

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 4, 2008

TO: Office of Commission Clerk (Cole)

FROM: Division of Economic Regulation (Johnson, Kaproth)
Office of the General Counsel (Klancke)

RE: Docket No. 080269-WU – Application for authority to transfer water Certificate No. 450-W, held by Pine Harbour Water Utilities, from Jim C. Branham to Pine Harbour Water Utilities, LLC, in Lake County.

AGENDA: 09/16/08 – Regular Agenda – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Argenziano

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\ECR\WP\080269.RCM.DOC

Case Background

Pine Harbour Water Utilities (Pine Harbour or utility) is a Class C utility serving approximately 60 residential customers. The utility is located in the Southwest Florida Water Management District (SWFWMD). The SWFWMD has not imposed special water use restrictions in the utility's service area. However, Lake 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 2007 annual report shows total operating revenue of \$18,757 and net operating loss of (\$2,798) for the system.

Certificate No. 450-W was granted to Mr. Earl W. Stockwell in 1990¹ and subsequently transferred to Mr. Jim C. Branham in 1991.² Upon Mr. Branham's death on April 14, 2007, the utility became a part of his estate. On May 11, 2007, the Circuit Court for Lake County, Florida appointed Ms. Sandra Wesson as personal representative of the Estate of Jim C. Branham. During the probate of Mr. Branham's estate, the Court granted Ms. Wesson authority to manage and operate the utility.

On May 9, 2008, Pine Harbour and Pine Harbour Water Utilities, LLC (PHWU), filed a joint application for transfer of the water facilities and certificate to PHWU. The application was deficient; however, the deficiencies were corrected on June 23, 2008.

Rate base was last established by the Commission in Order No. 24273, issued March 21, 1991. The transfer in this docket is the result of the death of the prior owner. Therefore, due to the nature of the transfer an acquisition adjustment was not addressed because there was no purchase price.

This recommendation addresses the transfer of the water facilities and Certificate No. 450-W from Pine Harbour to PHWU. The Commission has jurisdiction to consider this matter pursuant to Section 367.071, Florida Statutes.

¹ Water certificate issued pursuant to Order No. 15285, issued October 22, 1985, in Docket No. 850417-WU, In Re: Application of Earl W. Stockwell for a certificate to provide water service to the Pine Harbour Subdivision in Lake County, Florida pursuant to the provisions of Section 367.041, Florida Statutes.

² Certificate transferred pursuant to Order No. 24273, issued March 21, 1991, in Docket No. 900525-WU, In Re: Application for transfer of Certificate No. 450-W from Mr. Earl W. Stockwell to Pine Harbour Water Utilities, Inc. in Lake County, Florida.

Discussion of Issues

Issue 1: Should the Commission approve the transfer of facilities and Certificate No. 450-W from Pine Harbour Water Utilities to Pine Harbour Water Utilities, LLC?

Recommendation: Yes, the transfer of facilities and Certificate No. 450-W from Pine Harbour Water Utilities to Pine Harbour Water Utilities, LLC, is in the public interest and should be approved effective as of the date of the Commission's vote. The subsequent order will serve as the utility's water certificate and should be retained by the utility. Pursuant to Rule 25-9.044(1), Florida Administrative Code, the rates and charges approved for the utility should be continued until authorized to change by the Commission in a subsequent proceeding. Pine Harbour is current with regulatory assessment fees (RAFs) and annual reports. PHWU is responsible for filing the utility's annual report and RAFs for 2008 and future years. A description of the territory being transferred is appended to this recommendation as Attachment A. (Johnson, Kaproth, Klancke)

Staff Analysis: On May 28, 2008, an application was filed for approval of the transfer of the facilities and Certificate No. 450-W from Pine Harbour to PHWU. The application is complete and in compliance with the governing statute, Section 367.071, Florida Statutes, and other pertinent statutes and rules concerning an application for transfer. A description of the territory 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 the application were received, and the time for the filing of such objections has expired.

