

## BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for approval of the )	DOCKET NO. 881340-WS
transfer of water and sewer certificates) )	
from Burnt Store Utilities, Inc. to )	ORDER NO. 21632
Southern States Utilities, Inc. )	
_____ )	ISSUED: 7-31-89

The following Commissioners participated in the disposition of this matter:

MICHAEL McK. WILSON, Chairman  
 BETTY EASLEY  
 JOHN T. HERNDON  
 GERALD L. GUNTER

ORDER APPROVING TRANSFER AND ACCEPTING AMENDMENTS  
 TO THE ASSET PURCHASE AGREEMENT

AND

NOTICE OF PROPOSED AGENCY ACTION

ORDER ESTABLISHING RATE BASE

BY THE COMMISSION:

Notice is hereby given by the Florida Public Service Commission that the action discussed herein is final except for the establishment of rate base, which is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for formal proceeding pursuant to Rule 25-22.029, Florida Administrative Code.

Background

On October 12, 1988, a joint application was filed requesting the transfer of water and sewer certificates and facilities from Burnt Store Utilities, Inc. (Burnt Store or Utility) to Southern States Utilities, Inc. (SSUI) in Lee County.

Burnt Store is a wholly-owned subsidiary of Punta Gorda Isles, Inc. (PGI). The Utility serves customers in Charlotte and Lee Counties. Pursuant to Section 367.171, Florida Statutes, this Commission only exercises jurisdiction over

DOCUMENT NUMBER-DATE  
 07642 JUL 31 1989  
 FPSC-RECORDS/REPORTING

ORDER NO. 21632  
DOCKET NO. 881340-WS  
Page 2

utility operations in Lee County. Regulation of water and sewer service in Charlotte County is vested in the County Commission. Lee County service by the utility is provided to Burnt Store Marina, a multi-family condominium development receiving master-metered service.

Although most of the Utility's service area and facilities are located in Charlotte County, rate base has been set based on the Utility's entire system. Attempting to separate the jurisdictional portion from the non-jurisdictional portion would be very difficult. The Commission last established rate base for this utility in Docket No. 861593-WS by Order No. 17919, issued July 27, 1987. At that time, rate base was established based on the utility's entire system. We advised the Charlotte County Commission that an application requesting approval for the transfer of Burnt Store to SSUI had been received. Charlotte County indicated that it does not object to our setting rate base for the entire utility system.

Although Burnt Store violated Section 367.071(1), Florida Statutes, and Rule 25-30.040, Florida Administrative Code, by closing on the sale of the utility before obtaining Commission approval to do so, we are not initiating show cause proceedings against Burnt Store since we were informed in advance of the negotiations between Burnt Store and SSUI and the application was filed prior to the actual closing.

We considered the transfer of Certificates Nos. 306-W and 255-S from Burnt Store to SSUI at the May 30, 1989 Agenda Conference. All issues were decided at that time except for language contained in the Purchase Agreement between Burnt Store and SSUI regarding the application of service availability charges. This matter was deferred to allow the parties time to amend the language in the Sales Contract to satisfy our concerns as will be discussed below. We finalized our consideration of this issue at the July 11, 1989 Agenda Conference. Our findings are set forth in the body of this Order.

#### Application

The application is otherwise in compliance with Section 367.071, Florida Statutes, and other pertinent statutes and

ORDER NO. 21632  
DOCKET NO. 881340-WS  
Page 3

administrative rules concerning an application for transfer of facilities. In particular, the notarized application contains:

- a) A check in the amount of \$300 which, upon calculation, equates to the correct filing fee as prescribed by Section 367.141, Florida Statutes.
- b) Adequate service territory description pursuant to Rule 25-30.035(i), Florida Administrative Code. Said territory to be served is described as being in Lee County, and more particularly as described in Attachment A attached.
- c) Proof of notice to all customers of record pursuant to Rule 25-30.030(g), Florida Administrative Code.
- d) Proof of notice to all interested governmental and regulatory agencies, and all utilities within a four-mile radius of the territory to be served, and proof of advertisement in a newspaper of general circulation in the county, as prescribed by Rule 25-30.030, Florida Administrative Code.

