

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 140174-WU

APPLICATION FOR APPROVAL OF
TRANSFER OF CERTIFICATE NO.
117-W FROM CRESTRIDGE UTILITY
CORPORATION TO CRESTRIDGE
UTILITIES, LLC, IN PASCO
COUNTY.

In the Matter of:

DOCKET NO. 140176-WU

APPLICATION FOR APPROVAL OF
TRANSFER OF CERTIFICATE NO.
116-W FROM HOLIDAY GARDENS
UTILITIES, INC. TO HOLIDAY
GARDENS UTILITIES, LLC, IN
PASCO COUNTY.

PROCEEDINGS: COMMISSION CONFERENCE AGENDA
ITEM NOS. 5 and 6

COMMISSIONERS
PARTICIPATING: CHAIRMAN ART GRAHAM
COMMISSIONER LISA POLAK EDGAR
COMMISSIONER RONALD A. BRISÉ
COMMISSIONER JULIE I. BROWN
COMMISSIONER JIMMY PATRONIS

DATE: Tuesday, September 15, 2015

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: LINDA BOLES, CRR, RPR
Official FPSC Reporter
(850) 413-6734

P R O C E E D I N G S

1
2 **CHAIRMAN GRAHAM:** All right. Item No. 5
3 and 6.

4 **MR. ELLIS:** Good morning, Commissioners.
5 Phillip Ellis, Commission staff.

6 Items 5 and 6 are applications to transfer
7 water Certificates Nos. 117-W from Crestridge Utility
8 Corporation to Crestridge Utilities, LLC, and No. 116-W
9 from Holiday Gardens Utilities, Inc., to Holiday Gardens
10 Utilities, LLC.

11 Both utilities are Class C water only
12 utilities in Pasco County to be purchased by the same
13 buyer, Mr. Michael Smallridge, in a joint transaction.
14 Staff is recommending conditional approval of the
15 transfers and notes the conditions have been agreed to
16 by the buyer.

17 Staff is available for any questions you may
18 have. Representatives from the utility are also
19 present.

20 **CHAIRMAN GRAHAM:** Thank you, staff.

21 Mr. Friedman, welcome back to our chambers.

22 **MR. FRIEDMAN:** Thank you.

23 **CHAIRMAN GRAHAM:** Do you have any comments
24 before I go to the Commissioners?

25 **MR. FRIEDMAN:** No comments, unless you have

1 some questions.

2 **CHAIRMAN GRAHAM:** Okay. Well, I think we may
3 have one or two for you.

4 **MR. FRIEDMAN:** Thank you. I look forward to
5 it.

6 **CHAIRMAN GRAHAM:** Commissioner Brown.

7 **COMMISSIONER BROWN:** Thank you.

8 Good morning, Mr. Smallridge. Nice to see
9 you.

10 One of the things that stuck out on me -- on
11 these two cases before us are the conditions that you
12 agree to, I believe. One that really just jumped out
13 was that "Michael Smallridge shall not purchase, either
14 directly or indirectly, any other Commission-regulated
15 utilities until after December 31, 2017." Did you agree
16 to that?

17 **MR. SMALLRIDGE:** Did I do that right?

18 Yes. Yes, I did. Sorry.

19 (Laughter.)

20 **COMMISSIONER BROWN:** You've been deposed
21 before, haven't you?

22 **MR. SMALLRIDGE:** Yes.

23 (Laughter.)

24 **COMMISSIONER BROWN:** Again, this is just one
25 of the -- the type of -- I looked at this, we talked

1 with staff about this, and I guess there were some lack
2 of responses on your part with staff that brought us to
3 this level. I've never seen anything like this in a
4 transfer certificate before. Can you tell me why you
5 agreed to that, or have Mr. Friedman --

6 **MR. FRIEDMAN:** I'm sorry. What was -- why --

7 **MR. SMALLRIDGE:** Yeah. I can barely hear you.

8 **MR. FRIEDMAN:** Yeah, I couldn't hear you. Why
9 what? Why he agreed to that?

10 I guess because I recommended he do so. And
11 that was probably some of the hardest advice I've given
12 to a client because I don't agree with that provision,
13 as you might well imagine, or any of the others,
14 frankly. But that's what it took to get the staff to
15 recommend approval was to make certain concessions. And
16 whether we agree with those concessions or not, that's
17 what it took to do that.

18 Mr. Smallridge's option was to enter -- was to
19 disagree and get enthralled in a one-year long \$20,000
20 fight. And although I think he would have ultimately
21 been successful in the end, I'm the only one that would
22 make out in that deal because he's going to spend
23 \$20,000 that he should be spending, you know, on his
24 systems and not on a lawyer.