As a result of the dissolution of the estate of Mr. Jim C. Branham, ownership of the utility was transferred to Sandra Wesson, Madeline Lipsky, and Robert Stewart. The new owners are the former employees of Pine Harbour who have managed and operated the utility for the past 21 years. The application for transfer of the facilities and Certificate No. 450-W included copies of the court documents distributing the utility to the current owners in accordance with the decedent's will.

Rule 25-30.037(2)(q), Florida Administrative Code, requires proof that the utility owns or has provided for the continued use of the land upon which the utility facilities are located. In lieu thereof, the applicants have provided a copy of a quit claim deed.

The application contained a statement that the new owners 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 new owners' experience in water operations and a showing of their financial ability to provide service. According to the application, the transfer is in the public interest because the utility will continue to employ the same officers and operators that have been responsible for the utility for the past 21 years. By keeping the same personnel operating

the system, the customers will continue to receive the quality service that they are accustomed to receiving.

With regard to financial ability, the new owners provided individual financial statements to show that they have the resources to address the funding needs of the utility. 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.

The new owners are aware of the responsibilities of a regulated utility. The applicants indicated that they are using the National Association of Regulatory Utility Commissioners Uniform System of Accounts and understand that the utility may not change its rates or serve outside the utility's authorized territory without obtaining prior Commission approval. Pine Harbour's rates and charges were established pursuant to Order No. 24273 in 1991. In addition, the rates have been modified because of indexes and pass-through adjustments. 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 owners have not requested a change in rates; therefore, the existing rates and charges shown on Attachment B should continue in effect.

Based on the above, staff recommends that the transfer of facilities and Certificate No. 450-W from Pine Harbour to PHWU is in the public interest and should be approved effective the date of the Commission's vote. The subsequent order will serve as the utility's water certificate and should be retained by the utility. Pursuant to Rule 25-9.044(1), Florida Administrative Code, the rates and charges approved for the utility should be continued until authorized to change by the Commission in a subsequent proceeding. Pine Harbour is current with RAFs and annual reports. PHWU is responsible for filing the utility's annual report and RAFs for 2008 and future years. A description of the territory being transferred is appended to this recommendation as Attachment A.

Docket No. 080269-WU
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Issue 2: Should this docket be closed?

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

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

Pine Harbor Water Utilities, LLC.

The Pine Harbour Subdivision

The following described lands located in a portion of Section 6, Township 19 South, Range 26 East, Lake County.

From the N.E. corner of Section 6, run West along the North line of Section 6 a distance 2,720 more or less to the Point of Beginning (P.O.B.). From the P.O.B. continue North 89°29'45" West, 975.50 feet to the Southerly Right-of-Way of State Road 44; thence South 54°12'40" West along said Southerly Right-Of-Way, 44.47 feet to the Easterly Right-Of-Way of District road No. 5-5942 (Woodlyn Road); thence South 00°34'55" West, along said Easterly Right-of-Way 992.43 feet; thence south 89°53'30" East, 1562.90 feet; thence North 00°06'30" East, 188.00 feet; thence North 27°55'02" West, 198.70 feet; thence North 29°53'30" West 100.00 feet; thence North 26°38'55", 243.02 feet; thence North 62°39'26" West, 297.75 feet; thence North 06°55'19" West, 209.76 feet to the P.O.B.

FLORIDA PUBLIC SERVICE COMMISSION

authorizes

Pine Harbour Water Utilities, LLC
pursuant to
Certificate Number 450-W

to provide water service in Lake County 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> |
|---------------------|--------------------|----------------------|----------------------|
| 15285 | 10/22/85 | 850417-WU | Original Certificate |
| 24273 | 03/21/91 | 900525-WU | Transfer |
| * | * | 080269-WU | Transfer |

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

Monthly Water Service Rates

Residential Service

Meter Size:

| | |
|-------------|-----------|
| 5/8" x 3/4" | \$ 16.05 |
| 3/4" | \$ 24.08 |
| 1" | \$ 40.14 |
| 1 1/2" | \$ 80.25 |
| 2" | \$ 128.42 |
| 3" | \$ 256.81 |
| 4" | \$ 401.27 |

Charge Per 1,000 Gallons \$ 2.01

Service Availability Charges

Meter Installation Fee
5/8" x 3/4" \$ 82.00