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# Public Service Commission

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COMMISSION  
CLERK

## -M-E-M-O-R-A-N-D-U-M-

**DATE:** January 12, 2011

**TO:** Office of Commission Clerk (Cole)

**FROM:** Division of Economic Regulation (Jones-Alexis, Gardner, Hillier)  
Office of the General Counsel (Williams)

*Handwritten notes:* J.S., BA, J.S., 1st, C. Ross, P. 10, [initials]

**RE:** Docket No. 100452-SU – Application for transfer of majority organizational control of Hunters Ridge Utility Co. of Lee County to Hunters Ridge Community Association, Inc., and request for cancellation of Certificate No. 472-S. County(ies): Lee

**AGENDA:** 01/25/11 – Regular Agenda – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Administrative

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** None

**FILE NAME AND LOCATION:** S:\PSC\ECR\WP\100452.RCM.DOC

### Case Background

Hunters Ridge Utility Co. of Lee County (HRUC or Utility) is a Class B utility providing wastewater service to approximately 469 residential customers in the Hunters Ridge Golf & Country Club subdivision (Hunters Ridge) of Bonita Springs, located east of Interstate 75 in southern Lee County. Water service is provided by Bonita Springs Utilities, Inc. HRUC is located in the South Florida Water Management District in a Critical Water Supply Problem Area, as designated by Rule 40E-23, Florida Administrative Code (F.A.C.). The Utility's 2009 annual report indicates gross operating revenues of \$365,155 and a net operating loss of \$60,215.

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The Hunters Ridge community covers approximately 275 acres and consists of approximately 550 dwelling units (440 villas and single family homes and 110 coach homes), as well as a clubhouse and golf facilities. The Utility was established in August 1988 to provide wastewater service, which it did without compensation until it was granted Wastewater Certificate No. 472-S by the Commission on August 25, 1992.<sup>1</sup> The Utility has not had any amendments or transfers since that time.

On December 1, 2010, HRUC filed an application for transfer of majority organizational control of the Utility to Hunters Ridge Community Association, Inc. (HRCAI or Association). The application also requested cancellation of the Utility's Certificate No. 472-S, pursuant to Section 367.022(7), Florida Statutes (F.S.), which grants exemption from Commission regulation for a nonprofit association providing service solely to members who own and control the association.

The purpose of this recommendation is to address the Commission's approval of the transfer of majority organizational control of HRUC to HRCAI, and cancellation of HRUC's wastewater Certificate No. 472-S. The Commission has jurisdiction to consider this matter pursuant to Sections 367.071 and 367.022, F.S.

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<sup>1</sup> Order No. PSC-92-0867-FOF-SU, issued August 25, 1992, in Docket No. 920369-SU, In re: Application for a certificate to provide wastewater service in Lee County by Hunters Ridge Utility Co. of Lee County.

### **Discussion of Issues**

**Issue 1:** Should the Commission approve the transfer of majority organizational control of Hunters Ridge Utility Co. of Lee County (HRUC or Utility) to Hunters Ridge Community Association, Inc. (HRCIA or Association), and cancel Certificate No. 472-S?

**Recommendation:** Yes. The transfer of majority organizational control is in the public interest and should be approved effective the date of the Commission vote. HRCIA is responsible for regulatory assessment fees (RAFs) for the period July 1, 2010, through the closing date of November 1, 2010, and should pay the accrued RAFs by January 30, 2011. As the Utility will no longer be jurisdictional, pursuant to Section 367.022(7), Florida Statutes (F.S.), Certificate No. 472-S should be cancelled effective the same date. (Jones-Alexis, Gardner, Hillier, Williams)

**Staff Analysis:** On December 1, 2010, an application was filed for the transfer of majority organizational control of HRUC from the Utility to the Association through a Stock Purchase Agreement (Agreement), pursuant to Section 367.071, F.S., and Rule 25-30.037(3), F.A.C. In accordance with Section 367.071(1), F.S., the Second Addendum to the Agreement stated that the closing is conditioned on approval by the Commission of the transfer.

HRCIA is a Florida not-for-profit corporation established by the developer of Hunters Ridge, BBA Development Corporation, and was incorporated on May 20, 1988. The Association is responsible for the operation and maintenance of the common areas and attendant facilities, as well as the enforcement of the community's Master Declaration and Covenants, Conditions, and Restrictions (MDCCR). On November 3, 2006, HRCIA was deeded the community's Country Club facility, which includes golf facilities, as well as a clubhouse, activities center, maintenance buildings, swimming pools, and tennis courts. HRCIA is also responsible for the operation and maintenance of the Country Club facility.

Membership in the Association is exclusive to and required of all owners of living units in Hunters Ridge by the community's MDCCR. As each property owner is an automatic member of the Association, each is entitled to voting rights. Eligibility to serve on the Board of Directors is based upon membership type. Pursuant to the MDCCR, at least two-thirds of the Board should consist of golf members and/or charter members who have elected to be golf members.<sup>2</sup> As of December 31, 2009, there were 556 social members and 307 golf members. Included with the application were copies of the Amended and Restated MDCCR for Hunters Ridge and the Association's Amended By-Laws. Staff verified with the Florida Department of State that the Association is a registered and active nonprofit corporation. In accordance with Section 367.022(7), F.S., HRCIA is exempt from regulation by the Commission as a nonprofit association that provides service solely to members who own and control the Association.

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<sup>2</sup> As defined by the Amended and Restated MDCCR for Hunters Ridge, executed December 8, 2006, a golf member is one who is entitled to the use of the entire Country Club facility upon payment of annual dues levied by HRCIA's Board. A charter member is one who may elect, from year to year, whether a golf or social membership is desired. A social member is one who is entitled to the use of the clubhouse, activities center, tennis courts, and swimming pools, but is specifically excluded from the use of the golf facilities without payment of annual fees.

