

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Application for transfer of majority organizational control of Town and Country Utilities Company, holder of Certificate No. 613-W in Charlotte and Lee Counties, from Babcock Florida Company to MSKP III, Inc.

DOCKET NO. 060520-WU
ORDER NO. PSC-06-0809-FOF-WU
ISSUED: October 2, 2006

The following Commissioners participated in the disposition of this matter:

LISA POLAK EDGAR, Chairman
J. TERRY DEASON
ISILIO ARRIAGA
MATTHEW M. CARTER II
KATRINA J. TEW

FINAL ORDER APPROVING
TRANSFER OF MAJORITY ORGANIZATIONAL CONTROL

BY THE COMMISSION:

Background

Town and Country Utilities Company (Town and Country or utility) is a Class C utility providing water service to the Babcock Ranch (Ranch), which consists of approximately 16 residential and 11 general service customers in Charlotte and Lee Counties. The utility is in the Southwest Florida Water Management District and the South Florida Water Management District. The part of the utility that is situated in Lee County is in a water use caution area of the South Florida Water Management District. The utility was originally certificated in 1999.¹ The utility's 2005 annual report shows gross revenue of \$130,430 and net operating losses of \$19,377.

On July 27, 2006, Babcock Florida Company (Company) filed an application for the transfer of majority organizational control of the utility to MSKP III, Inc. (buyer). Both parties are registered with the Florida Division of Corporations. The utility is wholly owned by Babcock Florida Company. MSKP III, Inc. is a wholly-owned subsidiary of MSKP Southwest Florida Investment Partners, Inc. The parties entered into an agreement in July 2005 for MSKP III, Inc. to purchase the stock of the Company. Subsequent to the purchase, the two entities merged with Babcock Florida Company being the surviving entity and wholly-owned by MSKP Southwest Florida Investment Partners, Inc. The actual closing on this agreement took place on July 31, 2006. Pursuant to the Agreement for Application to Transfer Utility, the transfer of

¹ Order No. PSC-99-2198-PAA-WU, issued November 8, 1999, in Docket No. 981288-WU, In re: Application for certificate to operate a water utility in Charlotte and Lee Counties, by Town and Country Utilities Company.

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majority organizational control and merger, as it relates to the utility, was made contingent upon our approval. We have jurisdiction to consider this matter pursuant to Section 367.071, Florida Statutes.

Transfer of majority organizational control

The application is in compliance with the governing statute, Section 367.071, Florida Statutes, and Rule 25-30.037(3), Florida Administrative Code, pertaining to an application for transfer of majority organizational control. A description of the territory granted to Certificate No. 613-W 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 this application were received, and the time for the filing of such objections has expired.

Pursuant to Rule 25-30.037(3)(i), Florida Administrative Code, the application is to contain evidence that the utility has control of the land upon which the utility facilities are located. A copy of the 99-year lease between Babcock Florida Company and the utility which was executed on May 17, 1999, was provided. A revised 99-year lease for a lesser amount of land was provided following the closing on the transfer to a governmental authority.

We have verified that the utility is current on annual reports and regulatory assessment fees (RAFs) through 2005. The utility will continue to be responsible for filing the annual report and RAFs for 2006 and future years.

Pursuant to Rule 25-30.037(3)(h), Florida Administrative Code, the application contained a statement that the buyers performed a reasonable investigation of the utility system. We have 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.

Pursuant to Rule 25-30.037(3)(f), Florida Administrative Code, the application contained a statement of how the transfer is in the public interest. The utility will remain a wholly-owned subsidiary of the surviving entity, Babcock Florida Company, and its operations and operating personnel will remain the same; therefore, the transfer should be transparent to the customers, who will continue to receive the same quality service. A showing of the buyer's financial ability to provide service was also provided. MSKP III, Inc. is an affiliate of Kitson & Partners, LLC (Kitson) and Morgan Stanley. Kitson is an international real estate developer. Morgan Stanley is a well-known investment banking firm. In addition, the buyer provided a statement of intent to fulfill the commitments, obligations, and representations of the seller with regard to utility matters.

According to the application, the buyer did not finance the purchase of the utility. However, the acquisition of the outstanding capital stock of Babcock Florida Company was financed through a combination of debt and equity. The application included statements that the buyer has the funding available to make the financial and operating commitment necessary for

the utility to be successful in its endeavor to provide water services to the residents and businesses in the current and future developments within the utility's service territory.

Our staff met with a representative of the buyer and the utility on July 12, 2006, in anticipation of the submission of this application. Though MSKP III, Inc. has no experience in running a regulated utility, it is retaining the current staff, and also contracting with other professionals with experience before this Commission.

