

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: 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.

DOCKET NO. 080610-WS  
ORDER NO. PSC-09-0164-FOF-WS  
ISSUED: March 23, 2009

The following Commissioners participated in the disposition of this matter:

MATTHEW M. CARTER II, Chairman  
LISA POLAK EDGAR  
KATRINA J. McMURRIAN  
NANCY ARGENZIANO  
NATHAN A. SKOP

ORDER ACKNOWLEDGING TRANSFER OF FERNCREST UTILITIES, INC.'S ASSETS  
TO A GOVERNMENTAL AUTHORITY; AND  
CANCELLING CERTIFICATE NOS. 13-W AND 10-S

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.

The utility's water and wastewater systems were originally issued Certificate Nos. 13-W and 10-S in 1971.<sup>1</sup> The utility's territory was amended once.<sup>2</sup>

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. We have jurisdiction pursuant to Section 367.071, Florida Statutes (F.S.).

<sup>1</sup> 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.

<sup>2</sup> 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.

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FPSC-COMMISSION CLERK

Ferncrest's application to transfer the utility's service territory and facilities to Tindall, and to cancel Certificate Nos. 13-W and 10-S was made pursuant to Section 367.071(4)(a), F.S., and Rule 25-30.037(4), Florida Administrative Code (F.A.C.). 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 a 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, in two different dockets, we considered whether or not a transfer was to a "governmental authority" within the meaning of Section 367.071(4)(a), F.S.<sup>3</sup> In both of those orders, we 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. Accordingly, we find that Tindall is a governmental authority within the meaning of Section 367.071(4)(a), F.S. The statute provides that no notice of a transfer to a governmental authority is required and no filing fees apply.

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.

Tindall and Ferncrest agreed to the transfer of the water and wastewater facilities. 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.

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 regulatory assessment fees (RAFs) have been paid for 2008 through the November 3, 2008, closing date, and all prior years. 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, the transfer of Ferncrest Utilities, Inc.'s water and wastewater facilities to Tindall Hammock Irrigation and Soil Conservation District is approved as a matter of right pursuant to Section 367.071(4)(a), F.S. Certificate Nos. 13-W and 10-S are cancelled effective November 3, 2008.

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<sup>3</sup> 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.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the transfer of Ferncrest Utilities, Inc.'s water and wastewater facilities to Tindall Hammock Irrigation and Soil Conservation District is approved as a matter of right pursuant to Section 367.071(4)(a), F.S. It is further

ORDERED that Certificate Nos. 13W and 10-S are cancelled effective November 3, 2008. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission this 23rd day of March, 2009.



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ANN COLE  
Commission Clerk

( S E A L )

LCB

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 Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of 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 Office of Commission Clerk, 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.