No objections to the requested transfer have been received and the time for filing such has expired.

On November 23, 1988, we conducted a plant site inspection. At that time, the facilities were operating satisfactorily. The Department of Environmental Regulation (DER) currently has no outstanding notice of violation actions.

Since SSUI is in the business of acquiring, owning, expanding and operating water and sewer utility systems and because SSUI has the expertise and financial capacity to provide the customers of Burnt Store with high quality service, we find that the transfer is in the public interest and it is, therefore, approved.

#### Rate Base

In order to establish rate base at the date of transfer, we performed an audit of the Utility's books and records. As mentioned previously, rate base has been set for the entire

ORDER NO. 21632  
DOCKET NO. 881340-WS  
Page 4

utility system although most of the plant lies in Charlotte County, which is non-jurisdictional.

On April 24, 1989, SSUI and Burnt Store filed a response to the audit report and submitted water and sewer rate base as \$2,696,304 and \$869,351, respectively. Many of the differences with SSUI and Burnt Store have been resolved through Staff discussion. We find it necessary, however, to make the following adjustments to the Utility's water and sewer rate bases.

First, the value placed on land by the Utility must be adjusted since the Utility included all of its land in water rate base. We have allocated 50% of the land to water and 50% to sewer. As a result, the value of the land is \$32,601 for water and \$32,601 for sewer.

Secondly, we have adjusted the Utility's accumulated depreciation. The Utility categorized a portion of its water and sewer lines as non-used and useful and removed the depreciation associated with the non-used and useful lines from rate base. It is proper to do this; however, it is more appropriate to make this adjustment in a rate case proceeding. For transfer purposes, our calculation of rate base does not include used and useful adjustments because the rates do not change when a transfer occurs; the new owner must continue to charge the Utility's approved rates. We adjusted water and sewer accumulated depreciation by \$129,615 and \$266,972 and as a result accumulated depreciation, in accordance with our calculation, is \$497,381 and \$871,246 for water and sewer, respectively.

Contributions-in-aid-of-construction (CIAC) amortization has been adjusted because a portion of the Utility's water and sewer lines were donated and, therefore, are considered as CIAC. The amortization associated with the non-used and useful lines were removed from rate base. As explained above, this is proper, but it is more appropriate to make this adjustment in a rate case proceeding. We adjusted water and sewer CIAC amortization by \$28,170 and \$205,667. As a result, CIAC amortization is \$4,648 and \$566,821 for water and sewer, respectively.

ORDER NO. 21632  
DOCKET NO. 881340-WS  
Page 5

All of the above adjustments decrease the utility's water and sewer rate base by \$190,385 and \$28,704, respectively. Therefore, water and sewer rate base is established as \$2,505,919 and \$840,647, respectively, for purposes of this transfer.

As stated previously, the rate base calculations for BSUI do not include the normal ratemaking used and useful adjustments and working capital calculations. The rate base calculations are used purely to establish the book value of the property being transferred. Our rate base calculations are shown on Schedules Nos. 1 and 2, with adjustments shown on Schedule No. 3.

#### Rates and Charges

Rule 25-9.044(1), Florida Administrative Code, governs rates and charges when ownership of a regulated utility changes. This rule states that when a system is transferred the new owner must adopt and use the rates and charges previously approved for the utility unless authorized to change by the Commission.

Southern States has requested to continue charging the existing approved rates, miscellaneous service charges, initial deposits levels and service availability charges for Burnt Store. Since its request is in compliance with the above Rule, we do not find it appropriate to change the rates charges at this time. Therefore, Southern States shall continue charging the rates and charges currently approved by the Commission for Burnt Store. In addition, Southern States shall file tariff sheets including these rates and charges in its consolidated tariff.

