



Public Service Commission

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DATE: AUGUST 23, 2001

TO: DIVISION OF THE COMMISSION CLERK AND ADMINISTRATIVE SERVICES (BAYÓ)

FROM: DIVISION OF REGULATORY OVERSIGHT (JOHNSON, REDEMANN) *CCM*
 DIVISION OF LEGAL SERVICES (CROSETT, GERVASI) *PPR*
 DIVISION OF ECONOMIC REGULATION (MAILHOT) *EM* *TS* *PP* *PA* *of JMA*

RE: DOCKET NO. 001551-WS - APPLICATION FOR TRANSFER OF CERTIFICATE NOS. 544-W AND 474-S IN HIGHLANDS COUNTY FROM HIGHLANDS RIDGE ASSOCIATES, INC. TO HIGHLANDS RIDGE UTILITIES, LLC.
 COUNTY: HIGHLANDS

AGENDA: SEPTEMBER 4, 2001 - REGULAR AGENDA - PROPOSED AGENCY ACTION FOR ISSUE NO. 2 - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\RGO\WP\001551.RCM

CASE BACKGROUND

Highlands Ridge Associates, Inc. (HRA, utility, or seller) is a Class "C" water and wastewater utility that provides services to 394 water and 378 wastewater customers in Highlands County. According to its application, HRA has been providing service since October 1990. The utility is located in both the Highlands Ridge Water Use Caution Area and the Southern Water Use Caution Area in the Southwest Florida Water Management District (District). According to the utility's 2000 annual report, the revenues were \$122,731 and \$108,628, with net operating income of \$14,887 and a net operating loss of \$3,486, for the water and wastewater systems, respectively.

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By Order No. PSC-92-0954-FOF-WS, issued September 9, 1992, in Docket No. 920306-WS, the utility was granted Certificates Nos. 544-W and 474-S, and initial rates and charges were approved. The utility serves a development that consists of site-built manufactured homes, single-family detached homes, several golf courses, a pro shop and a clubhouse.

On October 12, 2000, Highlands Ridge Utilities, LLC, (HRU or Buyer) and HRA jointly filed an application for approval of the transfer of Certificates Nos. 544-W and 474-S currently held by HRA to HRU. On January 26, 2000, 27/SHH Corporation purchased all the assets of the development served by the utility (Villages of Highlands Ridge), including the utility. Sebring Land Limited Partnership is a subsidiary of 27/SHH and the parent corporation of HRU. HRU was created to own and manage the utility.

The Commission generally addresses the issue of rate base in transfer proceedings. However, there is no requirement to do so. Pursuant to Section 367.071(5) Florida Statutes, the Commission by order may establish the rate base for a utility or its facilities or property when approving a sale, assignment or transfer thereof, except for any sale, assignment, or transfer to a governmental authority. HRA has been the subject of a Commission investigation, in Docket No. 981147-WS, in which the Commission, among other things, established rate base as of December 31, 2000, in Order No. PSC-01-1488-PAA-WS, issued July 18, 2001. The audit requested by staff in this transfer docket was also used to establish rate base in the investigation docket, although additional adjustments were made to reflect nonused and useful plant and working capital in Docket No. 981147-WS. Therefore, because the Commission need not establish rate base in the transfer docket and because rate base has been established in the investigation Docket No. 981147-WS, staff has not raised rate base as a separate issue in this recommendation.

The following is staff's recommendation regarding the utility's application for a transfer, the appropriateness of an acquisition adjustment, and approval of the rates and charges. The Commission has jurisdiction to consider this matter pursuant to Section 367.071, Florida Statutes.

DISCUSSION OF ISSUES

ISSUE 1: Should the transfer of Certificate Nos. 544-W and 474-S from Highlands Ridge Associates, Inc. to Highlands Ridge Utilities, LLC, be approved?