25 **COMMISSIONER BROWN:** And you admitted it.

1 **MR. FRIEDMAN:** I'll -- I know as much as y'all
2 find that surprising, I really try very hard for -- to
3 minimize the costs, particularly of these small
4 companies, and, as a result, I thought he had no option.
5 If he wanted these approved, he had to make those
6 concessions. And they were negotiated. They were --
7 this is not exactly what was -- originally it started
8 out to be, and actually it's a little bit better than
9 what it started out. But, you know, there are things in
10 there -- you know, most of those conditions are things
11 that he's going to have to do anyway. Comply with --
12 comply with Commission policies, comply with DEP, you
13 know, those are things he's got to do whether he's
14 telling you he's got to or not.

15 **COMMISSIONER BROWN:** Well, Mr. Friedman --

16 **MR. FRIEDMAN:** But that one is particularly
17 disturbing that says --

18 **COMMISSIONER BROWN:** Mr. Friedman, thank you.
19 Quick question. So what led up to this
20 particular -- these type of conditions? What led up to
21 it? Mr. Smallridge's lack of response to --

22 **MR. FRIEDMAN:** No. And I think the staff can
23 answer this better, but my understanding from talking to
24 staff was that they thought that he had bitten off more
25 than he could chew, that he had a lot of systems that he

1 had just acquired, and they did not think that he was
2 assimilating them quickly enough. And they thought that
3 maybe he needed to sit back and look at what he had,
4 feel comfortable that he was able to assimilate them
5 together and operate them together before he went and
6 purchased anything else. And so the 2016 was an
7 arbitrary date that was picked.

8 **COMMISSIONER BROWN:** Okay. Thank you. I
9 appreciate that.

10 Mary Anne, I've never seen a particular
11 condition on a transfer certificate here. Is this even
12 permissible legally?

13 **MS. HELTON:** I think in this situation, with
14 the utility agreeing, that it is -- it is legal.

15 **COMMISSIONER BROWN:** I don't like it, but --

16 **MS. BROWNLESS:** May I respond?

17 **COMMISSIONER BROWN:** Certainly.

18 **MS. BROWNLESS:** I would point you to, and it's
19 referenced in our recommendation, the specific statutory
20 language that allows the Commission to make changes,
21 which is 367.045(5)(a), *Florida Statutes*, which states,
22 "The Commission may grant or amend a certificate of
23 authorization, in whole or in part or with modifications
24 in the public interest." We believe that the conditions
25 that have been negotiated and agreed to by the utility

1 are in the public interest. And the Commission has in
2 the past imposed conditions on certificates, and so that
3 is the statutory authority that we cite for the ability
4 to do so.

5 **COMMISSIONER BROWN:** Thank you.

6 I think the other conditions are definitely
7 acceptable and comply -- conform with our rules and
8 laws.

9 Commissioners, I don't feel comfortable with
10 mandating, even though Mr. Smallridge agreed to it, I
11 don't feel comfortable having a condition that he will
12 not purchase directly or indirectly any other utilities
13 for a period of two years. I think it sets a bad
14 precedent for transfers.

15 **CHAIRMAN GRAHAM:** Commissioner Edgar.

16 **COMMISSIONER EDGAR:** Thank you. I have a
17 question on another item if -- or another portion of the
18 recommendation.

19 On page -- and this is to staff, and then, of
20 course, if Mr. Friedman or Mr. Smallridge would like to
21 respond. On page 5 there's a discussion about charges
22 for lighting and garbage collection. And if I'm reading
23 it correctly, at one point it says that Mr. Smallridge
24 has put forth that it's basically a net net pass-through
25 but that there -- in the financial documents shows a

1 charge to customers higher, greater than the charge for
2 service. Can you address that for me? That seems
3 inconsistent.

4 **MR. ELLIS:** This was raised during the review
5 process. We were reviewing the financials of the
6 utility and noted the specific purchase agreement that
7 we're approving here, the contract -- or, rather, the
8 contract related to the transfer includes a combination
9 of a street lighting service, a waste collection
10 service, not wastewater, just a solid waste, as well as
11 the water utilities themselves. Initially the purchase
12 price was split between only the two water utility
13 portions.

14 So we started investigating the other
15 components of the business that were part of that
16 purchase price: From my understanding, approximately
17 \$4,400 a month over the price of those services as they
18 are not regulated by us, especially for the solid waste
19 portion; from my understanding, I believe the electric
20 street lighting portion is approximately \$2,000 a month
21 over the cost that the utility would be billed. I
22 believe the service provider is Duke.