From the audit conducted in this case, we became aware of a \$1,700 sewer connection fee in addition to the approved tariff charges. This charge has been in place since 1982 and CIAC attributable to this charge has been recorded by the Utility. The charge represents reimbursement by the developer, PGI, to the Utility for the sewage collection system, which is in place for the entire development. PGI collects this amount in its lot costs and passes these funds to the Utility. In late 1986, PGI prepaid this charge for all unsold lots within

ORDER NO. 21632  
DOCKET NO. 881340-WS  
Page 6

the service territory. Since all monies have been collected pursuant to this charge, the \$1,700 charge shall not be used by Southern States.

While unapproved CIAC has been collected, we find that the receipt of these funds is akin to the developer donating the collection system. Therefore, Burnt Store is not subject to further Commission action in regard to receipt of these contributions.

#### Acquisition Adjustment

An acquisition adjustment results when the purchase price differs from the utility's rate base at the date of transfer. In the absence of extraordinary circumstances, it has been Commission policy that a subsequent purchase of a utility system at a premium or discount shall not affect the rate base calculation. The circumstances in this exchange were not extraordinary or unusual; therefore, a positive acquisition adjustment should not be included in rate base. Also, the applicant did not request that an acquisition adjustment be included in rate base.

#### Purchase Agreement

Pursuant to Burnt Store's tariff, combined service availability charges for both water and sewer is \$842. Customers requesting water and sewer service from SSUI pay \$575 in service availability charges.

Section 4.5 of the Asset Purchase Agreement, as originally filed, stated that Southern States will provide Punta Gorda Development, Inc. up to 1600 connections at either the approved tariff rate or \$575. Of these 1600 connections, approximately 600 are within the Burnt Store service territory. The remainder of the connections are within the Twin County Utility Company service territory.

The language contained in Section 4.5 of the Asset Purchase Agreement has the appearance of a discriminatory application of the service availability charges. This Section allows PGI up to 1600 connections at \$575 each instead of the approved tariff rate of \$842 within the Burnt Store territory. The Companies have subsequently explained that this provision

ORDER NO. 21632  
DOCKET NO. 881340-WS  
Page 7

of the contract is not an attempt to ignore the tariff, but a means to provide additional compensation as part of the purchase price of Burnt Store.

Pursuant to the Agreement, Southern States, through a combination of cash and preferred stock, will pay \$3,500,000 for Burnt Store. PGI will also receive an additional \$160,200 as customers connect to the system, based upon the difference between the \$842 and \$575 charges for the estimated 600 connections.

At the May 30, 1989 agenda conference, as stated previously, we expressed our concerns regarding the apparent discriminatory aspect of this arrangement. The Companies explained that for all connections within the Burnt Store territory, PGI will collect from individual lot owners the approved \$842 charge. This amount will be remitted to Southern States with the exception of the 600 connections covered by the Asset Purchase Agreement. For these connections, PGI will remit \$575 to Southern States retaining \$267 as part of the purchase price. Therefore, the approved tariff rate is being charged to all lot owners.

In an attempt to clarify the language of these sections, on June 30, 1989, the Utilities filed revised contract language. Although the information submitted clarified the Sections to some extent, the language submitted on June 30, 1989, was orally amended at the July 11, 1989 agenda conference to remove any indication of discriminatory application of the Utility's service availability charge. The language was amended to indicate that Southern States would charge its tariffed rate, but collect from PGI the lesser of (a) \$575 or (b) its approved tariff rate for connection charges for 1600 new ERC's. We accept the language as amended in its written form plus the subsequent oral modification.