RECOMMENDATION: Yes, the transfer of Certificate Nos. 544-W and 474-S from Highlands Ridge Associates, Inc. to Highlands Ridge Utilities, LLC, should be approved. The utility is current on its 2000 regulatory assessment fees (RAFs) and annual reports. HRA is responsible for remitting its pro rata share of the 2001 RAFs accruing prior to closing to the Commission. Once the closing has occurred, HRU will be responsible for payment of the balance of 2001 RAFs accruing after closing and all future RAFs and annual reports that should be submitted to the Commission. HRU should be put on notice that it is required to maintain the utility's books and records in conformance with the National Association of Regulatory Utility Commissioners (NARUC) Uniform Systems of Accounts (USOA). The utility should submit a statement from its accountant with its 2001 annual report indicating that it has done so. Further, HRU should provide proof that it owns the land upon which the utility's facilities are located or that the utility has continued use of the land by October 29, 2001. A description of the territory being transferred is appended to this memorandum as Attachment A. (JOHNSON, REDEMANN, MAILHOT)

STAFF ANALYSIS: As discussed in the case background, on October 12, 2000, HRA and HRU jointly filed an application for transfer of Certificates Nos. 544-W and 474-S from HRA to HRU. The application was deficient and a request for the required information was sent on November 20, 2000. On December 20, 2000, HRU submitted all requested information. The application is in substantial compliance with the governing statute, Section 367.071, Florida Statutes, and other pertinent statutes and rules concerning an application for transfer. The application contains a check in the amount of \$1,500, which is the correct filing fee pursuant to Rule 25-30.020, 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 system 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.

HRU stated in its application that a warranty deed transferring the land upon which the plant facilities are located will be executed by HRA at the closing and a copy will be provided to the Commission. The transfer of the utility and the land is scheduled to take place thirty (30) days after the Commission approves the transfer application. Pursuant to Rule 25-30.037(2)(q), Florida Administrative Code, HRU should provide proof that it owns the land upon which the utility's facilities are located or that the utility has continued use of the land by October 29, 2001.

Regarding the buyer's technical ability, HRU will continue with the same employees and supporting contractors that have operated the water and wastewater utility for the past six years. At the present time, the utility provides safe and reliable water and wastewater service to its customers. HRU has the financial resources to maintain consistent compliance with environmental regulations. The application states that after a reasonable investigation of the utility system, the plant facilities appear to be in satisfactory condition and in compliance with all applicable standards set by the Florida Department of Environmental Protection (DEP). In addition, DEP verified that the utility's facilities appear to be in satisfactory condition and in compliance with all applicable standards set by DEP.

According to the application, the buyer's financial ability will not be affected by this transfer. HRU is a newly formed entity, created to own and manage the utility. Therefore, HRU does not have financial statements. In lieu of financial statements for HRU, the buyer provided the company's consolidated financial statements. The financial statements revealed substantial liquid assets with the capability to insure maintenance, repairs and compliance with environmental regulations. In addition, HRU has indicated that it will provide the company with the financial stability required to maintain the utility systems in accordance with Commission standards.

The application contains a copy of the Agreement for Purchase which includes the purchase price, terms of payment and a list of the assets purchased. According to the Agreement, the purchase price for the utility facilities (including land and equipment) is

\$750,000. The utility was purchased through a loan from the First Union National Bank (\$600,000 loan), with the balance being paid in cash (\$150,000). Based on the application, there are no guaranteed revenue contracts, developer agreements, utility debt, customer advances or customer deposits.

The utility is current on its RAFs and has filed an annual report for 2000 and all prior years. HRA is responsible for remitting its pro rata share of the 2001 RAFs accruing prior to closing to the Commission. HRU will be responsible for future annual reports and payment of the balance of 2001 RAFs accruing after the closing.

