

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application by Sun Life Trailer Resorts Limited Partnership for transfer of majority organizational control of Buttonwood Bay Utilities, Inc., holder of Certificates 431-W and 364-S in Highlands County, merger into Buttonwood Bay Water & Sewer Company, LLC, and name change on certificates to Buttonwood Bay Water & Sewer Company, LLC.

DOCKET NO. 990915-WS
ORDER NO. PSC-00-0577-FOF-WS
ISSUED: March 22, 2000

The following Commissioners participated in the disposition of this matter:

JOE GARCIA, Chairman
J. TERRY DEASON
SUSAN F. CLARK
E. LEON JACOBS, JR.
LILA A. JABER

ORDER APPROVING APPLICATION FOR TRANSFER OF MAJORITY ORGANIZATIONAL CONTROL, MERGER, NAME CHANGE, AND CLOSING DOCKET

BY THE COMMISSION:

Sun Life Trailer Resorts Limited Partnership (Sun Life or Buyer) formed Buttonwood Bay Water & Sewer Company, LLC (BBW&SC) on June 15, 1999. The actual transfer of the utility stock from Buttonwood Bay Investors (Buttonwood Investors or Seller) to Sun Life took place on June 17, 1999. On June 21, 1999, Buttonwood Bay Utilities, Inc. (Buttonwood or utility) and BBW&SC were merged with BBW&SC being the surviving entity. On July 14, 1999, Sun Life filed an application for transfer of majority organizational control of Buttonwood. The Buyer's application was found to be deficient, but the deficiencies were corrected in September, 1999. Buttonwood is a Class C utility located in Highlands County and serves approximately 960 water and wastewater customers. The utility was issued Water Certificate No. 431-W and Wastewater

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Certificate No. 364-S pursuant to Order No. 13672, issued September 11, 1984, in Docket No. 840177-WS.

Application

The application for transfer of majority organizational control of the utility from Buttonwood Investors to Sun Life and subsequent merger with BBW&SC is in compliance with Section 367.071, Florida Statutes, and other pertinent statutes and provisions of the Florida Administrative Code. The application contains a check in the amount of \$3,000, which is the correct filing fee pursuant to Rule 25-30.020, Florida Administrative Code.

The utility has a 99-year lease for its water and wastewater systems which provides for the continued use of the land as required by Rule 25-30.036(3)(i), 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, including notice to the customers of the utility to be transferred. No objections to the notice of application have been received and the time for filing such has expired. A description of the territory served by the utility is attached to this Order as Attachment A and is herein incorporated by reference.

According to the application, the transfer is in the public interest, as required by Rule 25-30.037(3)(f), Florida Administrative Code, because IT was included as part of the transfer of the mobile home community and R.V. park. Since the mobile home community and R.V. park comprised the customers of the utility, the former owner did not want to retain ownership of the utility, and thus, required the purchase of the utility as a condition to purchasing the community. Although the purchaser has no prior experience in water and wastewater utility operations, it has retained the existing operations personnel and has retained the law firm of Rose, Sundstrom & Bentley, LLP, to assist in regulatory matters. The application also included the statement that the Buyer will fulfill the commitments, obligations and representations of the Seller with regard to utility matters. According to its application, Sun Life has the financial and technical ability to

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provide water and wastewater service. The utility has been certificated in the water and wastewater business since 1984. According to our records, the utility is current on its regulatory assessment fees (RAFs) and has filed an annual report for 1998. The Buyer has accepted the responsibility for filing the 1999 RAFs and annual report.

The application states that the Buyer has performed a reasonable investigation of the utility system as required by Rule 25-30.037(3)(h), Florida Administrative Code. The Buyer included a statement that the sanitary sewer collection and transmission systems are in satisfactory condition and in compliance with all applicable standards set by the Florida Department of Environmental Protection (DEP). We have contacted the DEP and learned that there are no outstanding notices of violation.

Section 367.071(1), Florida Statutes, (1999), which became effective on June 11, 1999, states:

No utility shall sell, assign, or transfer its certificate of authorization, facilities or any portion thereof, or majority organizational control 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 or any portion thereof, or majority organizational control may occur prior to commission approval if the contract for sale, assignment, or transfer is made contingent upon commission approval.