The application included a copy of the Agreement between HRUC and the Association, dated September 24, 2010. According to the terms of the Agreement, its execution was contingent upon the members of the Association approving the stock purchase at a special meeting held on October 28, 2010. The minutes of that meeting indicated that 426 of the 431 ballots cast by members voted to acquire the HRUC facilities. Staff confirmed with a Utility representative that the closing occurred on November 1, 2010. However, the Utility continues to operate the facilities pending the Commission's approval of the transfer.

The sale was accomplished by a 100 percent buyout of Utility stock, which the Association financed with a \$300,000 deposit from its general reserve fund and a five-year loan of \$975,000 from a property owner and member of the Association. The loan is payable in quarterly payments beginning February 1, 2011, and ending November 1, 2015, with an interest rate of four percent. A Promissory Note stating the terms of the loan was executed by the President of the Association and was included with the application, along with an amortization schedule. The application also stated that all members will be assessed \$18 per month for the next five years to help pay the loan, and additional funds will be provided by annual Association budget surpluses, which have averaged more than \$250,000 for the last four years.

The application included a statement that described how the transfer is in the public interest, in accordance with Rule 25-30.037(3)(f), F.A.C. According to the statement, the transfer from the shareholders of HRUC to the members of HRCAI will result in more efficient operation of the wastewater system and will remove the profit motive inherent in ownership by a business entity. The statement also indicated that the financial ability of the Association is greater than that of the Utility since the Association has the ability to assess its members for the Utility's operating expenses. Staff believes that HRCAI has demonstrated financial ability to continue to operate the Utility based upon its financial statements provided with the application and its ability to assess members for expenses.

Additionally, the statement of public interest specified that HRCAI has the necessary experience to provide reliable service. The Association's experience in wastewater utility operations is demonstrated by means of its personnel. The Association's General Manager and the Utility's Plant Manager of 19 years will continue to manage the operations of the wastewater facilities, and the current Plant Operator of seven years will remain in that position. Staff believes that HRCAI has demonstrated technical ability to operate the Utility based upon its personnel's years of experience managing and operating the Utility. The statement concluded with HRCAI's intent to fulfill all commitments, obligations, and representations of the Utility with regard to utility matters.

HRUC has paid regulatory assessment fees (RAFs) for 2009 and all prior years, pursuant to Rule 25-30.120, F.A.C. The Utility has also paid RAFs for the period January 1, 2010, through June 30, 2010. The application included a statement that the Association will fulfill all commitments, obligations, and representations of the Utility with regard to utility matters. Therefore, the Association is responsible for RAFs for the period July 1, 2010, through November 1, 2010, the date of closing. Payment of the required RAFs for the stated period should be made by January 30, 2011.

In accordance with Rule 25-30.110, F.A.C., HRUC has filed its annual reports for 2009 and all prior years. Because the Association is exempt from Commission regulation pursuant to Section 367.022(7), F.S., the Utility will no longer be jurisdictional and no further RAFs or annual reports will be due following the Commission's approval of the transfer. Therefore, the Utility is not required to file a 2010 annual report since it will not be jurisdictional as of December 31, 2010.

Pursuant to Rule 25-30.037(3)(h), F.A.C., the application indicated that HRCAI has found the wastewater system to be in satisfactory condition and in compliance with all applicable standards set by the Florida Department of Environmental Protection (DEP). A letter from a representative of HRUC's Engineering firm stated that there is reasonable assurance that the Utility's facilities will comply with applicable statutes when properly operated and maintained. This determination is based upon the Engineer's professional opinion, past facility inspections, and an evaluation of the facility conducted during the water use permit renewal process with the DEP. Staff confirmed that the inspections were completed in April and June of 2008. Another representative of the Engineering firm stated during the Association's special meeting that the existing Utility facilities are in very good condition. Staff confirmed with the DEP that the Utility has no outstanding Consent Orders or any other compliance issues, and it has an active water use permit with the South Florida Water Management District.

A copy of a recorded deed evidencing that HRUC owns the land upon which the facilities are located accompanied the application, pursuant to Rule 25-30.037(3)(i), F.A.C. The deed, which indicates a transfer of the property from BBA Development Corporation to HRUC, is dated October 3, 1991, and includes an addendum of utility, force main, pump station, and access easements. As this is a transfer of majority organizational control, HRUC will continue to be the property owner of the land on which the facilities are located.

The application is in compliance with the governing statute, Section 367.071, F.S., and other pertinent statutes and rules concerning an application for transfer of majority organizational control. Pursuant to Rule 25-30.030, F.A.C., the application contains proof of compliance with the noticing provisions. No objections to the notice of application have been received and the time for filing objections has expired.

Based on the above, staff recommends that the transfer of majority organizational control of HRUC to HRCAI is in the public interest and should be approved effective the date of the Commission vote. HRCAI is responsible for regulatory assessment fees (RAFs) for the period July 1, 2010, through the closing date of November 1, 2010, and should pay the accrued RAFs by January 30, 2011. As the Utility will no longer be jurisdictional pursuant to Section 367.022(7), F.S., Certificate No. 472-S should be cancelled effective the same date.

Docket No. 100452-SU  
Date: January 12, 2011

**Issue 2:** Should this docket be closed?

**Recommendation:** Yes. Upon the Commission's approval of the transfer, this docket should be closed as no further action is necessary. (Williams)

**Staff Analysis:** Upon the Commission's approval of the transfer, this docket should be closed as no further action is necessary.