23 **COMMISSIONER EDGAR:** Thank you. Mr. Friedman,
24 can you speak to that, or Mr. Smallridge, of course?

25 **MR. FRIEDMAN:** Yes. Yes, Commissioner Edgar.

1 You know, those are services that are not regulated,
2 frankly. They're just not regulated, so I don't know
3 what particular relevance they have to the transfer of
4 the water and sewer.

5 The comment that was made about the allocation
6 of the purchase price, and that's been resolved, it's
7 been reallocated, as you might imagine, in a way, you
8 know, I had suggested he do so, which is to allocate the
9 value of the sale related to the utilities to whatever
10 the PSC says the rate base is date of transfer, which is
11 typically the way that's done when you -- when somebody
12 buys more than just the utility.

13 But the garbage and the street lighting are
14 non-regulated activities, but they do provide cash flow
15 to him, which he is allowed to use to help with his
16 regulated entities.

17 **COMMISSIONER EDGAR:** And I appreciate the
18 explanation and I do recognize, as you repeated, that
19 those are non-regulated portions per se for our
20 authority. But if there is an inconsistency in the
21 statements that Mr. Smallridge made to our staff while
22 we're reviewing the potential transfer, I do believe
23 that that is an area appropriate for us to inquire
24 about.

25 **MR. FRIEDMAN:** No. Absolutely it's

1 appropriate. But I don't think that the -- I think that
2 it's not something Mr. Smallridge misled them on. I
3 think it was probably more a misunderstanding of an
4 interpretation of what was said and maybe an advice that
5 he had gotten from somebody else. He wasn't trying to
6 hoodwink anybody into doing anything. He's as honest as
7 the day is long.

8 **COMMISSIONER EDGAR:** Thank you.

9 **CHAIRMAN GRAHAM:** Commissioner Patronis.

10 **COMMISSIONER PATRONIS:** Thank you,
11 Mr. Chairman.

12 Mr. Smallridge, you're kind of -- I'm just
13 reading through all the facts of what we've got with
14 your particular circumstances. I'm not trying to make
15 this an unorthodox question, but what are your strengths
16 and weaknesses as a businessperson?

17 **MR. SMALLRIDGE:** Strengths and weaknesses, and
18 what was the second part?

19 **COMMISSIONER PATRONIS:** Strengths and
20 weaknesses as a businessperson. There's -- I concur
21 with Commissioner Brown on this provision. I'm not
22 thrilled with the idea of putting a prohibition in it,
23 but do you have -- if you were giving yourself a
24 self-inventory of your ability to move forward -- I
25 don't know if you have any desire to purchase anything

1 within the next two years or not, but do you have any
2 concerns about yourself and your abilities that should
3 have brought this concern to this Commission?

4 **MR. SMALLRIDGE:** Well, the direct answer to
5 your question, Commissioner, is that I'm a growing
6 company. And at the beginning, not to make excuses, but
7 for your own time frame, at the beginning of the year I
8 purchased three utilities, two of these here and another
9 one. And I'll be perfectly honest with you, I was
10 overwhelmed. That's why some stuff was late. I was
11 worried -- more worried about making sure everybody had
12 water and pumps were running and that kind of stuff.

13 So the direct answer to your question is your
14 staff has picked up on a -- what I consider an issue
15 that is relevant to that. We have different ways of
16 solving the problem. What I was proposing to do, and I
17 filed this as part of a -- the Starke (phonetic)
18 applications that we -- that will be coming before you
19 pretty soon, was I had asked staff for a person that I
20 could hire in my group of growing companies that could
21 handle regulatory issues for me. We were renewing
22 permits, you know, working with staff requests with the
23 Public Service Commission, because I'm always filing
24 transfers and SARCs and index adjustments and annual
25 reports, and right now I do it all by myself, but I also

1 go reconnect meters and, you know, just whatever needs
2 to be done. So I found myself in a little bit of a
3 growing pain.

4 So my solution to the problem was let me hire
5 somebody who can take care of these things on time and
6 be professional at it, somebody that studies it and
7 knows it, and then I can go do, you know, whatever else
8 needs to be done. So that's what I had asked for. I
9 was told, no, that wasn't going to happen, so then it's
10 back to me doing it all.

11 And, you know, if it -- if it comes down to me
12 working seven days a week, then that's what I've got to
13 do, but also part of my job is to keep the water
14 flowing. You know, we're replacing a pump right now at
15 Holiday Gardens, we're replacing a tank at Crestridge,
16 I'm doing water testing at East Marion. I mean, I'm all
17 over the place.

18 So there -- the way I'm going to answer your
19 question is to say I'm a growing company.

20 **COMMISSIONER PATRONIS:** Uh-huh.

