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Public Service Commission

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-M-E-M-O-R-A-N-D-U-M-

DATE: February 19, 2009

TO: Office of Commission Clerk (Cole)

FROM: Division of Economic Regulation (Clapp, Marsh)
Office of the General Counsel (Bennett)

Handwritten notes and initials:
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RE: Docket No. 080610-WS – Application for transfer of water and wastewater utility assets of Ferncrest Utilities, Inc., in Broward County, to Tindall Hammock Irrigation and Soil Conservation District, and cancellation of Certificate Nos. 13-W and 10-S.
County: Broward

AGENDA: 03/03/09 – Regular Agenda – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\ECR\WP\080610.RCM.DOC

Case Background

Ferncrest Utilities, Inc. (Ferncrest or utility) is a Class B utility providing water and wastewater service to approximately 1,360 residential and 112 general service customers in Broward County. The utility's 2007 annual report indicates that the utility had gross revenue of \$559,070 and \$725,450 and net operating loss of \$164,384 and \$177,136 for water and wastewater, respectively.

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The utility's water and wastewater systems were originally issued Certificate Nos. 13-W and 10-S in 1971.¹ The utility's territory was amended once.²

On September 26, 2008, Ferncrest submitted an application for transfer of utility assets to Tindall Hammock Irrigation and Soil Conservation District (Tindall or buyer) and for cancellation of Certificate Nos. 13-W and 10-S. The Commission has jurisdiction pursuant to Section 367.071, Florida Statutes (F.S.).

¹ Order No. 5078, issued March 23, 1971, in Docket Nos. 7137-W and 9561-S, In re: On the motion to vacate Order No. 4899 filed by Davie Utilities, Inc., in the matter of application of Davie Utilities, Inc., for an amendment to its certificate no. WS-22, in Broward County., and in Docket Nos. 69203-W and 69204-S, In Re: On the Exceptions filed by Davie Utilities, Inc., to the Examiner's Recommended Order of July 6, 1970, in the matter of the reopened application of Davie Utilities, Inc., for certificates to operate a water system and a sewer system in Broward County and in the matter of the application of Ferncrest Utilities Company for certificates to operate water and sewer systems in Broward County.

² Order No. 7977, issued September 27 1977, in Docket Nos. 760011-W and 760012-S, In re: Application of Ferncrest Utilities, Inc., to amend Water Certificate No. 13-W and Sewer Certificate No. 10-S to include additional territory in Broward County, Florida. Section 367.061, Florida Statutes.

Discussion of Issues

Issue 1: Should the transfer of Ferncrest Utilities, Inc.'s water and wastewater facilities to Tindall Hammock Irrigation and Soil Conservation District and the cancellation of Certificate Nos. 13-W and 10-S be approved?

Recommendation: Yes. The transfer of Ferncrest Utilities, Inc.'s water and wastewater facilities to Tindall Hammock Irrigation and Soil Conservation District should be approved as a matter of right pursuant to Section 367.071(4)(a), F.S., and Certificate Nos. 13-W and 10-S should be cancelled effective November 3, 2008. (Clapp, Marsh, Bennett)

Staff Analysis: On September 26, 2008, Ferncrest filed an application to transfer the utility's service territory and facilities to Tindall pursuant to Section 367.071(4)(a), F.S., and Rule 25-30.037(4), Florida Administrative Code (F.A.C.), and for cancellation of Certificate Nos. 13-W and 10-S. According to documents filed on November 10, 2008, the actual closing of the transfer took place on November 3, 2008. Therefore, November 3, 2008, is the effective date of the transfer.

Section 367.071(4)(a), F.S., provides that "[t]he sale of (a utility's) facilities, in whole or part, to a governmental authority shall be approved as a matter of right" Section 1.01(8), F.S., defines governmental authority as a political subdivision and includes "counties, cities, towns, villages, special tax school districts, special road and bridge districts, and all other districts in this state." In 2003 and 2004, the Commission, in two different dockets, considered whether or not a transfer was to a "governmental authority" within the meaning of Section 367.071(4)(a), F.S.³ In both of those orders, the Commission acknowledged that the sale was to a governmental authority because that authority was an independent special district created and passed by a special act of the Florida legislature.

Tindall was also created by a special act of the Florida Legislature, Ch. 98-523, Laws of Florida, for purposes of draining, reclaiming, and conserving the lands in the district. In 2008, the special act was amended by Ch. 08-293, Laws of Florida, to include the district's authority to own, acquire, construct, operate, and improve water systems and sewer systems within the district. Tindall's elected board of supervisors also has the authority to impose taxes and issue bonds on behalf of the district. Therefore, staff believes that Tindall is a governmental authority within the meaning of Section 367.071(4)(a), F.S.

Tindall and Ferncrest agreed to the transfer of the water and wastewater facilities. Pursuant to Section 367.071(4)(a), F.S., the transfer of facilities to a governmental authority shall be approved as a matter of right. As such, no notice of the transfer is required and no filing fees apply.

³ Order No. PSC-03-1277-FOF-WU, issued November 10, 2003, in Docket No. 030541-WU, In re: Application for acknowledgement for transfer of Clay County and Bradford County land and facilities to Clay County Utility Authority, and for cancellation of Certificate Nos. 554-W and 003-W, by Florida Water Services Corporation.; and Order No. PSC-04-0575-FOF-WS, issued June 7, 2004, in Docket No. 040257-WS, In re: Application for transfer of Certificates 617-W and 531-S in Duval and St. Johns counties from Nocatee Utility Corporation to JEA.

The application contains a statement that the utility will transfer customer deposits plus any interest to the buyer. The application also stated that the buyer obtained the utility's most recent available income and expense statement, balance sheet, statement of rate base for regulatory purposes, and contributions-in-aid-of-construction.

In accordance with Rule 25-30.110, F.A.C., Ferncrest filed its annual reports for 2007 and prior years. Pursuant to Rule 25-30.120, F.A.C., the utility's RAFs for 2008 through the November 3, 2008, closing date, and all prior years have been paid. Ferncrest is not required to file an annual report for the period of January 1, 2008, through November 3, 2008, because of its transfer to Tindall prior to the end of 2008. All annual reports for prior years have been filed.

Based on the above, staff recommends that the transfer of Ferncrest Utilities, Inc.'s water and wastewater facilities to Tindall Hammock Irrigation and Soil Conservation District should be approved as a matter of right pursuant to Section 367.071(4)(a), F.S., and Certificate Nos. 13-W and 10-S should be cancelled effective November 3, 2008.

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Issue 2: Should this docket be closed?

Recommendation: Yes. Pursuant to Section 367.071(4)(a), F.S., approval of a transfer to a governmental authority is a matter of right. As such, no further Commission action is necessary and this docket should be closed. (Bennett)

Staff Analysis: Pursuant to Section 367.071(4)(a), F.S., approval of a transfer to a governmental authority is a matter of right. As such, no further Commission action is necessary and this docket should be closed.