Another of our concerns, was the accounting treatment of the estimated 600 connections by Southern States. Southern States has reflected plant and rate base amounts on its books pursuant to the levels established by the Commission at the May 30, 1989 agenda. However, since the estimated purchase price of \$3,660,200 exceeds the Commission approved rate base of \$3,346,566, Southern States will carry an acquisition

ORDER NO. 21632  
DOCKET NO. 881340-WS  
Page 8

adjustment below the line for accounting purposes. Since an acquisition adjustment was not requested by Southern States or approved by the Commission, this acquisition adjustment will not impact rate base or the rate payers. The acquisition adjustment account will be used in accounting for receipt of the fees for the 600 connections. Upon receipt of the \$575 charge, Southern States will book \$842 to CIAC as if the entire amount had been received. In order to balance its books, the \$267 difference will be booked to acquisition adjustment in recognition of the fact that this amount represents deferred payment for the purchase of Burnt Store.

Alternately, PGI could remit the entire \$842 and SSUI could in turn remit \$267 back to PGI. By requiring PCI to remit the net amount, the accounting is less cumbersome. Under either scenario customers are protected since the approved tariff charge is booked to CIAC, eliminating the concern of future imputation of CIAC.

At the May 30, 1989 agenda, we approved adoption of Burnt Store's tariff by Southern States. Since Burnt Store's tariff does not provide for gross-up on CIAC, SSUI shall not collect the gross-up for any connections within the Burnt Store area. Southern States has been advised that should it desire to collect the gross-up in the future, it would need Commission approval.

It is, therefore,

ORDERED by the Florida Public Service Commission that the joint application for transfer of Certificates Nos. 306-W and 255-S from Burnt Store Utilities, Inc., 1625 Est Marion Avenue, Punta Gorda, Florida 33950, to Southern States Utilities, Inc., 1000 Color Place, Apopka, Florida 32703, is hereby granted. Southern States shall return Certificates Nos. 306-W and 255-S to this Commission within 20 days of the date of this Order for entry reflecting the transfer of ownership. It is further

ORDERED that rate base, for purposes of the transfer reflecting net book value, is \$2,505,919 for water and \$840,647 for sewer. It is further



ORDER NO. 21632  
DOCKET NO. 881340-WS  
Page 9

ORDERED that Southern States shall continue to charge the rates and charges previously approved for Burnt Store. It is further

ORDERED that Southern States shall file tariff sheets, consolidating Burnt Stores' rates and charges in its tariff. It is further

ORDERED that an acquisition adjustment shall not be included in rate base. It is further

ORDERED that Southern States shall continue to charge Burnt Store's service availability charges for all connections as set forth in the body of this Order. It is further

ORDERED that the amended language in the Asset Purchase Agreement regarding service availability charges is accepted as set forth in the body of this Order. It is further

ORDERED that the provisions of this Order, issued as Proposed Agency Action, shall become final unless an appropriate petition in the form provided by Rule 25-22.036, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on August 21, 1989. It is further

ORDERED that in the event this Order becomes final, this docket shall be closed.

By ORDER of the Florida Public Service Commission,  
this 31st day of JULY, 1989.

  
\_\_\_\_\_  
STEVE TRIBBLE, Director  
Division of Records and Reporting

( S E A L )

ALC

ORDER NO. 21632  
DOCKET NO. 881340-WS  
Page 10

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 hearing or judicial review will be granted or result in the relief sought.

As identified in the body of this order, our action establishing rate base is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on August 21, 1988. In the absence of such a petition, this order shall become effective August 22, 1988, as provided by Rule 25-22.029(6), Florida Administrative Code, and as reflected in a subsequent order.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If the relevant portion of this order becomes final and effective on August 22, 1988, any party adversely affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by 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 of the effective date of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal

ORDER NO. 21632  
DOCKET NO. 881340-WS  
Page 11

must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

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.

ORDER NO. 21632  
DOCKET NO. 881340-WS  
Page 12

## ATTACHMENT A

CHARLOTTE COUNTY (NONJURISDICTIONAL)

Township 42 South, Range 22 East.

Section 25

All of that fractional portion of said Section 25 lying East of the shoreline of Charlotte Harbor.

Section 36

All of that fractional portion of said Section 36 lying East of the shoreline of Charlotte Harbor.