During a staff audit of HRA's books and records in January, 2001, staff learned that HRA keeps one set of books for all of its operations. The builder, developer, restaurant, golf club and membership fees accounts are commingled with those of the utility. Rule 25-30.115(1), Florida Administrative Code, states "Water and wastewater utilities shall, effective January 1, 1998, maintain their accounts and records in conformity with the 1996 NARUC USOA adopted by the National Association of Regulatory Utility Commissioners." Accounting Instruction 2, of the NARUC USOA for Class C utilities states:

Each utility shall keep its books of account, and all other books, records, and memoranda which support the entries in such books of account so as to be able to furnish readily full information as to any item included in any account. Each entry shall be supported by such detailed information as will permit a ready identification, analysis, and verification of all facts relevant thereto. (emphasis added)

Further, Accounting Instruction 4, of the NARUC USOA for Class C utilities states:

Each utility shall keep its books on a monthly basis so that for each month all transactions applicable thereto, as nearly as may be ascertained, shall be entered in the books of the utility. Amounts applicable or assignable to specific utility departments shall be segregated monthly. Each utility shall close its books at the end of each calendar year unless otherwise authorized by the Commission. (emphasis added)

Rule 25-30.450, Florida Administrative Code, states:

In each instance, the utility must be able to support any schedule submitted, as well as any adjustments or allocations relied on by the utility. The work sheets, etc., supporting the schedules and data submitted must be organized in a systematic and rational manner so as to enable Commission personnel to verify the schedules in an expedient manner and minimum amount of time. The supporting work sheets, etc., shall list all reference sources necessary to enable Commission personnel to track to original source of entry into the financial and accounting system and, in addition, verify amounts to the appropriate schedules. (emphasis added)

HRA's failure to maintain its books and records in accordance with NARUC USOA is an apparent violation of Rule 25-30.115, Florida Administrative Code. However, HRA will not be operating the utility if the transfer is approved to HRU. Therefore, HRU should be put on notice that it is required to maintain the utility's books and records in conformance with NARUC USOA as prescribed by Rule 25-30.115, Florida Administrative Code. Further, the utility should submit a statement from its accountant with its 2001 annual report indicating that it has done so.

The application states that the transfer is in the public interest because the transfer allows the customers to continue receiving the same water and wastewater service as they have become accustomed to for the past several years without disruption. Also, since an affiliate company of HRU's is developing the Highlands Village Community that will be served by the utility, there is a vested interest in continuing to provide satisfactory service. In addition, pursuant to Rule 25-30.037(2)(j), Florida Administrative Code, HRU has provided a statement that it will fulfill the commitments, obligations, and representations of HRA regarding utility matters.

Based on the above, staff recommends that the transfer of Certificates Nos. 544-W and 474-S from HRA to HRU is in the public interest and it should be approved. The utility is current on its 2000 RAFs and annual reports. HRA is responsible for remitting its pro rata share of the 2001 RAFs accruing prior to closing to the Commission. Once the closing has occurred, HRU will be responsible for payment of the balance of 2001 RAFs accruing after closing and

DOCKET NO. 001551-WS
DATE: AUGUST 23, 2001

all future RAFs and annual reports that should be submitted to the Commission. HRU should be put on notice that it is required to maintain the utility's books and records in conformance with the National Association of Regulatory Utility Commissioners (NARUC) Uniform Systems of Accounts (USOA). The utility should submit a statement from its accountant with its 2001 annual report indicating that it has done so. Further, HRU should provide proof that it owns the land upon which the utility's facilities are located or that the utility has continued use of the land by October 29, 2001. A description of the territory being transferred is appended to this memorandum as Attachment A.

ATTACHMENT A

Highlands Ridge Utilities, LLC
Water and Wastewater Service Area
Highlands County

That part of the South 1/2 of the Northwest 1/4 lying North and East of the present right-of-way line of the Seaboard Airline Railroad: the West 1100.00 feet of the Northeast 1/4: the East 220.00 feet of the West 1/2 of the Northeast 1/4 and the East 1/2 of the Northeast 1/4, all being in Section 8, Township 34 South, Range 29 East, Highlands County, Florida AND

