



Public Service Commission

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DATE: MAY 3, 2001

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF REGULATORY OVERSIGHT (BRADY) *BSM*
DIVISION OF LEGAL SERVICES (CROSBY, GERVASI) *pb*

RE: DOCKET NO. 990256-WU - APPLICATION FOR TRANSFER OF FACILITIES OF GEM ESTATES UTILITIES, INC. IN PASCO COUNTY TO GEM ESTATES MOBILE HOME VILLAGE ASSOCIATION, INC., AND CANCELLATION OF CERTIFICATE NO. 563-W. COUNTY: PASCO

AGENDA: 05/15/01 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\RGO\WP\990256.RCM

CASE BACKGROUND

Gem Estates Utilities, Inc. (Gem Estates or utility) is a Class C utility located in Pasco County. It provides water service to 224 unmetered lots and a clubhouse in the subdivision known as Gem Estates Mobile Home Park. Wastewater service is provided by septic system. According to its 1999 annual report, the utility had gross revenues of \$12,434 with a net operating loss of \$4,488.

Gem Estates was formed in 1974 by Majorie and Lawrence Cahill. Ms. Hollis Malberg, daughter of the founders, assumed operations of Gem Estates in 1989 as one of two trustees of the Majorie Ruth Cahill Trust (Cahill Trust). Ms. Malberg's sister, Ms. Jacqueline Cahill, was the other co-trustee. The Commission first became aware of the utility's existence in 1992 when it received a complaint regarding a proposed rate increase. The utility's petition for a landlord-tenant exemption pursuant to Section

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367.022(5), Florida Statutes, was denied by Order No. PSC-92-0746-FOF-WU, issued August 4, 1992, in Docket No. 920281-WU, as the customers owned their own lots and charges for water service were specifically referenced within the maintenance agreement. The utility was required to file for a water certificate. Certificate No. 563-W was granted by Order No. PSC-94-1472-FOF-WU, issued November 30, 1994, in Docket No. 921206-WU.

At the time of certification, Ms. Malberg was still the controlling trustee. On October 27, 1995, the co-trustees signed an agreement leaving Ms. Cahill with full responsibility for the utility. Ms. Cahill had medical limitations which interfered with her ability to properly maintain utility operations. On December 24, 1996, a phone complaint was logged with the Division of Consumer Affairs (CAF) by Gem Estates Mobile Home Village Association, Inc. (GEMHVA) for failure of the utility to pay its electric bill which caused electric service to be disconnected and water service disrupted for several hours. GEMHVA paid the electric bill as well as many subsequent bills on behalf of the utility in order to maintain water operations.

On May 28, 1997, CAF forwarded the complaint to the Division of Water and Wastewater for investigation. The Commission had received additional complaints concerning the failure of the utility to bill the homeowners and to respond to homeowners' calls and letters. The utility had also failed to file its 1995 and 1996 annual reports and regulatory assessment fees (RAFs). Furthermore, staff learned that on September 10, 1996, the Florida Department of Environmental Protection (FDEP) had initiated an enforcement action against the utility for failure to correct the deficiencies noted in its October 2, 1995, inspection. On September 24, 1997, staff performed a joint field inspection with the FDEP staff, the utility's plant operator, and a member of GEMHVA. While numerous deficiencies were noted, the utility did not appear to be either a health hazard or in immediate danger of being abandoned.

Subsequent to the inspection, staff continued its attempts to contact Ms. Cahill. On May 22, 1998, staff initiated Docket No. 980678-WU to pursue a show cause proceeding against the utility for delinquent annual reports and RAFs. On July 7, 1998, by Order No. PSC-98-0905-SC-WU, the Commission ordered the utility to show cause in writing why it should not be fined for its failure to file its 1995-1997 annual reports and for its failure to pay RAFs, and ordered the utility to immediately file its 1995-1997 annual reports and immediately remit \$1,713.96 in delinquent RAFs for 1995-1997.

