

## BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

|  |   |                      |
|--|---|----------------------|
| In re: Objection to notice of joint    | ) | DOCKET NO. 891110-WS |
| application to transfer water and      | ) | ORDER NO. 22342      |
| sewer certificates in St. Johns County | ) | ISSUED: 12-26-89     |
| from ST. JOHNS NORTH UTILITY           | ) |                      |
| CORPORATION to JACKSONVILLE SUBURBAN   | ) |                      |
| UTILITIES CORPORATION.                 | ) |                      |

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD  
GERALD L. GUNTER

ORDER ACKNOWLEDGING WITHDRAWAL OF OBJECTION,  
GRANTING INTERVENTION AS AN INTERESTED PARTY,  
AND APPROVING APPLICATION FOR  
SALE OF ASSETS AND TRANSFER OF CERTIFICATES

BY THE COMMISSION:

Case Background

On July 18, 1989, St. Johns North Utility Corp. (St. Johns North) and its parent corporation, General Waterworks Corporation, gave notice of their joint application for the sale of assets and transfer of water and sewer certificates from St. Johns North to Jacksonville Suburban Utilities Corporation (Jacksonville Suburban). The joint applicants also requested establishment of rate base, determination of an acquisition adjustment and approval of rates.

On August 2, 1989, General Development Utilities, Inc. (GDU) filed an objection to the notice of application for transfer. Fruit Cove, Ltd. (Fruit Cove) filed a petition to intervene on October 17, 1989. GDU withdrew its objection on October 23, 1989. On November 16, 1989, Jacksonville Suburban requested that the processing of this docket be bifurcated to expedite the transfer in order to avert foreclosure upon mortgages of St. Johns North.

Objection and Petition to Intervene

On account of GDU's objection to the proposed transfer, this matter was set for hearing. In Order No. 21978,

DOCUMENT NUMBER-DATE

12256 DEC 26 1989

FPSC-RECORDS/REPORTING

ORDER NO. 22342  
DOCKET NO. 891110-WS  
PAGE 2

establishing procedure, a hearing date of February 12, 1990, was set. On October 23, 1989, GDU withdrew its objection. Accordingly, we find it appropriate to acknowledge the withdrawal of GDU's objection.

On October 17, 1989, Fruit Cove filed a petition to intervene, objecting to the proposed transfer on grounds that it would violate Order No. 20762, issued February 17, 1989. Order No. 20762 required St. Johns North to make a refund to Fruit Cove for collection of unauthorized contributions-in-aid-of-construction (CIAC) gross-up charges. However, Fruit Cove's petition was not filed within twenty days of the joint applicants' notice, as required by Section 367.051(1), Florida Statutes. Since GDU withdrew its objection, Fruit Cove must obtain status as an objecting party, as opposed to an intervenor, and the time for doing such has passed. We, therefore, find it appropriate to deny Fruit Cove entry to this proceeding as an objecting party, but will grant Fruit Cove intervention as an interested party. Further, as there is no existing valid objection to the proposed transfer, we find it appropriate to process the transfer without a hearing, pursuant to Section 367.051(1), Florida Statutes, and to process all other matters in this docket by proposed agency action.

#### Transfer

As previously stated, Jacksonville Suburban requested bifurcation of this docket to expedite the transfer. There is presently a lien on utility assets and a loan in default. Jacksonville Suburban has agreed, upon approval of the transfer, to assume responsibility for payments on the loan to avoid foreclosure. Although we generally do not bifurcate a transfer docket, we find it appropriate under the circumstances to separate the transfer portion from the remaining matters in the docket. Those remaining matters, such as the establishment of rate base for purposes of the transfer, will be processed by proposed agency action at a later date.

The transfer application is in compliance with Section 367.071, Florida Statutes, and other pertinent statutes and administrative rules concerning transfer applications. In particular, the notarized affidavit contains:

- a) A check in the amount of \$1,050 which, upon calculation, equates to the correct filing fee as prescribed by Section 367.141, Florida Statutes.

ORDER NO. 22342  
DOCKET NO. 891110-WS  
PAGE 3

- b) An adequate legal description, pursuant to Rule 25-30.035(i), Florida Administrative Code, of the St. Johns North Utility Company service territory. A description of this territory is appended to this memorandum as Attachment "A".
- c) An affidavit stating that notice of the application has been furnished to all customers of record pursuant to Rule 25-30.030, Florida Administrative Code.
- d) Proof of notice to all interested governmental and regulatory agencies, 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.