The West 1/2 of the Northeast 1/4: the East 1/2 of the Northwest 1/4: the Northwest 1/4 of the Northwest 1/4: the North 1/2 of the Southwest 1/4 of the Northwest 1/4: the Northwest 1/4 of the Southeast 1/4: and the Northeast 1/4 of the Southwest 1/4 all being in Section 9, Township 34 South, Range 29 East, Highlands County, Florida. The above described property includes the subdivision known as Bonnet Lake Village, according to the plat thereof as recorded in Plat Book 10, Page 8, of the Public Records of Highlands County, Florida. Less and Except that portion of the following described property that lies in the Northwest 1/4 of the Southeast 1/4 of said Section 9, described as follows: Commence at the Southeast corner of the Southwest 1/4 of the Southeast 1/4 of said Section 9: thence North 00 degrees 25'00" East along the East line of said Southwest 1/4 of the Southeast 1/4 a distance of 1449 feet to the point of beginning: thence North 89 degrees 35'00" West 660 feet to the West line of the East 1/2 of the Northwest 1/4 of the Southeast 1/4 of said Section 9: thence South 00 degrees 25'00": East 129.42 feet to the South line of said Northwest 1/4 of the Southeast 1/4: thence South 89 degrees 35'00" East along said South line 660 feet to the Southeast corner of said Northwest 1/4 of the Southeast 1/4: thence North 00 degrees 25'00" East along the East line of said Northwest 1/4 of the Southeast 1/4 of said Section 9 a distance of 129.42 feet to the point of beginning. AND

Tracts A and B and Lot 52 of BASKET LAKE GROVES according to plat thereof recorded in Plat Book 3, Page 25 of the Public Records of DeSoto (now Highlands) County, Florida, and that portion of a 40

foot platted road right-of-way lying north of said Tracts A and B and Lot 52 of said BASKET LAKE GROVES, closed by Resolution recorded in Official Records Book 1053, Pages 472-474, of the public records of Highlands County, Florida, all being more particularly described as follows: Commence at the Southeast corner of the Northeast 1/4 of Section 8, Township 34 South, Range 29 East, Highlands County, Florida: thence North 00 degrees 31'31" East 84.00 feet to the North line of a 40 foot platted right-of-way as shown on said plat of BASKET LAKE GROVES: thence North 89 degrees 29'30" West along said North right-of-way line 638.02 feet to the Point of Beginning: thence continue North 89 degrees 29'30" West along said right-of-way line 1142.07 feet: thence South 00 degrees 31'30" West along the West line of said Tract "B" a distance of 326.00 feet to the Southwest corner of said Tract "B": thence South 89 degrees 29'30" East along the South line of said Tracts "B" and "A" a distance of 823.06 feet to the Southeast corner of said Tract "A": thence South 00 degrees 31'30" West along the West line of said Lot 52 a distance of 1058.00 feet to the Southwest corner of said Lot 52: thence South 89 degrees 28'30" East along the South line of said Lot 52 a distance of 319.01 feet to the Southeast corner of said Lot 52: thence North 00 degrees 31'30" East along the East line of said Lot 52 and its extension 1384.00 feet to the Point of Beginning.

ISSUE 2: Should an acquisition adjustment be included in the calculation of rate base?

RECOMMENDATION: No. HRU has not requested an acquisition adjustment and there are no extraordinary circumstances in this case to warrant the inclusion of an acquisition adjustment. Staff recommends that no acquisition adjustment should be included in the calculation of rate base. (JOHNSON, CROSBY)

STAFF ANALYSIS: An acquisition adjustment results when the purchase price differs from the rate base for transfer purposes. In Order No. PSC-01-1488-PAA-WS, issued July 18, 2001, in Docket No. 981147-WS, the Commission set rate base at \$136,184 as of December 31, 2000. Therefore, the acquisition adjustment resulting from the transfer of HRA would be calculated as follows:

Purchase Price:	\$750,000
Less Staff Calculated Rate Base:	\$136,184
Positive Acquisition Adjustment:	\$613,816
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The buyer stated in the application that it was not seeking an acquisition adjustment. Moreover, in the absence of extraordinary circumstances, it has been Commission practice that a subsequent purchase of a utility system at a premium or discount shall not affect the rate base calculation. There are no extraordinary circumstances regarding this purchase that would justify an acquisition adjustment to rate base. Staff recommends that a positive acquisition adjustment not be included in the calculation of rate base. Staff's recommendation is consistent with previous Commissions decisions in this regard. See Orders Nos. PSC-00-0758-PAA-SU, issued April 17, 2000, in Docket No. 991056-SU; PSC-00-1659-PAA-WU, issued on September 18, 1998, in Docket No. 000334-WU; and PSC-00-1515-PAA-WU, issued on August 21, 2000, in Docket No. 000333-WU.