21 **MR. SMALLRIDGE:** I don't have any utilities on
22 my radar screen I'd like to acquire, but I would like to
23 acquire some in the future.

24 Just a little bit of help would, to me would
25 be the ideal solution to the problem. What your

1 staff -- your staff has recognized that there's an issue
2 there, I don't deny that, but what I would say is that
3 at some point in time I'm going to grow to the point
4 where we'll need this person anyway. So do we do it
5 now? Do we do it down the road? That, I guess, is for
6 you guys to figure out. But in my filing with the SARC,
7 you can go back and look through the record, months and
8 months ago I put in there that I would like to have
9 somebody to help me with these issues.

10 And so when I was told no on that, you know, I
11 called Mr. Friedman and said I need some help, you know,
12 and that's how we got to this point.

13 **COMMISSIONER PATRONIS:** Follow-up?

14 **CHAIRMAN GRAHAM:** Sure.

15 **MR. SMALLRIDGE:** Did I answer your question,
16 sir?

17 **COMMISSIONER PATRONIS:** You did. You did.

18 **MR. SMALLRIDGE:** Okay.

19 **COMMISSIONER PATRONIS:** Follow-up, has your
20 to-do list over the last year and a half, has it shrunk?

21 **MR. SMALLRIDGE:** Oh, yeah, absolutely. My
22 whole -- my whole -- most of the time when I buy these
23 utilities, they're -- they've not been maintained,
24 they're out of compliance in some way, shape, or form,
25 so I've gotten pretty good over the years of getting

1 them kickstarted and getting them rolling back again.
2 And we got -- me and my team, we got pretty efficient at
3 it.

4 But, you know, there are -- there are some
5 times when you just -- when you're just overloaded with
6 this stuff, you know. When I -- when I took over
7 Holiday Gardens and Crestridge, you know, I took over
8 for some folks that hadn't replaced meters, tanks were
9 bad in past tank inspections. You know, I've got to get
10 all that stuff caught up. We're in the process of
11 renewing the, you know, the consumptive use water
12 permits with the water management district now. All
13 that stuff was lagging behind. So most of the time when
14 I step in the door, I have to catch up what everybody
15 else is supposed to have been doing and then go forward
16 with what it needs to be doing now. So you always have
17 that really big time in the beginning where you're just
18 so backed up and logged trying to get everything going
19 in every different direction.

20 But most of that we've gotten through now.
21 Holiday Gardens is pretty much done. We've replaced
22 almost a hundred meters. There's a new well pump going
23 in, the tanks were done by the previous owner.
24 Crestridge is -- there's -- I've already put a deposit
25 down to make a new tank there for Well No. 4, and we're

1 starting new meter replacements as we speak. So a lot
2 of that is just being done.

3 But when you've got -- basically most of the
4 time when I get these systems, there's a lot of work
5 that people didn't do in the past that I've got to get
6 caught up and then try to go forward with what needs to
7 be done.

8 Me and my staff, my team, we try to be very
9 proactive, and some folks aren't like that. So that
10 creates more work and more time to be proactive to do
11 things. A perfect example was in Holiday Gardens of
12 Crestridge, fire hydrants haven't been painted in 20
13 years, so me and my guys took a Saturday afternoon and
14 we went and painted all the fire hydrants. So, you
15 know, stuff like that's got to be done, but it just has
16 to be done, you know. So I hope I answered your
17 question.

18 **COMMISSIONER PATRONIS:** Thank you.

19 **MR. FRIEDMAN:** Can I interject one thing that
20 Mr. Smallridge didn't mention that I think is huge is
21 his customer relations. When he buys the system, the
22 first thing he does, he goes out and he has a customer
23 meeting with these folks, and has customer meetings
24 whether there's a rate case going or not. When he
25 bought -- and you can go on YouTube, go to YouTube to

1 his Florida Utility Services, you can watch his videos
2 where, you know, where he has these. He goes in and
3 tells the people here I am, and he provides good quality
4 of service. I mean, the water provided by his companies
5 are good. You know, his -- his only shortfall is, I
6 think, maybe getting some of the documentation analyzed
7 correctly, and unfortunately he had to hire me to help
8 him do that. But he's on -- he's on track. I mean,
9 he's -- I think he's doing everything right, and he's
10 just -- he's just, like he said, he's overwhelmed at the
11 very beginning when he buys a system, but that certainly
12 works itself out. And I think with these systems,
13 they've all worked themselves out.

14 **COMMISSIONER PATRONIS:** Just a comment,
15 Mr. Chairman.