On October 19, 1998, the FDEP served Ms. Cahill with a final "Notice of Violation and Orders for Corrective Action" (NOV). The FDEP informed staff that, if Ms. Cahill failed to respond to the final NOV, the FDEP would file a motion for default final judgment in Circuit Court in which case the Circuit Court would likely appoint a receiver to ensure environmental compliance.

Commission staff coordinated with GEMHVA and the FDEP to facilitate the positioning of GEMHVA as a potential receiver. With an interest in acquiring the utility, GEMHVA hired an engineering firm to establish an estimated value for the utility along with the remainder of the property in the Cahill Trust. On January 14, 1999, GEMHVA held its first vote on the acquisition to which an overwhelming number of members concurred. Because Section 367.071, Florida Statutes, at the time required Commission approval prior to the sale of utility facilities, GEMHVA filed an application for transfer on March 4, 1999, opening this docket. However, staff was unable to act on the application until there was an executed sales agreement.

Meanwhile, on January 5, 1999, the FDEP filed a petition in Circuit Court for an emergency injunction against Ms. Cahill's continued operation of the utility and requested the Circuit Court find that the utility had been constructively abandoned by Ms. Cahill. After soliciting staff's recommendation and having witnessed GEMHVA's willingness to deal with the utility's problems, the FDEP requested that GEMHVA be appointed receiver or that the Circuit Court issue an order forcing the sale of the utility. Action on the motion was held in abeyance by the Circuit Court because Ms. Malberg contacted Commission staff and the FDEP at this time with offers to bring the utility into compliance.

On April 16, 1999, the Circuit Court of the Sixth Judicial Circuit removed Ms. Cahill as co-trustee and appointed Ms. Malberg as sole trustee of the Cahill Trust. On June 1, 1999, Ms. Malberg entered into a stipulated consent order with the FDEP and the enforcement case was eventually closed on December 27, 1999, without the need to appoint a receiver or force a sale. Also in June of 1999, Ms. Malberg and GEMHVA entered into an informal agreement to wait until GEMHVA could reconvene its membership in 2000 to finalize discussions on the acquisition of the utility facilities.

By the time of GEMHVA's 2000 annual meeting, there were still a number of legal impediments to the final closing. Nevertheless, Ms. Malberg and GEMHVA executed an "Offer to Purchase and Contract For Sale" (sales agreement) on March 22, 2000, in which both

parties agreed to wait until January of 2001 to close. On April 20, 2000, Ms. Malberg filed for a staff assisted rate case (SARC) which initiated Docket No. 000467-WU. As an explanation to staff, Ms. Malberg stated that the utility needed compensatory rates in the event the closing did not occur. Following the initiation of the SARC, by Order No. PSC-00-0916-FOF-WU, issued May 8, 2000, in Docket No. 980678-WU, the Commission granted a waiver of 1995-1997 annual reports, referred the annual report penalty to the Comptroller's Office for permission to write off the account, discharged the lien, and closed the show cause docket.

On October 19, 2000, approximately 100 customers attended a customer meeting in Docket No. 000467-WU held at the utility site. On December 7, 2000, staff filed its resulting recommendation for the December 19, 2000, agenda conference. On December 18, 2000, just prior to the agenda conference, Ms. Malberg requested a deferral to allow Gem Estates and GEMHVA time to reach a closing. The closing took place on January 23, 2001, at which time Ms. Malberg withdrew her petition for the SARC and Docket No. 000467-WU was closed. On April 2, 2001, GEMHVA completed the filing requirements for the transfer of utility facilities.

The Commission has jurisdiction over the transfer of utility facilities pursuant to Section 367.071, Florida Statutes.

DISCUSSION OF ISSUES

ISSUE 1: Should the transfer of water facilities from Gem Estates Utilities, Inc., to Gem Estates Mobile Home Village Association, Inc., be approved and Certificate No. 563-W be canceled? (BRADY, CROSBY)

RECOMMENDATION: Yes. The transfer should be approved and Certificate No. 563-W should be canceled.