The application states that the parties closed on the transfer on June 17, 1999, prior to receiving Commission approval. However, the Agreement includes the following "unwind" provisions:

The parties acknowledge and agree that the Florida Public Service Commission (the "PSC") has the power and jurisdiction to approve or disapprove the transactions contemplated by this agreement.

In the event that said PSC should fail to approve the transfer of the Stock to Purchaser, then Seller, upon the

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same terms and conditions hereof, shall sell the Stock to such other entity as chosen by Purchaser in its sole discretion as will be approved by the PSC.

The above language is indication that the stock transfer was made contingent upon Commission approval. If the transfer had not been approved by this Commission, ownership of the stock would have reverted back to the Seller, and any future stock transfers would have been subject to our approval. Therefore, the transfer agreement accords with Section 367.071, Florida Statutes.

Based on the foregoing, we find that the transfer of majority organizational control of Buttonwood to Sun Life is in the public interest and is hereby approved. Additionally, the merger of Buttonwood into BBW&SC is approved and Certificates Nos. 431-W and 364-S shall be issued in the name of Buttonwood Bay Water & Sewer Company, LLC.

Rate Base

Rate base is not normally established in transfer of majority organizational control proceedings because stock is traded and has no regulatory relationship to rate base. Because different ownership of stock does not affect a utility's rate base balance, stock purchase price and rate base are not considered when determining whether a transfer of majority organizational control is in the public interest.

Moreover, rate base audits have historically not been conducted in transfer of majority organizational control proceedings. The establishment of rate base in this docket would result in an unnecessary deviation from Commission practice. We do not believe the facts in this particular case warrant such a deviation.

Acquisition Adjustment

An acquisition adjustment results when the purchase price differs from the original cost calculation. Determinations of the appropriateness of an acquisition adjustment are made in cases involving the transfer of certificates, assets, or facilities because the purchase price is considered when determining whether the transfer is in the public interest. Acquisition adjustments are generally not considered in stock transfers because the price of stock has no regulatory relationship to a utility's established

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rate base. Therefore, we find that an acquisition adjustment is not appropriate in this docket.

Rates and Charges

The utility's rates and charges were established by Order No. 13672, issued September 11, 1984, in Docket No. 840177-WS, as the result of an original certificates application.

Rule 25-9.044(1), FAC, 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).

The Buyer has not requested a change in the rates and charges of the utility and we see no reason to change them at this time. Accordingly, the utility shall continue to charge the rates and charges approved in its tariff until authorized to change by this Commission in a subsequent proceeding. Because there is a utility name change requested as part of the transfer of majority organizational control, the utility has filed a revised tariff. The tariff filing will be approved, effective for services rendered or connections made on or after the stamped approval date.

Because no further action is required, this docket should be closed.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the application by Sun Life Trailer Resorts Limited Partnership for a transfer of majority organizational control of Buttonwood Bay Utilities, Inc., holder of Certificates Nos. 431-W and 364-S in Highlands County, merger into Buttonwood Bay Water & Sewer Company, LLC, and name change on certificates to Buttonwood Bay Water & Sewer Company, LLC, is hereby approved. The territory served by Buttonwood Bay Utilities, Inc. is attached to this Order as Attachment A and is herein incorporated by reference. It is further

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ORDERED that Buttonwood Bay Water & Sewer Company, LLC, shall continue to charge the rates and charges approved in the tariff for Buttonwood Bay Utilities, Inc. until authorized to change by this Commission in a subsequent proceeding. It is further

ORDERED that because there is no further action required, this docket is hereby closed.

By ORDER of the Florida Public Service Commission this 22nd day of March, 2000.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records

(S E A L)

SAC

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of

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this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Director, Division of Records and reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

BUTTONWOOD BAY WATER & SEWER COMPANY, LLC

HIGHLANDS COUNTY

WATER AND WASTEWATER TERRITORY SERVED

Township 35 South, Range 29 East

Section 27

That portion of the Southwest 1/4 of the Northwest 1/4 of said Section 27 lying West of U.S. Highway No. 27.

Section 28

That Portion of the East 2,233 feet of the North 3,484 feet of said Section 28 lying East of Jackson Creek as it now runs.

