

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for transfer of majority organizational control of Dixie Groves Estates, Inc., holder of Certificate 139-W in Pasco County, from Frank W. Potter to Judson F. Potter and Matthew A. Potter.

DOCKET NO. 990548-WU
ORDER NO. PSC-00-0914-FOF-WU
ISSUED: May 8, 2000

The following Commissioners participated in the disposition of this matter:

JOE GARCIA, Chairman
J. TERRY DEASON
SUSAN F. CLARK
E. LEON JACOBS, JR.
LILA A. JABER

ORDER APPROVING TRANSFER OF MAJORITY ORGANIZATIONAL CONTROL,
DECLINING TO INITIATE SHOW CAUSE PROCEEDINGS,
AND CLOSING DOCKET

BY THE COMMISSION:

On May 3, 1999, Dixie Groves Estates, Inc. (Dixie Groves or utility) filed an application for transfer of majority organizational control of the utility from Mr. Frank Potter to Mr. Judson F. Potter and Mr. Matthew A. Potter. Dixie Groves is a Class C utility which holds Certificate No. 139-W. The utility serves approximately 337 water customers in Pasco County. The facilities consist of one water treatment plant and one water distribution system.

Mr. Frank Potter, father, owned 72 shares of stock in the utility and Mr. Judson Potter, son, owned 28 shares. When the Father developed health problems, he sold 22 shares of the stock to his son and 50 shares to Mr. Matthew Potter, grandson. The transfer occurred on January 1, 1997, prior to Commission approval.

DOCUMENT NUMBER-DATE

05721 MAY-88

FPSC-RECORDS/REPORTING

Show Cause

Section 367.071, Florida Statutes, states, in part, "No utility shall sell, assign, or transfer its certificate of authorization, facilities or any portion thereof . . . without determination and approval of the commission that the proposed sale, assignment, or transfer is in the public interest." On January 1, 1997, majority organizational control of Dixie Grove was transferred from Mr. Frank Potter to other members of the family because his health had deteriorated to the point that he was no longer able to attend to the business of the utility. The transfer occurred without prior Commission approval. Such action is "willful" in the sense intended by Section 367.161, Florida Statutes.

Section 367.161, Florida Statutes, authorizes the Commission to assess a penalty of not more than \$5,000 for each offense, if a utility is found to have knowingly refused to comply with, or to have willfully violated any provision of Chapter 367, Florida Statutes. In Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL, titled In Re: Investigation Into The Proper Application of Rule 25-14.003, F.A.C., Relating To Tax Savings Refund For 1988 and 1989 For GTE Florida, Inc., the Commission, having found that the company had not intended to violate the rule, nevertheless found it appropriate to order it to show cause why it should not be fined, stating that "[i]n our view, 'willful' implies an intent to do an act, and this is distinct from an intent to violate a statute or rule." Id. at 6.

Failure of Dixie Groves to obtain Commission approval prior to transferring majority organizational control of the utility appears to be due to lack of knowledge of the statutes and Commission rules. Neither the buyer nor the seller were aware of the requirement to obtain Commission approval prior to the sale of stock in Dixie Groves. Immediately upon becoming aware of the requirement, Dixie Groves filed an application for approval of the transfer. As stated previously, the application was filed on May 3, 1999.

Although regulated utilities are charged with the knowledge of Chapter 367, Florida Statutes, we do not believe that the apparent violation of Section 367.071, Florida Statutes, rises in these circumstances to the level of warranting initiation of a show cause proceeding. Therefore, we do not find it appropriate to initiate a show cause proceeding against Dixie Groves for transferring

majority organizational control from Mr. F. Potter to Mr. J. Potter and Mr. M. Potter without prior Commission approval.

Application

Except as discussed previously, the application is in compliance with Section 367.071, Florida Statutes, and other pertinent statutes and provisions of the Florida Administrative Code. In particular, the application contains a filing fee in the amount of \$750, as prescribed by Rule 25-30.020, Florida Administrative Code. The application also contains proof in the form of a recorded warranty deed that the utility owns the land upon which its facilities are located, in accordance with Rule 25-30.037(3)(i), Florida Administrative Code.

The application 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 utility being transferred. No objections to the application have been received and the time for filing such has expired.