16 I guess I've been kind of intrigued by this
17 case just because of learning the challenges that an
18 older water system runs into, and then here there's this
19 inheriting issue that somebody has got to be the bad guy
20 to take it and clean up the system.

21 I don't think this prohibition is needed.
22 You're only going to grow and embrace what you can as
23 you can, when you can. By the sound of what you're
24 trying to tackle right now, I think this is just a
25 little -- a little punitive by -- and I don't think it's

1 necessary. I think you're only going to move forward as
2 your ability to move forward, and I don't want to feel
3 like we're chastising, chastising you over doing
4 something that I'm kind of grateful you are. So, I'm
5 happy to move forward with striking that, if y'all would
6 like.

7 **CHAIRMAN GRAHAM:** Well, I see the path this is
8 going down, and I don't have a problem with it one way
9 or the other. Just to give you guys a little
10 perspective, you've got to understand -- I understand
11 the frustration that Mr. Smallridge is going through
12 starting -- grabbing these new companies and bringing
13 them, getting them cleaned up and bringing them up to
14 speed, and nobody in staff has ever even -- no one in
15 staff has ever said that, you know, you run a bad
16 utility, that you do things ineffectively. But there's
17 also things on the administrative side that need to
18 happen, and I think we're at this point now because of
19 the frustration between staff trying to get that
20 information from you and trying to get your attention.
21 And there's several different ways of getting your
22 attention, and this may be one of the ways of getting
23 your attention. There could have been other ways of
24 getting your attention.

25 So let's not sit here and act like, you know,

1 this is just one of those things that happened
2 yesterday. I mean, this is frustration, and just from
3 the things that I read in the record, frustration that's
4 been going on for a while. I mean, so if this was
5 something that staff came up with and this is something
6 you agreed with, I think we're fine there. Now if my
7 colleagues think that's just too much and want to strike
8 it, that's fine. But let's not act like there hasn't
9 been something alleged at this point.

10 And I sit back and say to staff all the time,
11 one of the issues we had up here earlier, I ask them all
12 the time "Why does this stuff drag on forever before we
13 get to the point where we want to hold somebody, you
14 know, and bring them to show cause?" And it frustrates
15 me that things go on for five and six years. I mean, so
16 I appreciate everything that staff goes through.

17 Commissioner Brisé.

18 **COMMISSIONER BRISÉ:** Thank you, Mr. Chairman.

19 Recognizing the point you just made and the
20 point that my colleagues have been making in terms of
21 the fact that the prohibition may be a little bit over
22 the top in the view of some, I think part of the issue
23 is if we wanted to create or maintain some sort of
24 attention to what happens over the next couple of years,
25 maybe the language could read differently so that we

1 would have -- Mr. Smallridge, if he were to purchase or
2 want to purchase another system, that we would have to
3 review his capacity from an administrative side to be
4 able to move forward rather than just having a straight
5 out prohibition with respect to him finding an
6 opportunity that could scale him up to a certain point
7 that he can address some of the other challenges that
8 exist with some of the other systems. So I, too, I'm a
9 little uncomfortable with -- with the notion of the
10 prohibition for the amount of period -- amount of time
11 laid out there, but I am fully cognizant that if there
12 isn't some type of special attention provided when the
13 opportunities arise for transfer, that we're going to
14 have continuous issues with respect to data being
15 provided and so forth. So that is my food for thought,
16 and hopefully we can come up with a -- a resolution
17 somewhere there in the middle.

18 **CHAIRMAN GRAHAM:** Commissioner Edgar.

19 **COMMISSIONER EDGAR:** Thank you. To staff, can
20 you thoroughly, yet succinctly, lay out what the
21 criteria in the statutes are for us to consider when
22 determining if a transfer is in the public interest?

23 **MS. BROWNLESS:** The statute says that we have
24 to look at their financial ability -- well, actually the
25 rule that implements the statute says we have to look at

1 their financial ability. We have to look at whether
2 it's in the public interest. We have to look at whether
3 they can meet the previously agreed to -- let me
4 think -- the previously agreed to conditions, the
5 previously agreed to agreements that the previous owner
6 has entered into. In other words, can they maintain the
7 utility and can they continue in the future to comply
8 with Commission rules?

9 The conditions that are here, the first four,
10 are simply a restatement of our rules and statutes that
11 everybody who operates a water utility in the state must
12 comply with.

13 The -- one thing I'd like to mention is that
14 the December 31st, 2017, date here is based upon a
15 response that Mr. Smallridge made to staff data request
16 No. 22A in which he indicated that there would be
17 \$129,000 to \$164,000 worth of expenditures on the
18 six Commission-regulated utilities that he already owns,
19 so that is of concern.