As stated above, there are no existing valid objections to the proposed transfer and the time for filing such has expired. Jacksonville Suburban is a well established utility with the technical and financial capability to provide the customers of St. Johns North with high quality service. We find that the proposed transfer would avoid foreclosure and assure continuity of service under competent ownership, and is therefore in the public interest.

However, the transfer should not be approved without consideration of the refund ordered in Order No. 20762. Such Order required St. Johns North to refund to developers unauthorized CIAC gross-up charges that were collected, plus interest. Fruit Cove, in its petition, claims that it paid St. Johns North \$85,800 of such unauthorized charges.

As Jacksonville Suburban proposes to purchase the assets, not the stock, of St. Johns North, the responsibility for making the refund to Fruit Cove remains with St. Johns North. St. Johns North, however, has managed to lien its assets by approximately \$800,000. The bank has agreed to forgive the non-utility portion of such debt and cancel the mortgages and remove the lien on St. Johns North assets upon payment by Jacksonville Suburban of the utility portion of the debt, \$495,000, plus interest. The sales agreement between St. Johns

ORDER NO. 22342  
DOCKET NO. 891110-WS  
PAGE 4

North and Jacksonville Suburban calls for a purchase price of rate base, yet to be established, plus \$300,000. Jacksonville Suburban has already advanced \$250,000 on the purchase price. It is speculative at this time whether there will be any sales proceeds in excess of the \$495,000 of debt, with which St. Johns North could make the refund to Fruit Cove. Since St. Johns North, rather than Jacksonville Suburban, is responsible for such refund, we find it appropriate to require Jacksonville Suburban to place in escrow or file an irrevocable letter of credit or corporate undertaking in an amount representing the excess of sale proceeds over the debt of \$495,000 plus interest, in the amount of \$120,800. The escrowed or otherwise guaranteed funds will be distributed to pay the refund to Fruit Cove, as well as other fines previously imposed by this Commission. Based on the foregoing, we find it appropriate to approve the application to sell the assets and transfer Certificates Nos. 475-W and 411-S from St. Johns North to Jacksonville Suburban for the territory described in Attachment A to this Order, by reference incorporated herein.

It is, therefore,

ORDERED by the Florida Public Service Commission that the withdrawal of General Development Utilities, Inc.'s objection to the proposed transfer of certificates from St. Johns North Utility Corp. to Jacksonville Suburban Utilities Corporation is hereby acknowledged. It is further

ORDERED that Fruit Cove, Ltd. is hereby denied entry to this proceeding as an objecting party, but is granted intervention as an interested party. It is further

ORDERED that all parties to this proceeding shall furnish copies of all testimony, exhibits, pleadings and other documents which may hereinafter be filed in this proceeding, to Fruit Cove, Ltd., 1904 Gulf Life Tower, Jacksonville, Florida 32207. It is further

ORDERED that the application to sell the assets and transfer Certificates Nos. 475-W and 411-S from St. Johns North Utility Corp. to Jacksonville Suburban Utilities Corporation for the territory described in Attachment A to this Order is hereby approved. It is further

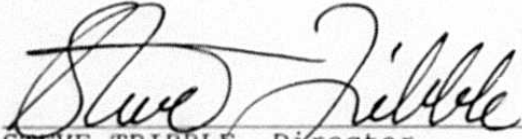
ORDER NO. 22342  
DOCKET NO. 891110-WS  
PAGE 5

ORDERED that Certificates Nos. 475-W and 411-S shall be returned to the Commission by the close of business on January 25, 1989, for entry indicating Jacksonville Suburban Utilities Corporation as the name of the utility. It is further

ORDERED that Jacksonville Suburban Utilities Corporation shall place in escrow or file an irrevocable letter of credit or corporate undertaking as set forth in the body of this Order. It is further

ORDERED that the remaining matters in this docket, such as establishment of rate base, determination of an acquisition adjustment and approval of rates, shall be processed by proposed agency action at a later date.

By ORDER of the Florida Public Service Commission  
this 26th day of December, 1989.

