



# Public Service Commission

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RECORDS AND REPORTING

**DATE:** APRIL 6, 2000

**TO:** DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYÓ)

**FROM:** DIVISION OF WATER AND WASTEWATER (CLAPP) @ Sam Gray  
DIVISION OF LEGAL SERVICES (CROSBY) MS

**RE:** DOCKET NO. 990548-WU - 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. COUNTY: PASCO

**AGENDA:** 4/18/00 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE

**CRITICAL DATES:** NONE

**SPECIAL INSTRUCTIONS:** NONE

**FILE NAME AND LOCATION:** S:\PSC\WAW\WP\990548WU.RCM

**CASE BACKGROUND**

Dixie Groves Estates, Inc. (Dixie Groves or utility) is a Class C water utility located in Pasco County and serves approximately 337 water customers. The utility was issued Water Certificate No. 139-W pursuant to Order No. 5740, issued May 7, 1973, in Docket No. C-73191-W. The utility's 1998 annual report lists total operating revenues of \$27,289 and total operating loss of (\$23,104). The utility's facilities consist of one water treatment plant and one water distribution system.

On May 3, 1999, Dixie Groves filed an application for transfer of majority organizational control (TMOC) of the utility from Mr. Frank Potter (Mr. F. Potter or Seller) to Mr. Judson F. Potter (Mr. J. Potter) and Mr. Matthew A. Potter (Mr. M. Potter). The application was found to be deficient. The deficiencies were corrected on March 6, 2000.

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The actual transfer of the 72 shares of stock took place on January 1, 1997. This was a transfer between family members. Mr. F. Potter originally owned 72 shares and Mr. J. Potter owned 28 shares. Mr. F. Potter developed health problems which caused him to sell his shares. His son, Mr. J. Potter, purchased 22 shares and his grandson, Mr. M. Potter, purchased 50 shares.

It has been Commission practice that rate base is not established in TMOC proceedings, and thus, rate base audits are not conducted in TMOC cases. However, for informational purposes, rate base was established for this water utility in a 1998 Staff Assisted Rate Case as \$35,805. The total purchase price paid for the 72 shares of utility stock is \$7,000.

#### DISCUSSION OF ISSUES

**ISSUE 1:** Should Dixie Grove Estates, Inc. be ordered to show cause, in writing within twenty-one days, why it should not be fined for apparent violation of Section 367.071, Florida Statutes?

**RECOMMENDATION:** No. Show cause proceedings should not be initiated. (CROSBY)

**STAFF ANALYSIS:** As stated in the case background, Dixie Grove is in apparent violation of Section 367.071, Florida Statutes, which 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." Until the time of transfer, Mr. F. Potter held 72 percent of the stock of Dixie Grove. On January 1, 1997, majority organizational control of Dixie Grove was transferred from Mr. F. Potter to other members of the Potter family because Mr. Potter's 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 that they had 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 knowledge of Chapter 367, Florida Statutes, staff does 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, staff recommends that the Commission not order Dixie Groves to show cause for failing to obtain Commission approval prior to transferring majority organizational control from Mr. F. Potter to Mr. J. Potter and Mr. M. Potter.

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**ISSUE 2:** Should the application for transfer of majority organizational control of the utility from Mr. Frank Potter to Mr. Judson Potter and Mr. Matthew Potter be approved?

**RECOMMENDATION:** Yes, the application for transfer of majority organizational control of the utility from Mr. Frank Potter to Mr. Judson Potter and Mr. Matthew Potter should be approved. (CLAPP)

**STAFF ANALYSIS:** As discussed in the case background, on May 3, 1999, the utility filed an application for transfer of majority organizational control of Dixie Groves from Mr. F. Potter to Mr. J. Potter and Mr. M. Potter (buyers). The application is in compliance with the governing statute, Section 367.071, Florida Statutes, and other pertinent statutes and administrative rules concerning an application for transfer of majority organizational control. The application contains a check in the amount of \$750, which is the correct filing fee pursuant to Rule 25-30.020, Florida Administrative Code.

In addition, 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 to be transferred. No objections to the notice of application have been received and the time for filing such has expired. A description of the territory served by the utility is appended to this memorandum as Attachment A.

The application states that the transfer is in the public interest, as required by Rule 25-30.037(3)(f), Florida Administrative Code, because the buyers have diverse expertise in areas of or relating to operation of this water utility and ownership and operation of Virginia City Utilities, Inc. in Pasco County. The buyers have the financial resources to make the future improvements to the utility systems as deemed necessary. Additionally, the application contains a statement that the buyers will fulfill the commitments, obligations and representations of the seller with regard to utility matters. In contrast the seller is no longer able to continue to operate the utility system due to age, physical reasons and advanced Alzheimer's disease.

The application states that the buyers have performed a reasonable investigation of the utility system as required by Rule 25-30.037(3)(h), Florida Administrative Code. The buyers included a statement that the system being acquired seems to be in satisfactory condition and in compliance with all applicable standards set by the Florida Department of Environmental Protection

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(DEP). Staff has contacted the DEP and learned that there are no outstanding notices of violation.

According to the application, Dixie Groves has the financial and technical ability to provide water service. The utility has been certificated in the water business since May 4, 1973. Rule 25-30.037(3)(i), Florida Administrative Code, requires a utility to provide proof of ownership of the land upon which its facilities are located. The application contained a recorded warranty deed in the name of the utility as proof of ownership. According to our records, the utility is current on its regulatory assessment fees and annual report through 1998.

Based on the above, staff recommends that the Commission find that the transfer of majority organizational control of Dixie Groves to the buyers is in the public interest and, therefore, that it should be approved.

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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

Docket No. C-73191-W, Order No. 5740, dated May 4, 1973

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.

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**ISSUE 3:** Should rate base be established for Dixie Groves Estates, Inc. as of the time of transfer?

**RECOMMENDATION:** No, rate base should not be established as of the time of transfer. (CLAPP)

**STAFF ANALYSIS:** 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 of certificate because the purchase price of the utility, as compared to the rate base, is part of determining whether the transfer is in the public interest. However, the Commission generally does not establish rate base for transfers of majority control since the purchase is usually accomplished by the transfer of stock. Stock price, whether publicly traded or privately held, has no regulatory relationship to a utility's established rate base.

Since the transfer of majority control of Dixie Groves was accomplished by the transfer of stock, staff recommends that rate base not be established as of the time of transfer.

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**ISSUE 4:** Should the rates and charges approved for this utility be continued?

**RECOMMENDATION:** Yes, the rates and charges approved for Dixie Groves Estates, Inc. should be continued. (CLAPP)

**STAFF ANALYSIS:** Dixie Grove's rates and charges were established most recently by Order No. PSC-99-0243-FOF-WU, issued February 9, 1999, in Docket No. 980726-WU, as the result of a staff-assisted rate case.

Rule 25-9.044(1), FAC, provides that:

In case of change of ownership or control of a utility which places the operation under a different or new utility...the company which will thereafter operate the utility business must adopt and use the rates, classification and regulations of the former operating company (unless authorized to change by the Commission).

The buyers have not requested a change in the rates and charges of the utility and staff sees no reason to change them at this time. Accordingly, staff recommends that the utility continue operations under the existing tariff and apply the approved rates and charges.



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**ISSUE 5:** Should this docket be closed?

**RECOMMENDATION:** Yes, this docket should be closed. (CROSBY)

**STAFF ANALYSIS:** No further action is required in this docket.  
Therefore, staff recommends that this docket be closed.