20 As Mr. Smallridge indicated, he has, in his
21 staff-assisted rate cases, requested additional
22 positions, both management/maintenance positions as well
23 as accounting positions, in order to assist him in
24 complying with our -- our requirements. He's paid his
25 RAFs, he's current on his annual reports, he's run these

1 systems well and made improvements. And I should also
2 say that with regard to East Marion, he has made -- is
3 in the process of making refunds when the previous owner
4 would not.

5 So the staff, we find ourselves in kind of a
6 bind. We want to facilitate Mr. Smallridge's ability to
7 run these systems and to operate these systems
8 effectively, but at the same time we have concerns
9 because, frankly, some of the answers that he gave us
10 regarding the street lighting districts, the garbage
11 districts, the closing dates, the fact that many of
12 these systems were purchased and six to eight months
13 went by before the Commission was notified of that
14 purchase -- I mean, there are some true concerns on the
15 administrative end.

16 I also want to say that, as has been stated,
17 Mr. Smallridge has greatly improved. So condition
18 No. 5, the date was based on that interrogatory, the
19 time by which he believed and he represented that he
20 would have these improvements completed. He has filed
21 for staff-assisted rate cases for his other systems. He
22 currently has six systems regulated by us, one of which,
23 Pinecrest, has already received a certificate. The
24 others, West Lakeland -- Holiday Gardens and
25 Crestridge's is here today -- East Marion, Charlie Creek

1 are in the process of securing certificates. So we're
2 trying to look at this holistically. We're trying to
3 look at this from the entire picture.

4 Understand that condition No. 5 would not be
5 an automatic revocation of any certificate that was
6 granted today. It would be the initiation of a show
7 cause proceeding in which Mr. Smallridge would have the
8 ability to come to us and say, yes, I purchased another
9 system, but here's why and here's what I'm going to do
10 with it and here's the financing to enable me to run it
11 and effectively operate it.

12 So it's -- it's not we're going to take your
13 certificates away. And the idea here is that these
14 conditions would be attached to not only Holiday Gardens
15 and Crestridge, but also East Marion, Charlie Creek, and
16 West Lakeland, the other systems that have yet to be
17 receiving a certificate. The only one that wouldn't
18 have this condition is Pinecrest because that's already
19 been granted a certificate by the Commission.

20 **MR. FRIEDMAN:** Might I ask a question, because
21 that was the first time I'd heard that particular
22 explanation of that No. 5 requirement that seemed to say
23 you can't do it. Now it seems to say that the staff is
24 now saying we can do it, we just have to ask for
25 approval. Is that -- is that -- was that the

1 Commission's understanding of her explanation?

2 **MS. BROWNLESS:** My explanation, sir, is that
3 we would show cause you, and then you could explain as
4 to why that was appropriate in your particular instance.

5 **COMMISSIONER EDGAR:** Okay. Let me take this,
6 if I may, Mr. Chairman --

7 **CHAIRMAN GRAHAM:** Sure.

8 **COMMISSIONER EDGAR:** -- in a slightly
9 different approach. I read this language as
10 prospective, not retrospective. So that's all I'm going
11 to say about that.

12 But if -- if this language were not in a
13 condition, if this language did not exist as an
14 enforceable condition, then would not a request by -- or
15 an effort by Mr. Smallridge to purchase directly or
16 indirectly any other Commission-regulated utilities
17 require review and approval by this Commission?

18 **MS. BROWNLESS:** Yes, ma'am, but here's the
19 problem, and it's a problem of timing. If you look at
20 Chapter 367, you'll see that it says a person must apply
21 to the Commission for the transfer of a certificate when
22 that takes place. However, it does not say how long.
23 In other words, there's no timeline in there. So I can
24 purchase a water and sewer utility today and I can wait,
25 pursuant to the statute, an indefinite amount of time

1 before I file an application for a certificate with the
2 PSC. Now that is in direct contradiction and at odds
3 with the other portion of 367, which says you can't
4 operate a regulated utility without a certificate.

5 So one of the things we were trying to do
6 here, to be perfectly honest, was bridge that gap.
7 Because in this instance, with regard to Holiday Gardens
8 and Crestridge, there was a period of six to eight
9 months in which Mr. Smallridge purchased the utility,
10 executed the purchase agreement, and correctly all these
11 purchase agreements do, in fact, have the appropriate
12 clause that says subject to Commission approval. But
13 Mr. Smallridge, of course, went ahead, transferred all
14 the assets into an LLC, the LLC does not have a
15 certificate, and he's been running and operating those
16 LLCs ever since. So that the assets of the utility have
17 been in the LLCs; however, the certificate is in the
18 name of the original thing. So that is one of the legal
19 hurdles that we were trying to accommodate by this
20 provision.