  
STEVE TRIBBLE, Director  
Division of Records and Reporting

( S E A L )

DCS

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.

ORDER NO. 22342  
DOCKET NO. 891110-WS  
PAGE 6

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. 22342  
 DOCKET NO. 891110-WS  
 PAGE 7

ATTACHMENT A

APPENDIX "A"

LEGAL DESCRIPTION

Township 5 South, Range 27 East  
Sections 5, 38 and 42, St. Johns County  
 and

Township 4 South, Range 27 East  
Section 57, St. Johns County

CUNNINGHAM CREEK SUBDIVISION AND CUNNINGHAM CREEK II

Begin at the intersection of the easterly right-of-way line of State Road 13, Section 42, and the southerly right-of-way line of Cunningham Estates Road; thence South  $86^{\circ}11'00''$  East, 356.55 Feet; thence North  $81^{\circ}20'00''$  East, 193.29 Feet; thence South  $03^{\circ}49'00''$  West, 849.71 Feet to the Southwest corner of the Cunningham Creek Subdivision, as recorded in Map Book 15, pages 76 to 79; thence North  $81^{\circ}20'00''$  East, 2,480 Feet to the Southeast corner of said Cunningham Creek Subdivision and the Southwest corner of Cunningham Creek II, as recorded in Map Book 17, page 64; thence North  $81^{\circ}20'00''$  East, 1,370 Feet to the Southeast corner of said Cunningham Creek II, thence North  $3^{\circ}49'00''$  East, + 1,535 Feet to the southerly bank of Cunningham Creek; thence westerly along the southerly bank of said Cunningham Creek + 3,930 Feet to the Northwest corner of said Cunningham Creek Subdivision, as recorded in Map Book 15, pages 76 to 79; thence South  $03^{\circ}49'00''$  West + 895 Feet to the northerly right-of-way line of Cunningham Estates Road; thence South  $81^{\circ}20'00''$  West, 200.00 Feet; thence North  $86^{\circ}11'00''$  West, 350 Feet to the easterly right-of-way line of State Road 13; thence South  $03^{\circ}49'00''$  West along said right-of-way 60 Feet to the Point of Beginning.

Fruit Cove Woods Unit II

As a point of reference, start at the intersection of the easterly right-of-way line of State Road 13, Section 42, and the southerly right-of-way line of Cunningham Estates Road; thence South  $86^{\circ}11'00''$  East, 356.55 Feet; thence North  $81^{\circ}20'00''$  East, 193.29 Feet; thence South  $03^{\circ}49'00''$  West, 849.71 Feet to the Southwest corner of Cunningham Creek Subdivision, as recorded in Map Book 15, pages 76 to 79; thence South  $03^{\circ}49'00''$  West, + 115 Feet to the Northwest corner of Fruit Cove Woods Unit II as recorded in Map Book 15, pages 88 and 89, as the POINT OF BEGINNING; thence South  $03^{\circ}49'00''$  West, 402.89 Feet; thence North  $86^{\circ}11'$  West, 250.0 Feet; thence South  $03^{\circ}49'$  West, + 455 Feet to the Southwest corner of said Fruit Cove Woods Unit II; thence South  $86^{\circ}11'$  East, 295.0 Feet; thence North  $03^{\circ}49'$  East, 177.0 Feet; thence South  $86^{\circ}11'$  East, 542.0 Feet; thence North  $03^{\circ}49'$  East, + 46 Feet; South  $86^{\circ}11'$  East, 311.0 Feet; thence North  $03^{\circ}49'$  East, 70.85 Feet; thence North  $81^{\circ}20'$  East, 425.0 Feet; thence North  $8^{\circ}40'$  West, + 62.5 Feet; thence North  $69^{\circ}43'$  East, 174.93 Feet; thence North  $81^{\circ}20'$  East, 948.65 Feet; thence North  $83^{\circ}49'$  East, 210.2 Feet; thence South  $08^{\circ}40'$  East, 107.48 Feet; thence South  $84^{\circ}17'$  East, + 440 Feet to the southeast corner of said Fruit Cove Woods Unit II; thence North  $08^{\circ}40'$  West, 872.35 Feet to the Northeast corner of said Fruit Cove Woods Unit II; thence South  $81^{\circ}20'$  West, 2937.71 Feet to the Point of Beginning.