Township 42 South, Range 23 East.

Section 29

All of said Section 29.

Section 30

All of that fractional portion of said Section 30 lying East of the shoreline of Charlotte Harbor.

Section 31

All of said Section 31.

Section 32

The North 1/2 of the Northeast 1/4 and the South 1/2 of the Southwest 1/4 and the East 1/2 of the Southeast 1/4 and the Northwest 1/4 of the Southeast 1/4 of said Section 32.

Section 33

The Northwest 1/4 of said Section 33.

LEE COUNTY

Township 43 South, Range 22 East.

Section 1

All of Government Lots 1, 2, 3, and 4 and the Southeast 1/4 of the Northeast 1/4 and the Northeast 1/4 of the Southeast 1/4 and the North 278 feet of the Southeast 1/4 of the Southeast 1/4 of said fractional Section 1, lying East of the shoreline of Charlotte Harbor.

Township 43 South, Range 23 East.

Section 6

All of said Section 6, less and except the South 1660 Feet.

ORDER NO. 21632  
DOCKET NO. 881340-WS  
PAGE 13

SCHEDULE NO. 1

BURNT STORE UTILITIES, INC.  
SCHEDULE OF WATER RATE BASE  
AS OF DECEMBER 20, 1988

<u>Description</u>	<u>Balance per Utility</u>	<u>Commission Adjustment</u>	<u>Balance per Commission</u>
Utility plant in service	\$3,035,716	\$ -0-	\$3,035,716
Land	65,201	(32,600)(1)	32,601
Accumulated Depreciation	( 367,766)	(129,615)(2)	( 497,381)
Contributions-in-aid-of- Construction	( 69,665)	-0-	( 69,665)
CIAC Amortization	<u>32,818</u>	<u>(28,170)(3)</u>	<u>4,648</u>
Total	<u>\$2,696,304</u>	<u>\$(190,385)</u>	<u>\$2,505,919</u>

ORDER NO. 21632  
 DOCKET NO. 881340-WS  
 PAGE 14

SCHEDULE NO. 2

BURNT STORE UTILITIES, INC.  
 SCHEDULE OF SEWER RATE BASE  
 AS OF DECEMBER 20, 1988

<u>Description</u>	<u>Balance per Utility</u>	<u>Commission Adjustment</u>	<u>Balance per Commission</u>
Utility plant in service	\$4,783,796	\$ -0-	\$4,783,796
Land	-0-	32,601 (1)	32,601
Accumulated Depreciation	( 604,274)	(266,972)(2)	( 871,246)
Contributions-in-aid-of- Construction	(3,671,325)	-0-	(3,671,325)
CIAC Amortization	<u>361,154</u>	<u>205,667(3)</u>	<u>566,821</u>
Total	<u>\$ 869,351</u>	<u>\$(28,704)</u>	<u>\$ 840,647</u>

ORDER NO. 21632  
DOCKET NO. 881340-WS  
PAGE 15

SCHEDULE NO. 3

BURNT STORE UTILITIES, INC.  
RATE BASE ADJUSTMENTS

<u>Explanation</u>	<u>Water</u>	<u>Sewer</u>
<u>Land</u>		
1) To allocate land on a 50/50 split between water and sewer	<u>\$ (32,600)</u>	<u>\$ 32,601</u>
<u>Accumulated Depreciation</u>		
2) To adjust accumulated depreciation to include applicable portions of used and useful and to reflect accumulated depreciation at the date of transfer using rates specified in Rule 25-30.140	<u>\$(129,615)</u>	<u>\$(266,972)</u>
<u>Contributions-in-aid-of-Construction</u>		
<u>Amortization</u>		
3) To adjust amortization to include amortization related to CIAC adjusted plant and to reflect amortization at the date of transfer using 2.5% rate for water and sewer lines and composite rates for cash CIAC.	<u>\$( 28,170)</u>	<u>\$ 205,667</u>