ISSUE 3: Should the rates and charges approved for this utility be continued?

RECOMMENDATION: Yes, HRU should continue charging the rates and charges approved for this utility system until authorized to change by the Commission in a subsequent proceeding. The tariff reflecting the change in ownership should be effective for services provided or connections made on or after the stamped approval date on the tariff sheets. (JOHNSON)

STAFF ANALYSIS: The utility's current rates for service were approved by the Commission in an administrative price index proceeding effective April 18, 1998. The utility's originally approved service availability charges were effective September 30, 1992, pursuant to Order No. PSC-92-0954-FOF-WS, issued September 9, 1992, in Docket No. 920306-WS. Pursuant to Order No. PSC-01-1488-PAA-WS, issued July 18, 2001, in Docket No. 981147-WS, the utility was ordered to discontinue the collection of the utility's service availability charges, but was allowed the continued collection of the water meter installation charges. In addition, the utility was ordered to file a rate restructuring case with the Commission no earlier than one year but no later than two years after the implementation of the utility's conservation program. This action became final and effective upon the issuance of Consummating Order No. PSC-01-1658-CO-WS on August 14, 2001. The utility's approved rates and charges are as follows:

Water Monthly Service Rates

Residential and General Service

Base Facility Charge:

Meter Size:

5/8" x 3/4"	\$ 10.42
1"	\$ 15.64
1 1/2"	\$ 26.05
2"	\$ 52.10
3"	\$ 83.36
4"	\$166.72
6"	\$260.51
8"	\$833.63

Charge per 1,000 gallons \$ 1.23

Wastewater Monthly Service Rates

General Service

	5/8"	\$ 12.45
Full	3/4"	\$ 18.69
	1"	\$ 31.14
	1 1/2"	\$ 62.28
	2"	\$ 99.64
	3"	\$199.26
	4"	\$311.35
	6"	\$622.72
	8"	\$996.33
	Charge per 1,000 gallons	\$ 1.76

Residential

Base Facility Charge:

All Meter Sizes	\$ 12.45
Charge per 1,000 gallons (Maximum 10,000 gallons)	\$ 1.47

Miscellaneous Service Charges

	<u>Water</u>	<u>Wastewater</u>
Initial Connection Fee	\$15.00	\$ 15.00
Normal Reconnection Fee	\$15.00	\$ 15.00
Violation Reconnection Fee	\$15.00	Actual Cost
Premises Visit Fee (in lieu of disconnection)	\$10.00	\$ 10.00

Water Meter Installation Fee

Meter Installation Fee:		
5/8" x 3/4" Meter Size		\$125.00
1"		\$150.00
1 1/2"		\$175.00
2"		Actual Cost
Over 2"		Actual Cost

Rule 25-9.044(1), Florida Administrative Code, provides that:

[i]n 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).

HRU has not requested a change in the rates and charges of the utility. Accordingly, staff recommends that HRU should continue charging the rates and charges approved for this utility system until authorized to change by the Commission in a subsequent proceeding. The tariff reflecting the change in ownership should be effective for services provided or connections made on or after the stamped approval date on the tariff sheets.

DOCKET NO. 001551-WS
DATE: AUGUST 23, 2001

ISSUE 4: Should this docket be closed?

RECOMMENDATION: No. If no timely protest is received to the proposed agency action issue, upon the expiration of the protest period a Consummating Order should be issued. The docket should remain open pending receipt of proof that HRU owns the land upon which the utility's facilities are located or that the utility has continued use of the land. Upon receipt and verification of such proof, the docket should be administratively closed. (CROSBY)

STAFF ANALYSIS: If no timely protest is received to the proposed agency action issue, upon the expiration of the protest period a Consummating Order should be issued. The docket should remain open pending receipt of proof that HRU owns the land upon which the utility's facilities are located or that the utility has continued use of the land. Upon receipt and verification of such proof, the docket should be administratively closed.