STAFF ANALYSIS: As described in more detail in the Case Background, an application for transfer of the water facilities from Gem Estates to GEMHVA was filed with the Commission on March 4, 1999. The sales agreement was executed on March 22, 2000. The closing occurred on January 23, 2001. An addendum to the contract makes the transfer contingent upon Commission approval, in compliance with Section 367.071(1), Florida Statutes.

GEMHVA was incorporated by the mobile home park lot owners on April 10, 1984, as a non-profit association in which each lot has one vote. To supplement the filing, GEMHVA provided its attorney's opinion that all lot owners are members of GEMHVA in the "strictest sense." As such, GEMHVA is exempt from Commission regulation pursuant to Section 367.022(7), Florida Statutes, which exempts nonprofit associations providing service solely to members who own and control the association. Therefore, should the Commission approve the transfer of water facilities, Certificate No. 563-W should be canceled.

As filed and amended, the application is in compliance with Section 367.071, Florida Statutes. The application contains the correct filing fee pursuant to Rule 25-30.020, Florida Administrative Code. The application also contains proof of compliance with the noticing provisions set forth in Rule 25-30.030, Florida Administrative Code. Subsequent to the noticing, no objections have been received and the time for filing such has expired. Pursuant to Rule 25-30.037(2)(g), Florida Administrative Code, evidence in the form of a recorded warranty deed was provided that the land upon which the utility facilities are located has transferred from Gem Estates to GEMHVA.

Pursuant to Rules 25-30.037(2)(g), (h), (i) and (k), Florida Administrative Code, a copy of the sales agreement and an explanation of the financing were also provided. The purchase price of \$287,000 was for all the property of the Cahill Trust in which the water facilities were only a portion. Less the cash deposit of \$1,000 and the cash on closing of \$12,000, the balance

of the purchase price is to be financed by the seller in ten annual payments of \$27,400 beginning at closing and interest free for two years. Thereafter, interest will accrue at the rate of 7.9% per annum. GEMHVA is collecting the revenues through a special assessment of the lot owners. At the time of this recommendation, all but three lot owners had paid their assessments in full.

Since the entity to which the facilities are being transferred is exempt from Commission regulation, it is unnecessary to establish rate base, to consider whether an acquisition adjustment should be included in rate base or to set rates and charges. For informational purposes, prior to the utility's withdrawal of its petition for a SARC in Docket No. 000467-WU, staff had proposed that the Commission establish rate base for the utility at \$61,845, as of May 31, 2000.

According to Commission records, the utility is current on RAFs through 2000. In addition, the utility furnished a statement that it did not collect any revenues for the period January 1 through 23, 2001. According to Commission records, the utility is also current on annual reports through 1999. Pursuant to Rule 25-30.110(3), Florida Administrative Code, an annual report is required for any year a utility is jurisdictional as of December 31st. Since the utility transferred to an exempt entity on January 23, 2001, an annual report is not required for 2001. In addition, the utility has filed a petition for a waiver of its 2000 annual report. That petition will be considered in Docket No. 010385-WU.

Pursuant to Rule 25-30.037(j), Florida Administrative Code, staff believes that by its continued commitment to the utility throughout the transfer process, GEMHVA has demonstrated its technical and financial ability to provide utility service. Further, because the customers are all members of the Association, GEMHVA has a vested interest in ensuring that adequate service continues to be provided. Therefore, staff recommends that the transfer is in the public interest.

Based on all the above, staff recommends that the transfer of water facilities from Gem Estates Utilities, Inc., to Gem Estates Mobile Home Village Association, Inc., be approved and that Certificate No. 563-W be canceled.

DOCKET NO. 990256-WU

DATE: 05/03/01

ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes. No further action is necessary and the docket should be closed. (CROSBY)

STAFF ANALYSIS: Since no further action is necessary, the docket should be closed.