With regard to the buyers' technical ability, according to the application, Judson and Matthew Potter have diverse expertise in areas of or relating to the operation of this utility and the ownership and operation of Virginia City Utilities, Inc. in Pasco County. The buyers also have the financial resources to continue to operate the utility and to make any future improvements to the utility systems as deemed necessary. In addition, the application contains a statement that the buyers will fulfill the commitments, obligations and representations of Mr. Frank Potter with regard to the utility system.

As required by Rule 25-30.037(3)(h), Florida Administrative Code, the buyers performed a reasonable investigation of the utility system and found that the system seems to be in satisfactory condition. Further, according to the Department of Environmental Protection, there are no outstanding notices of violation against the utility.

Based on the foregoing, we find the transfer of majority organizational control of Dixie Groves from Mr. Frank Potter to Mr. Judson Potter and Mr. Matthew Potter to be in the public interest and it is approved. The territory Dixie Groves is authorized to serve is shown on Attachment A of this Order, which by reference is incorporated herein.

Rate Base

Section 367.071(5), Florida Statutes, states, in part, "[t]he commission by order may establish the rate base for a utility or its facilities or property when the commission approves a sale, assignment, or transfer thereof." The Commission generally establishes rate base at the time of a sale, assignment or transfer because the purchase price of a utility, as compared to rate base, is part of determining whether the transfer is in the public interest. However, the Commission does not generally establish rate base for transfers of majority organizational control because the purchase is usually accomplished by the transfer of stock. Stock price has no regulatory relationship to a utility's established rate base.

Because the transfer of majority organizational control of Dixie Groves was accomplished by the transfer of stock, we do not find it appropriate to establish rate base in this proceeding.

Rates and Charges

Dixie Groves' existing rates and charges were established by Order No. PSC-99-0243-FOF-WU, issued February 9, 1999, in Docket No. 980726-WU. Rule 25-9.044(1), Florida Administrative Code, requires the new owner of a utility to adopt and use the rates, classifications and regulations of the previous owner unless authorized to change by this Commission. The new owners have not requested to change the rates and charges and we see no reason to change them at this time. Dixie Groves shall continue to charge the rates and charges approved in its tariff until authorized to change by this Commission in a subsequent proceeding.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the transfer of majority organizational control of Dixie Groves Estates, Inc., 5940 Main Street, New Port Richey, Florida 34652, from Mr. Frank Potter to Mr. Judson F. Potter, 5914 Wyoming Avenue, New Port Richey, Florida 34652, and Mr. Matthew A. Potter, Conniewood, New Port Richey, Florida 34653, is hereby approved. The territory Dixie Groves is authorized to serve is shown on Attachment A of this Order, which by reference is incorporated herein. It is further

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ORDERED that Dixie Groves Estates, Inc. shall not be required to show cause for failing to obtain Commission approval prior to transferring majority organizational control of the utility from Mr. Frank Potter to Mr. Judson F. Potter and Mr. Matthew A. Potter. It is further

ORDERED that Dixie Groves Estates, Inc. shall continue to charge the rates and charges approved in its tariff until authorized to change by this Commission in a subsequent proceeding. It is further

ORDERED that this docket is hereby closed.

By ORDER of the Florida Public Service Commission this 8th day of May, 2000.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records

(S E A L)

ALC

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

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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.

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ATTACHMENT A

DIXIE GROVES ESTATES, INC.
Pasco County

Water Service Area

Serving the areas known as Dixie Grove Estates, Dixie Garden Loop
and Knollwood Village

In Township 26 South, Range 16 East, a portion of Sections 29, 31,
and 32 further described as follows:

Commence at the Southwest corner of said Section 29 for a Point of
Beginning; thence run Easterly along said section line 881.62 feet;
thence Northerly 1000.98 feet; thence Easterly 440.58 feet; thence
Southerly 2021.46 feet; thence Westerly 550.25 feet; thence
Westerly 166.79 feet along the arc of a curve to the left; thence
Westerly 578 feet; thence Southerly 37 feet +/- to the South right-
of-way line of Pine Bough Lane, as it is now established; thence
run Westerly along said right-of-way line, 809.35 feet; thence
Northerly 25 feet; thence Westerly 98.36 feet; thence Northerly
1012.97 feet to the North boundary of said Section 31; thence
Easterly along said section line 880.36 feet to the Point of
Beginning.