

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for the) DOCKET NO. 911054-WS
transfer of Certificates Nos.) ORDER NO. PSC-92-0335-FOF-WS
523-W and 457-S from Heritage) ISSUED: 05/11/92
Wood 'N Lake Estates to EGR)
Enterprises, Inc., d/b/a)
Wildwood Estates in Sumter)
County, Florida.)
_____)

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman
SUSAN F. CLARK
J. TERRY DEASON
BETTY EASLEY
LUIS J. LAUREDO

ORDER APPROVING TRANSFER AND CLOSING DOCKET

BY THE COMMISSION:

Heritage Wood 'N Lake Estates (Heritage or Utility) holds Certificates Nos. 523-W and 457-S in Sumter County. The Utility serves approximately 90 customers in three subdivisions, Hearty Host Lake Resort, Water Wheel Adult Mobile Home Community and RV Park, and Heritage Wood Estates.

The subdivisions were acquired by Freedom Federal Savings and Loan of Tampa (Freedom) through foreclosure. Freedom also acquired ownership of the Utility. Subsequently, Freedom was taken over by the Resolution Trust Corporation (RTC). The Sunshine State Service Company (Sunshine), a wholly-owned corporation of RTC, operated the Utility after it was acquired.

On April 4, 1991, the mobile home development and the Utility were acquired by EGR Enterprises, Inc. d/b/a Wildwood Estates (EGR). We became aware of the change in ownership of the Utility when Heritage failed to file its 1990 annual report. EGR was sent a transfer application on June 5, 1991. On September 5, 1991, the Commission received a letter from Mr. R. Dewey Burnsed advising that his law firm had been hired to complete the transfer application for EGR.

On October 15, 1991, this Commission received the application for the transfer of Heritage to EGR. Although the transfer

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occurred on April 4, 1991, prior to Commission approval, we will not initiate show cause proceedings since EGR filed the application for approval of the transfer shortly after being advised of the requirement.

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 notarized application contains:

1. A filing fee in the amount of \$300, as prescribed by Rule 25-30.020, Florida Administrative Code.
2. Proof of compliance with the noticing provisions of Rule 25-30.030, Florida Administrative Code, including notice to the customers of the Utility being transferred.
3. Evidence that the Utility owns the land upon which its facilities are located, as required by Rule 25-30.037 (1)(o), Florida Administrative Code. Since the evidence of land ownership was in the form of a Quit-claim Deed, EGR provided Title Insurance as proof that it has clear title to the land.

No objections to the notice of application have been received and the time for filing such has expired. However, on November 12, 1991, the Commission Staff responded to several telephone calls from customers complaining about service and the quality of water. The customers also complained that their water had been turned off the night before. EGR was contacted immediately and advised of the customers' concerns. Mr. Gilbert Titus, Vice President of EGR, explained that he was in the process of fixing the problem and had to turn the water off temporarily in order to replace a burned out part. With regard to the complaints about water quality, Mr. Titus stated that the Utility is in compliance with the requirements of the Department of Environmental Regulation (DER). Upon contacting DER, we determined that there are no outstanding notices of violation against the Utility.

One of the complaints received was that management is uncooperative and the plant operator is unlicensed. Mr. Titus manages the Utility and resides in the Utility's service area. He has over 18 years of experience in working with water and

wastewater systems. Mr. Titus is assisted in the operation of the systems by Mr. Charles Baker of Baker Water and Wastewater, Inc. Mr. Baker is a licensed plant operator with over 7 years of experience in the operation of water and wastewater systems.

From information submitted with the application, it appears that EGR has the financial ability to operate the Utility. EGR's financial statement for 1991 shows that its capital structure contains 100 percent debt; however, we believe the corporation has sufficient cash to provide service. Additionally, the majority of the Corporation's debt is backed by the personal guarantee of its President, Ms. E. G. Rogow. Also, since EGR purchased the entire development, we believe that it has a vested interest in seeing that the Utility provides good service to its customers.

It should be noted that Heritage has not filed its 1990 Annual Report or paid regulatory assessment fees for 1990. In accordance with Section 367.071(2), Heritage shall remain liable for any outstanding regulatory assessment fees, fines or refunds of the Utility. In the future, EGR will be responsible for filing annual reports and paying regulatory assessment fees.

Based on the foregoing, we find that the transfer of Certificates Nos. 523-W and 457-S from Heritage to EGR is in the public interest and it is approved. The territory being transferred is described in Attachment A of this Order, which by reference is incorporated herein. EGR shall return Certificates Nos. 523-W and 457-S to this Commission for entry reflecting the change in ownership.

Rate Base

The Commission has never established rate base for Heritage. According to the application, the net book value of the water and wastewater systems is estimated to be \$275,100. An audit of the Utility's books and records was requested to determine rate base. However, EGR does not have the Utility's books and records. As stated previously, EGR purchased the entire mobile home development, including the Utility. The books and records of the Utility were not available at the time of purchase.

