

DOCKET NO. 910097-WS
MAY 9, 1991

the wastewater plant is located so that Century could continue to operate the plant until the transfer, if found to be in the public interest, is approved. Upon approval of the transfer, the lease expires. We believe the intent of the lease was to avoid transferring the water and wastewater utilities without prior Commission approval. However, since the lease does not address the transfer of the water utility, the transfer was finalized without prior Commission approval and therefore, the lease did not accomplish its purpose. Nonetheless, the application for approval of the transfer was filed within a reasonable time period after the Commission staff became aware of the transfer. Therefore, Staff sees no need in requiring the utility to show cause why they should not be fined for transferring without Commission approval. According to Staff's Standard Operating Procedure (SOP) 1610, a show cause proceeding is normally a last resort, only after the utility has been made aware of the violation, given an opportunity to comply or explain its position, and has not responded. Since the utility has filed for the transfer within a short period after notifying the Commission, no show cause is recommended.

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DISCUSSION OF ISSUES

ISSUE 1: Should the transfer of Water Certificate No. 524-W and Sewer Certificate No. 459-S from Century Group, Inc. to B.D.C., Inc. be approved?

RECOMMENDATION: Yes, the transfer should be approved. (HAND, CROSSY)

STAFF ANALYSIS: The 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 certificate. The application contains a check in the amount of \$300, which is the correct filing fee pursuant to Rule 25-30.020, Florida Administrative Code. The applicant has provided evidence that BDC owns the land upon which the utility's facilities are located as required by Rule 25-30.037(1)(c), Florida Administrative Code.

The application also 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 system 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 appended to this memorandum as Attachment A.

The applicant states that the "Transferee's financial ability to provide service is demonstrated by their ability to obtain financing for the purchase of the mobile home park and utility assets. The total value of which exceeds the proposed rate base by seven fold." BDC has submitted financial information indicating that BDC has assets in excess of \$2 million, as of January 1, 1991.

While BDC has no past experience in the industry, they have retained Wray Enterprises to manage and operate the water and wastewater utility systems to insure proper operation of the utilities.

Staff has contacted the Department of Environmental Regulation and learned that there are no outstanding notices of violation or warnings against the utility.

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The application contains a copy of the contract for sale which includes the purchase price, terms of payment and a list of the assets purchased and the liabilities assumed. The applicant provided a statement in its application that BDC will fulfill the commitments, obligations and representations of Century.

There are no customer deposits, guarantee revenue contracts, developer agreements, outstanding regulatory assessment fees, refunds, or customer advances.

Based on the above, staff believes the transfer of Water Certificate No. 524-W and Sewer Certificate No.459-S from Century Group, Inc. to B.D.C., Inc. is in the public interest and should be approved.

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ATTACHMENT A

CENTURY GROUP, INC.

TERRITORY DESCRIPTION

The following described lands located in portions of Section(s) 9, Township 26 South, Range 21 East, Pasco County, Florida:

Section 9

The SW 1/4 of the NE 1/4 of the NW 1/4 and the S 1/2 of the SE 1/4 of the NE 1/4 of the NW 1/4 and the N 1/2 of the N 1/2 of the SE 1/4 of the NW 1/4.

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ISSUE 2: Should rate base be established in this docket?

RECOMMENDATION: No, rate base is being established in the staff assisted rate case which is also scheduled for this agenda. (HAND)

STAFF ANALYSIS: The Commission has the discretion of setting rate base in transfer proceedings as provided in Section 367.071(5), Florida Statutes, which states that

The commission by order may establish rate base for a utility or its facilities or property when the commission approves a sale, assignment, or transfer thereof,...

Since rate base is being established in the staff-assisted rate case and the utility is not requesting a positive acquisition adjustment even though the portion of the sales price allocated to the utility is in excess of the rate base, Staff recommends that rate base not be established in this docket.

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ISSUE 1: Should B.D.C., Inc. adopt and use the rates and charges approved by this Commission for Century Group, Inc.?

RECOMMENDATION: Yes, B.D.C., Inc. should continue charging the rates and charges approved for this utility system. (HAND)

STAFF ANALYSIS: The utility's approved rates were effective September 30, 1990, pursuant to an index and pass-through rate adjustment. There are no miscellaneous service charges or service availability charges.

Rule 25-9.044(1), Florida Administrative Code, provides that:

"In cases 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 utility has requested a change in its rates and charges in the staff-assisted rate case, Docket No. 900749-WS, which is also on this May 21st Agenda Conference. Staff recommends that the utility continue operations under the existing tariff and apply the approved rates until authorized to be changed. The utility has filed a tariff reflecting the transfer of ownership. Staff will approve the tariff filing effective for services provided on and after the tariff's stamped approval date.

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ISSUE 4: Should this docket be closed?

RECOMMENDATION: Yes. (CROSBY)

STAFF ANALYSIS: No further action will be required and the docket should be closed.

DOCTER.CMH