Town and Country's rates and charges were established pursuant to Order No. PSC-99-2198-PAA-WU. 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 owner has not requested a change; therefore, the existing rates and charges shown on Attachment B shall continue in effect.

Based on all of the above, the application for transfer of majority organizational control of Town and Country as a result of the merger of Babcock Florida Company with MSKP III, Inc. is in the public interest and is hereby approved effective September 19, 2006. The resultant order shall serve as the utility's water certificate and shall be retained by the utility. Town and Country shall remain responsible for all regulatory assessment fees and annual reports for 2006 and the future. The tariff pages reflecting the transfer shall be effective for services provided or connections made on or after the stamped approval date on the tariff sheets.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the transfer of majority organizational control of Town and Country Utilities Company, holder of Certificate No. 613-W, to MSKP III is in the public interest and is hereby approved effective September 19, 2006. It is further

ORDERED that all attachments appended hereto are incorporated herein by reference. It is further

ORDERED that this Order shall serve as Town and Country Utilities Company's water certificate and shall be retained the utility. It is further

ORDERED that Town and Country Utilities Company shall remain responsible for all regulatory assessment fees and annual reports for 2006 and the future. It is further

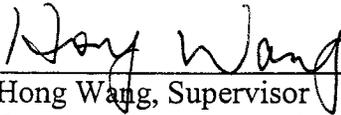
ORDERED that the tariffs reflecting the transfer of ownership shall be effective for services provided or connections made on or after the stamped approval date. It is further

ORDERED that Town and Country Utilities Company shall continue to charge its existing rates until authorized a change by this Commission. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission this 2nd day of October, 2006.

BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

By: 

Hong Wang, Supervisor
Case Management Review Section

(S E A L)

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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 the Commission Clerk and Administrative Services, 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 the Commission Clerk and Administrative Services 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.

TOWN AND COUNTRY UTILITIES COMPANY

WATER SERVICE AREA

CHARLOTTE AND LEE COUNTIES

All of Sections 1 through 36, Township 41 South, Range 26 East, Charlotte County, Florida. Less road right-of-way for S.R. 31 and C.R. 74.

AND

All of Sections 1 through 36, Township 42 South, Range 26 East, Charlotte County, Florida. Less road right-of-way for S.R. 31.

AND

All of Sections 1 through 19, Township 41 South, Range 27 East, Charlotte County, Florida.

AND

All of Sections 1 through 11, the west ½ of Section 12, and all of Sections 13 through 36, Township 42 South, Range 27 East, Charlotte County, Florida.

AND

All of Sections 1 through 7, the west ½ of Section 9, and all of Section 12, Township 43 South, Range 26 East, Lee County, Florida. Less the road right-of-way for S.R. 31 and C.R. 78.

AND

All of Sections 4 through 8, Township 43 South, Range 27 East, Lee County, Florida.

AND

Section 9, Township 43 South, Range 27 East, Lee County, Florida. Less the South ½ of the Southeast 1/4 of 9-43-27.

AND

The Northwest 1/4 and the North ½ of the Northeast 1/4 of Section 17, Township 43 South, Range 27 East, Lee County, Florida.

AND

The North ½ of Section 18, Township 43 South, Range 27 East, Lee County, Florida.

FLORIDA PUBLIC SERVICE COMMISSION

authorizes

Town and Country Utilities Company
pursuant to
Certificate Number 613-W

to provide water service in Charlotte and Lee Counties 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>
PSC-99-2198-PAA-WU	11/08/99	981288-WU	Original Certificate
PSC-06-0809-FOF-WU	10/02/06	060520-WU	Transfer of Majority Organizational Control

Town and Country Utilities Company

Monthly Service Rates

Residential Service and General Service

Meter Size:	
5/8" x 3/4"	\$ 7.98
1"	19.95
1 1/2"	39.90
2"	63.84
3"	127.68
4"	199.50
6"	399.00
8"	638.40
Charge per 1,000 gallons	\$2.57

Non-Potable Agricultural Service

Well Size:	Flat Rate
1"	\$ 5.14
2"	16.48
3"	32.96
4"	51.50
5"	86.52
6"	103.00
7"	144.20
8"	164.80
9"	214.24
10"	236.90
12"	442.90

Raw Water Service

Charge per 1,000 gallons	\$0.50
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Miscellaneous Service Charges

Initial Connection Fee	\$15.00
Normal Reconnection Fee	15.00
Violation Reconnection Fee	15.00
Premises Visit Fee (in lieu of disconnection)	10.00

Service Availability Charges

Plant Capacity Charge	
Per ERC (350 GPD)	\$115.00
Charge per gallon of capacity	0.33