A more complete description is listed below:

PARCEL NO. 1 (WASTEWATER TREATMENT PLANT SITE, I-2 CU)

The East 750 feet of the North 2560 feet of Section 28, Township 35 South, Range 29 East, Highlands County, Florida, less the North 2200 feet thereof. Said Parcel No.1 containing 6.2 Acres, more or less.

PARCEL NO. 2 (WASTEWATER PLANT SITE, I-2 CU)

Commence at the Northeast corner of Section 28, Township 35 South, Range 29 East, Highlands County, Florida, and run Southerly along the East boundary of said Section 28, a distance of 1360 feet; thence run Westerly and parallel to the North boundary of said Section 28, a distance of 720 feet to the Point of Beginning; thence continue to run Westerly 200 feet; thence run Southerly 200 feet; thence run Easterly 200 feet; thence run Northerly 200 feet to the Point of Beginning. All parallel to the North and East boundary lines of Section 28, Township 35 South, Range 29 East, Highlands County, Florida. Said Parcel No. 2 containing 0.92 Acres, more or less.

Distribution site together with a right-of-way over and upon all streets, alleyways and utility easements located within the

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ATTACHMENT A
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subdivision for the purpose of installing and maintaining water and sewage distribution systems.

PARCEL NO. 3 (MOBILE HOME PARK SITE, M-2)

The North 2060 feet of Section 28, Township 35 South, Range 29 East, Highlands County, Florida, lying East of Jackson Creek right-of-way, less the North 1040 feet thereof and less; commence at the Northeast corner of Section 28, Township 35 South, Range 29 East, Highlands County, Florida, and run Southerly along the East boundary of said Section 28, a distance of 1330 feet; thence run Westerly and parallel to the North Boundary of said Section 28, a distance of 720 feet to the Point of Beginning; thence continue to run Westerly 200 feet; thence run Southerly 200 feet; thence run Easterly 200 feet; thence run Northerly 200 feet to the Point of Beginning. All parallel to the North and East boundary lines of Section 28, Township 35 South, Range 29 East, Highlands County, Florida. Said Parcel No. 3 containing 35.4 Acres, more or less.

PARCEL NO. 4 (RECREATIONAL VEHICLE SITE, CG-1)

The North 3524 feet of Section 28, Township 35 South, Range 29 East, Highlands County, Florida, lying East of Jackson Creek right-of-way, less the North 2060 feet of said Section 28. Said Parcel No. 4 containing 49.0 Acres, more or less.

PARCEL NO. 5 (BUSINESS, B-3)

The South 600 feet of Southwest 1/4, of Northwest 1/4, West of Highway No. 27 right-of-way, of Section 27, Township 35 South, Range 29 East, Highlands County, Florida. Said Parcel No. 5 containing 4.0 Acres, more or less.

PARCEL NO. 6 (MOBILE HOME SUBDIVISION, M-1)

The North 1040 feet of Section 28, Township 35 South, Range 29 East, Highlands County, Florida, lying East of Jackson Creek right-of-way, less the right of way for Skipper Road. Said Parcel No. 6 containing 40.0 Acres, more or less.

M E M O R A N D U M

March 20, 2000

RECEIVED-FPSC

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RECORDS AND
REPORTING

TO: DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (CROSSMAN) *ps*

RE: DOCKET NO. 990915-WS - APPLICATION BY SUN LIFE TRAILER RESORTS LIMITED PARTNERSHIP FOR TRANSFER OF MAJORITY ORGANIZATIONAL CONTROL OF BUTTONWOOD BAY UTILITIES, INC., HOLDER OF CERTIFICATES 431-W AND 364-S IN HIGHLANDS COUNTY, MERGER INTO BUTTONWOOD BAY WATER & SEWER COMPANY, LLC, AND NAME CHANGE ON CERTIFICATES TO BUTTONWOOD BAY WATER & SEWER COMPANY, LLC.

0577-50F

Attached is an ORDER APPROVING APPLICATION FOR TRANSFER OF MAJORITY ORGANIZATIONAL CONTROL, MERGER, NAME CHANGE, AND CLOSING DOCKET, to be issued in the above-referenced docket.

(Number of pages in order - 9)

SAC/lw

Attachment

cc: Division of Water and Wastewater (Clapp, Redemann)

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