We requested EGR to perform an original cost study in order to establish rate base. EGR responded that it does not believe that it is necessary to establish rate base at this time. EGR was advised that in any future rate cases, the Commission will

establish rates based on the rate base of the Utility. However, in this case, the charge for water and wastewater service is not a separate charge. The charge for service is included in the maintenance fee, which is controlled by the lot owners' covenants and deed restrictions. The maintenance fee includes water and wastewater service, garbage collection and common area maintenance.

Even though the charge for water and wastewater service is a non-specific portion of the maintenance fee, the Utility is jurisdictional because it is providing service to the public for compensation. Although the Utility is jurisdictional, EGR believes that it is bound by the lot owners' covenants and restrictions and will not seek rate relief from the Commission.

We will not establish rate base for the Utility at this time. However, if EGR seeks rate relief in the future, an original cost study will be required at that time so that rate base may be established.

Rates and Charges

The rates and charges currently approved for Heritage were approved along with the original tariff and became effective on November 22, 1989, pursuant to Order No. 22152, issued in Docket No. 890730-WS. As stated previously, residents own their own lots and pay a monthly maintenance fee, which includes water and wastewater service, garbage collection and common area maintenance services. According to information in the original certificate application, \$13.65 of the maintenance fee is for water and wastewater services. As a result, the Commission approved a monthly flat rate of \$5.85 for water and \$7.80 for wastewater. The Utility has no service availability charges, miscellaneous service charges or customer deposits approved in its tariff.

Rule 25-9.044(1), Florida Administrative Code, requires the new owner of a utility to adopt and use the rates, classification and regulations of the former owner unless authorized to change by the Commission. EGR has not requested to change the rates and charges of the Utility and we see no reason to change them at this time. EGR shall charge the rates and charges approved in the Utility's tariff until authorized to change by the Commission. EGR has filed a tariff reflecting the change of ownership. The tariff shall be effective for service rendered or connections made on or after the stamped approval date on the tariff sheets.

ORDER NO. PSC-92-0335-FOF-WS
DOCKET NO. 911054-WS
Page 5

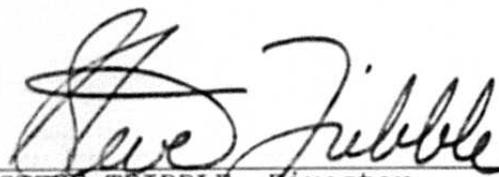
It is, therefore,

ORDERED by the Florida Public Service Commission that the transfer of Certificates Nos. 523-W and 457-S from Heritage Wood 'N Lake Estates, 4200 West Cypress Street, Tampa, Florida 33607-4150, to EGR Enterprises, Inc. d/b/a Wildwood Estates, 8701 Banyan Court, Tamarac, Florida 33321, is hereby approved. Certificates Nos. 523-W and 457-S shall be returned to the Commission within 30 days of the date of this Order for entry reflecting the change of ownership. It is further

ORDERED that EGR shall continue to charge the rates and charges approved in Heritage's tariff until authorized to change by the Commission. It is further

ORDERED that Docket No. 911054-WS is hereby closed.

By ORDER of the Florida Public Service Commission, this 11th day of May, 1992.



STEVE TRIBBLE, Director
Division of Records and Reporting

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ALC

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), 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

ORDER NO. PSC-92-0335-FOF-WS
DOCKET NO. 911054-WS
Page 6

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 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 or sewer 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.

ATTACHMENT A

HERITAGE WOOD 'N LAKE ESTATES

A Division of Sunshine State Service Corporation

Territory Description

The following described lands located in portions of Section 16, Township 19 South, Range 23 East, Sumter County, Florida:

Section 16:

Beginning at the Northwest corner of the Southwest 1/4 of Section 16, Township 19 South, Range 23 East, Sumter County, Florida; thence North 00°02'49" East along the West boundary of the Northwest 1/4 of said Section, 1592.76 feet to an intersection with the South right-of-way line of State Road 44 (100 feet wide); thence South 69°41'51" East along said right-of-way line 1414.39 feet to an intersection with the East boundary of the West 1/2 of the Southwest 1/4 of said Section; thence South 00°04'47" East along said East boundary 1097.86 feet; thence South 00°02'36" East along said East boundary 1324.54 feet; thence South 00°38'18" West along said East boundary 10.28 feet to the Southeast corner of Heritage Wood 'N Lakes Estates, according to the plat thereof as recorded in Plat Book 4, Pages 61 and 61A, Public Records of Sumter County, Florida; thence South 89°34'21" West along the South boundary of said Heritage Wood 'N Lakes Estates and a Westerly projection thereof 946.35 feet more or less to an intersection with the East boundary of Tract D, Hearty Host Lake Resort, according to the plat thereof as recorded in Plat Book 3, Pages 57 and 57A, Public Records of Sumter County, Florida; thence South 00°03'20" East along said East boundary of Tract D, 27.06 feet more or less to the Southeast corner of said Tract D; thence South 89°38'21" West along the South boundary of said Tract D, 388.84 feet to the Southwest corner of said Tract D; thence North 00°12'25" East along the West boundary of said Tract D and the West boundary of aforesaid Southwest 1/4, 1353.14 feet to the Point of Beginning.