

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for transfer of Certificate No. 495-S from Sandalhaven Utility, Inc. to CHP Utility, Inc. in Charlotte County, cancellation of Certificate No. 495-S, and exemption from Florida Public Service Commission regulation.

DOCKET NO. 970381-SU  
ORDER NO. PSC-97-1150-FOF-SU  
ISSUED: September 30, 1997

The following Commissioners participated in the disposition of this matter:

JULIA L. JOHNSON, Chairman  
J. TERRY DEASON  
SUSAN F. CLARK  
DIANE K. KIESLING  
JOE GARCIA

ORDER DECLINING TO INITIATE SHOW CAUSE PROCEEDINGS,  
APPROVING TRANSFER, CANCELING CERTIFICATE  
AND CLOSING DOCKET

BY THE COMMISSION:

BACKGROUND

Sandalhaven Utility, Inc. (Sandalhaven or Utility) is a Class C utility which provides wastewater service to 623 residential, general service, and multi-family customers in Charlotte County. According to the 1996 annual report, the utility had annual operating revenues of \$161,918 and experienced an operating loss of \$41,249.

On March 26, 1997, the Commission received an application from CHP Utility, Inc. (CHP), a non-profit corporation, requesting transfer of Sandalhaven's assets and customer service area, and seeking exempt status from the Commission for provision of wastewater service as an exempt non-profit association. Although the actual closing took place December 30, 1996, the purchase and sale agreement contained a condition which demanded complete

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approval by the Florida Public Service Commission for final closure.

CHP is a non-profit corporation formed on April 10, 1996. The utility has filed with the Office of the Secretary of State as a non-profit entity and has fulfilled all of the criteria to be considered an exempt entity pursuant to Section 367.022(7), Florida Statutes. The CHP membership is comprised of utility customers receiving service from the utility and all members hold one vote as stated in the Articles of Incorporation. Only members of the non-profit corporation receive wastewater service.

#### Show Cause

Section 367.071(1), Florida Statutes, requires that no utility may transfer its facilities without determination and approval of the Commission that the buyer will fulfill the commitments, obligations, and representations of the utility. Section 367.161(1), Florida Statutes, authorizes the Commission to assess a penalty of not more than \$5,000 for each offense, if a utility is found to have knowingly refused to comply with, or to have willfully violated, any provision of Chapter 367, Florida Statutes. As stated previously, the transfer from Sandalhaven to CHP occurred on December 30, 1996 without prior approval of the Commission. The application for approval of the transfer was not filed until March 26, 1997. This is an apparent violation of Section 367.071, Florida Statutes.

Utilities are charged with the knowledge of the Commission's rules and statutes. Additionally, "[i]t is a common maxim, familiar to all minds that 'ignorance of the law' will not excuse any person, either civilly or criminally." Barlow v. United States, 32 U.S. 404, 411 (1833). Thus, any intentional act, such as the utility's failure to obtain Commission approval prior to transferring its assets and facilities to another entity, would meet the standard for a "willful violation." In Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL titled In Re: Investigation Into The Proper Application of Rule 25-14.003, F.A.C., Relating To Tax Savings Refund for 1988 and 1989 For GTE Florida, Inc., the Commission, having found that the company had not intended to violate the rule, nevertheless found it appropriate to order it to show cause why it should not be fined, stating that

"'willful' implies an intent to do an act, and this is distinct from an intent to violate a statute or rule." Id. at 6.

There are, however, circumstances which appear to mitigate the utility's apparent violation of Section 367.071, Florida Statutes. Through conversations with Commission staff, the utility stated that the need for the sales transaction to occur in December 1996 was driven by tax considerations. By executing the agreement prior to January 1997, the utility avoided substantial ad valorem taxation assessments for the current year. The utility required additional time in order to prepare the information and documentation needed to file the transfer application. Regardless of when the sale of the assets actually occurred or when CHP commenced running the utility, the purchase and sale agreement provided that the closing was contingent upon PSC approval of the transfer. So, even though the sale was closed prior to PSC approval, it is still dependent upon receiving such approval. Furthermore, the transfer resulted in the utility being placed under the control of the customers.

Although regulated utilities are charged with knowledge of Chapter 367, Florida Statutes, we do not believe that the apparent violation of Section 367.071, Florida Statutes, rises in these circumstances to the level of warranting initiation of show cause proceedings. Therefore, Sandalhaven shall not be required to show cause for failing to obtain approval from the Commission prior to the transfer of the utility to CHP.

#### Transfer Application

The transfer application is in compliance with the governing statute, Section 367.071, Florida Statutes, and other pertinent statutes and administrative rules concerning an application for transfer of utility assets. The application contains a check for wastewater service totaling \$1,500.00, which is the correct filing fee pursuant to Rule 25-30.020, Florida Administrative Code.

The filing by CHP requests that the transfer include the wastewater collection lines and wastewater treatment system. According to the contract for sale, the purchase price for both systems is \$733,000. CHP will fund the purchase through from operating capital. The non-profit association has also indicated

this transaction will not jeopardize its financial standing. The non-profit corporation was created as an entity to operate the utility and is registered with the Office of the Secretary of State. CHP will not be held liable for any prior taxes assessed to Sandalhaven.

Sandalhaven has been in operation since 1983. The utility has consistently met DEP standards and provided customers with quality service. Sandalhaven has no outstanding violations. Sandalhaven is current with Commission requirements of annual reports and regulatory assessment fees through 1996. Sandalhaven shall be responsible for submitting a 1997 annual report and 1997 regulatory assessment fees through the date of transfer as recognized by Commission Order.

According to the application, CHP will continue to utilize the professional services of licensed operators, who have managed the day to day operations of the system since 1983. The buyer is committed and willing to make any necessary repairs to the system. Because the operations of the system will be relatively unchanged, the customers should experience consistent service provided within DEP standards. We have determined that these considerations demonstrate a financial and technical ability to provide quality utility service and that CHP is capable of fulfilling the commitments, obligations and representations of the utilities. Therefore, we find that the transfer of Sandalhaven Utility, Inc. to CHP Utility, Inc. is in the public interest and shall be approved. Because it appears that CHP would satisfy the requirements for exemption pursuant to Section 367.022(7), Florida Statutes, Wastewater Certificate No. 495-S is hereby canceled.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Sandalhaven Utility, Inc. shall not be required to show cause for failing to obtain prior Commission approval of the transfer. It is further

ORDERED that the transfer of Sandalhaven Utility, Inc., 6800 Placida Road, Englewood, Florida 34224, to CHP Utility, Inc., 6800 Placida Road, Englewood, Florida 34224, is hereby approved. It is further

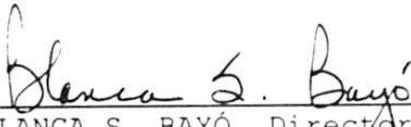
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ORDERED that Sandalhaven Utility, Inc. shall be responsible for submitting a 1997 annual report and 1997 regulatory assessment fees through the date of transfer as recognized by this Order. It is further

ORDERED that Wastewater Certificate No. 495-S is hereby canceled. It is further

ORDERED that this docket is hereby closed.

By ORDER of the Florida Public Service Commission this 30th day of September, 1997.

  
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BLANCA S. BAYÓ, Director  
Division of Records and Reporting

( S E A L )

JSB

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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 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.