21 **MR. FRIEDMAN:** Could I point out that I think
22 that your rulemaking --

23 **CHAIRMAN GRAHAM:** Hold on. Hold on.
24 Commissioner Edgar.

25 **COMMISSIONER EDGAR:** Thank you. I guess where

1 I'm struggling, and certainly there have been instances
2 over the years where there have been some conflicts
3 within statutes, so -- and -- that need to be grappled
4 with. So what I'm struggling with is not -- I
5 understand that there has been frustration, and I
6 support our staff fully in their efforts to get the
7 information that they need to do their job and to be
8 able to make a thorough, complete, and defensible
9 recommendation to us, and I believe that we need to --
10 to support that.

11 But this particular condition just -- I do
12 have a concern that it goes beyond our legal authority
13 to approve or disapprove a transfer that the criteria
14 generally come down to what is in the public interest.
15 And it does seem to me that there are processes and
16 procedures in place, notwithstanding the situation that
17 you have just described and the fact that there may be
18 some inconsistencies in requirements and processes and
19 procedures, but there should be another way to address
20 that particular issue.

21 And I think perhaps Commissioner Brisé and I
22 are maybe kind of saying the same thing. Now whether it
23 is to find a way to either make this language more
24 specific or more narrow or more focused or whether it's
25 to -- if there is a desire by the Commission to not

1 approve or to not include that particular recommended
2 condition, recognizing that there are other processes
3 that will occur should a future request come before us,
4 I'm still trying to figure out which would be the
5 superior way to address the concern.

6 **CHAIRMAN GRAHAM:** Mr. Friedman.

7 **MR. FRIEDMAN:** I was just going to point out
8 that, in regard to Mr. Brownless's question about how
9 long it takes after an application is -- after a
10 transfer to file an application, I think that the new
11 rulemaking that y'all have in place takes care of that
12 issue. I think it's got a -- I don't remember what the
13 deadline is, but I'm sure that whoever on the staff is
14 involved in that rulemaking can tell you. But that
15 issue has been resolved, and when that rule gets
16 adopted, will be resolved well in advance of 12, '17.

17 **CHAIRMAN GRAHAM:** All right. I think -- I
18 think we'll take about a five-minute break and allow for
19 different Commissioners to meet with the different staff
20 and see if we can't craft some language that makes
21 everybody happy, and feel free to reach out to our staff
22 over here. So let's take five minutes.

23 (Recess taken.)

24 Okay. And this is a perfect example of one of
25 those reasons why I'm an engineer and not an attorney.

1 Our -- our laws of gravity and things like that are very
2 clear.

3 Okay. I am sure one of my very, very, very,
4 very, very intelligent colleagues has come up with some
5 verbiage that will get us through this issue.

6 Commissioner Edgar.

7 **COMMISSIONER EDGAR:** Thank you, Mr. Chairman.

8 I did have the opportunity to -- and thank you
9 for the five minutes -- to speak with my advisor, and
10 together, trying to think through the discussion that
11 we've heard and the concerns that have been expressed,
12 have a suggestion for discussion. And that would be
13 that we make a slight amendment to the language that is
14 proposed as condition five, and instead of that language
15 I'm suggesting this: If Michael Smallridge purchases,
16 either directly or indirectly, any other
17 Commission-regulated utilities, an application for
18 transfer shall be submitted within 90 days. And I don't
19 know if that addresses the concerns, but that was an
20 effort to address the concerns, and I'd just put it out
21 there for discussion.

22 **CHAIRMAN GRAHAM:** A question that I have
23 before, I guess, I seek a second on that motion is, is
24 that for the same period of time, that two years?

25 **COMMISSIONER EDGAR:** Mr. Chairman, I did not

1 make a motion. I made a suggestion for discussion.

2 **CHAIRMAN GRAHAM:** Okay. But did that -- was
3 that for two years or was that indefinite?

4 **COMMISSIONER EDGAR:** I don't know. What do
5 you think?

6 **CHAIRMAN GRAHAM:** Well, since the original
7 condition was --

8 **COMMISSIONER EDGAR:** Can we do forever? I
9 don't know if we can do forever.

10 **CHAIRMAN GRAHAM:** I think it should be for two
11 years. I didn't hear you say that, but --

12 **COMMISSIONER EDGAR:** I did not say that. I
13 was thinking more on the 90 days than I was the two
14 years, but I would certainly be comfortable adding that
15 two thousand -- December 31st, 2017, date.

