

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for transfer  
of facilities of Fiveland  
Investments, Inc. to Charlotte  
County, and cancellation of  
Certificate No. 571-W.

DOCKET NO. 981930-WU  
ORDER NO. PSC-99-1220-FOF-WU  
ISSUED: June 21, 1999

ORDER APPROVING TRANSFER OF FACILITIES OF  
FIVELAND INVESTMENTS, INC. TO CHARLOTTE COUNTY

BY THE COMMISSION:

On December 22, 1998, an application was filed requesting acknowledgment of the transfer of the facilities of Fiveland Investments, Inc. (Fiveland or utility) to Charlotte County and cancellation of Certificate No. 571-W. Deficiencies to the application were corrected on February 1, 1999, and March 22, 1999. The transfer occurred on December 30, 1998.

Fiveland's application is in compliance with Section 367.071, Florida Statutes, and Rule 25-30.037, Florida Administrative Code. Fiveland provided a copy of the agreement between Charlotte County and the utility. According to the agreement, the utility system was transferred and contributed to the County for a nominal monetary consideration, although the parties agree that the fair market value of the system is \$1,000,000.

Pursuant to Section 2.11.11 of the agreement, at the closing, Fiveland was required to provide a report accounting for any customer deposits and a cashier's check payable to Charlotte County for any amount held. However, prior to closing, Fiveland advised Charlotte County that it had no customer deposits. A statement was also provided with the application confirming that Fiveland had previously provided Charlotte County with its most recently available income and expense statement, balance sheet, statement of rate base for regulatory purposes and contributions-in-aid-of-construction (CIAC). The application also provided a statement with regard to any outstanding regulatory assessment fees, fines or refunds owed.

DOCUMENT NUMBER-DATE

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FPSO-RECORDS/REPORTING

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According to Commission records, Fiveland has paid 1998 regulatory assessment fees up to the closing on December 30, 1998, and does not owe any outstanding fees, fines or refunds. Commission records also confirm that disposition of gross-up of CIAC does not apply to Fiveland. Fiveland has returned Certificate No. 571-W to this Commission for cancellation.

Fiveland's certificate was granted by Order No. PSC-95-0613-FOF-WU, issued on May 22, 1995, in Docket No. 941340-WS. Although not apparent in that Order, Fiveland was under receivership at the time. Originally, Fiveland had two equal shareholders, a resident and the on-site manager. The resident shareholder terminated the manager/shareholder due to perceived inadequacies. As a result of the problems which arose from this action, the Twelfth Judicial Circuit Court appointed Mr. Theodore C. Steffens, Esquire, as Receiver on September 5, 1991, until the dispute could be resolved. During the receivership, the utility plant was partially upgraded and automated, and delinquent taxes, annual reports and regulatory assessment fees were filed and paid by the Receiver. As a consequence, the Receiver remained in control of the utility until a \$50,000 lien was satisfied. Mr. Eugene Schwartz, the prevailing party in the ownership dispute, provided the Commission with an affidavit that he released and disclaimed any and all interest in the facilities owned by Fiveland and transferred to Charlotte County.

In addition, prior to the appointment of the Receiver, Fiddlers Green Condominium filed a lawsuit against the utility on August 19, 1991, alleging damage to lines, utilities, and improvements as a result of inadequate potable water. The lawsuit was recently successfully resolved without liability accruing to the utility. There remained, however, the possibility that the utility could recover monies at some future date. Because the Receiver is not necessary for such recovery, steps have been taken for the Dissolution of Receivership so that any monies collected will revert to Charlotte County. Therefore, Fiveland should be free and clear of any future legal complications with regard to the dispute and lawsuit.

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While the application for transfer to Charlotte County in the instant docket was being processed, we became aware that a portion of Fiveland's service area overlapped the territory served by Rotonda West Utility Corporation (Rotonda). By letter filed April 22, 1999, in Docket No. 981858-WS (application to transfer facilities from Rotonda to AquaSource Utility, Inc.), AquaSource Utility, Inc. requested that the overlapping territory not be transferred from Rotonda to itself when we consider the application for transfer in Docket No. 981858-WS. Because an application for transfer to a governmental entity is approved as a matter of right, and since the transfer has already occurred, we find it appropriate to consider the problem of the overlapping territory in Docket No. 981858-WS.

Based on the foregoing, the transfer of the facilities of Fiveland to Charlotte County is hereby approved. Although Fiveland has returned Certificate No. 571-W to this Commission, Docket No. 981930-WU shall remain open and Certificate No. 571-W shall remain active pending a determination in Docket No. 981858-WS that the territory overlap is no longer in question. At that time, Certificate No. 571-W shall be canceled and this docket shall be closed administratively.

It is, therefore,

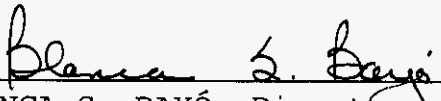
ORDERED by the Florida Public Service Commission that the transfer of the facilities of Fiveland Investments, Inc., 6320 Tower Lane, Suite E, Sarasota, Florida, 34240, to Charlotte County, 18500 Murdock Circle, Port Charlotte, Florida, 33948-1094, is hereby approved. It is further

ORDERED that Certificate No. 571-W shall remain active pending resolution in Docket No. 981858-WS of the problem regarding the overlapping territory, as discussed in the body of this Order. It is further

ORDERED that Docket No. 981930-WU shall remain open pending resolution in Docket No. 981858-WS of the problem regarding the overlapping territory, as discussed in the body of this Order. At that time, the docket shall be administratively closed.

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By ORDER of the Florida Public Service Commission this 21st  
day of June, 1999.

  
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BLANCA S. BAYÓ, Director  
Division of Records and Reporting

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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 Records and Reporting, 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 Records and reporting 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.