16 **CHAIRMAN GRAHAM:** Okay. Commissioner Brisé.

17 **COMMISSIONER BRISÉ:** Thank you, Mr. Chairman.

18 And, Commissioner Edgar, I think we are on the
19 same page in terms of framework. My -- my advisor and I
20 were talking about it during the break, and our language
21 is pretty similar to what you've come up with. So --
22 and I agree with the -- ending the time frame at
23 December 31, 2017, as well as the two-year time frame.
24 So I'm comfortable with that language.

25 **COMMISSIONER EDGAR:** Commissioner Brown.

1 **COMMISSIONER BROWN:** Thank you. I like the
2 language much better than proposed by staff in five.
3 Doesn't that language mirror, though, the language in
4 the new rule that staff is drafting?

5 **MS. HELTON:** Yes.

6 **COMMISSIONER BROWN:** Okay. So do you know
7 when -- when it should come before us?

8 **MS. HELTON:** I know we just opened the docket
9 to address it, and so it should be coming before you
10 very soon, this year.

11 **COMMISSIONER BROWN:** Okay.

12 **CHAIRMAN GRAHAM:** Let me see if I understand.
13 If I remember correctly, where's my aide, in briefing
14 yesterday I was told that statutorily we couldn't pass a
15 rule that did that.

16 **MS. CRAWFORD:** Commissioner, that was me who
17 spoke, and I did also preface that saying that I was not
18 in the rule development group, but that I would have
19 some concerns that if such a rule is proposed, that we
20 would make sure that we had the statutory authority to
21 do so. It appears that the opinion is that we do and
22 that it is in the draft as proposed.

23 **CHAIRMAN GRAHAM:** Okay. I just wanted to make
24 sure that I was listening correctly.

25 **MR. CRAWFORD:** That was my error.

1 **CHAIRMAN GRAHAM:** Okay. All right.

2 Commissioner Patronis.

3 **COMMISSIONER PATRONIS:** I just wanted to
4 compliment how seniority and experience puts together
5 comments and policy, and I like -- you're still putting
6 obligations on -- on the -- Mr. Smallridge to do his
7 obligations per the rules that we're governed by, but at
8 the same time I'm -- you know, this is -- I'm supportive
9 of the proposed idea.

10 **CHAIRMAN GRAHAM:** Commissioner Edgar.

11 **COMMISSIONER EDGAR:** Then if -- I would, I
12 would just restate the suggested language that would be
13 a substitute for the language proposed as condition
14 five. If Michael Smallridge purchases, either directly
15 or indirectly, prior to December 31st, 2017, an
16 application for -- and I missed a phrase. Let me -- may
17 I start over?

18 **CHAIRMAN GRAHAM:** Sure.

19 **COMMISSIONER EDGAR:** Thank you. If Michael
20 Smallridge purchases, either directly or indirectly, any
21 other Commission-regulated utilities prior to
22 December 31st, 2017, an application for transfer shall
23 be submitted within 90 days.

24 **CHAIRMAN GRAHAM:** That's been moved and
25 seconded. Is there any further discussion on that

1 motion? Seeing none, all in favor, say aye.

2 (Vote taken.)

3 Any opposed? By your action, you've approved,
4 I guess, Issues 5 and 6 with -- we'll call it the Edgar
5 amendment.

6 **COMMISSIONER EDGAR:** Then just to wrap it up,
7 I would -- because I was really just talking about
8 that condition, so I would move approval of Items 5
9 and 6 with the approved amended language.

10 **COMMISSIONER BROWN:** Second.

11 **COMMISSIONER PATRONIS:** Second.

12 **CHAIRMAN GRAHAM:** All in favor, say aye.

13 (Vote taken.)

14 Any opposed? By your action, we're adjourned.
15 We're going have IA in the IA room in 15 minutes, so
16 that would be 11:00.

17 (Agenda Conference adjourned.)

1 STATE OF FLORIDA)
2 COUNTY OF LEON) : CERTIFICATE OF REPORTER

3
4 I, LINDA BOLES, CRR, RPR, Official Commission
5 Reporter, do hereby certify that the foregoing
6 proceeding was heard at the time and place herein
7 stated.

8 IT IS FURTHER CERTIFIED that I
9 stenographically reported the said proceedings; that the
10 same has been transcribed under my direct supervision;
11 and that this transcript constitutes a true
12 transcription of my notes of said proceedings.

13 I FURTHER CERTIFY that I am not a relative,
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15 am I a relative or employee of any of the parties'
16 attorney or counsel connected with the action, nor am I
17 financially interested in the action.

18 DATED THIS 21st day of September, 2015.

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