

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application For Transfer) DOCKET NO. 900496-WU
of Assets From Sun Country) ORDER NO. PSC-94-0082-FOF-WU
Estates Utility, Inc. to) ISSUED: January 24, 1994
Windstream Utilities Company,)
Cancellation of Certificate No.)
348-W and amendment of Certifi-)
cate No. 427-W in Marion County.)
_____)

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK
J. TERRY DEASON, Chairman
JULIA L. JOHNSON
DIANE K. KIESLING
LUIS J. LAUREDO

ORDER APPROVING TRANSFER AND CLOSING DOCKET

BY THE COMMISSION:

Background

On May 17, 1990, Windstream Utilities Company (Windstream) filed an application seeking approval of the transfer of the assets from Sun Country Estates Utility, Inc. (Sun Country or utility) to Windstream, cancellation of Certificate No. 348-W, cancellation of Certificate No. 348-W, and amendment of Certificate No. 427-W. Sun Country is a Class C Utility which provides water service to approximately 45 customers in Marion County.

In 1989, Sun Country's parent company, Phoenix West, Inc., went into foreclosure and was taken over by VDC Acquisition Corporation (Ensign Bank, Boca Raton, Florida)(VDC). VDC approached Windstream in September of 1989 to take over operations

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of the utility. Windstream has been operating the system and billing the customers since that time.

Prior to taking over operations of the system, Windstream advised the Commission Staff of its intent to purchase the utility. At that time, Windstream was advised of the necessity of filing an application for approval of the transfer.

As stated previously, on May 17, 1990, Windstream filed its application in the instant docket for approval of the transfer. On September 1, 1990, a purchase agreement was signed by Windstream and VDC. Soon after the purchase agreement was signed, VDC suffered financial difficulties and Mr. Roy Thagard Boyd, Jr. foreclosed upon the Sun Country Estates property. When the Commission Staff became aware of the foreclosure, Mr. Boyd was contacted and advised that either he would have to file a new transfer application or pursue sale of the utility to Windstream.

On July 19, 1991, Ensign Bank (VDC) went into receivership and the Resolution Trust Corporation (RTC) was appointed receiver. According to information provided, RTC held a right of redemption rider on the deed for the utility assets until February 19, 1992. The rider subsequently expired and negotiations between Mr. Boyd and Windstream resumed. Before the sale could be finalized, however, Mr. Boyd died and his estate went into probate. After the estate was settled, negotiations between Mr. Boyd's estate and Windstream were finalized. On November 22, 1993, Windstream filed a copy of the final purchase agreement, along with the recorded mortgage and deed.

Application

Except as discussed previously, the application is in compliance with Section 367.071, Florida Statutes, and other pertinent statutes and administrative rules. In particular, the application contains a filing fee in the amount of \$150.00, pursuant to Rule 25-30.020, Florida Administrative Code. In addition, Windstream provided evidence in the form of a recorded warranty deed that it owns the land upon which the utility's facilities are located.

Windstream has provided 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 being transferred. No objections to the notice of application have been received and the time for filing such has expired.

Windstream has been operating the Sun Country system, since late 1989, complying with all of the requirements of this Commission and the Department of Environmental Protection. Sun Country is located near the existing system owned by Windstream. In addition, according to the Department of Environmental Protection, there are no outstanding notices of violation against the utility.

According to the purchase agreement executed on November 13, 1993, between the estate of Roy Thagard Boyd, Jr. and Windstream, Windstream will pay \$39,000 for Sun Country's water transmission and distribution system. The Promissory Note signed by the President of Windstream indicates that Windstream will pay monthly installments equal to \$250 multiplied by the number of water customers connecting to the system during that month.

Windstream has been operating the utility satisfactorily for several years and appears to have the financial ability to continue to operate the system. Therefore, we find that the transfer of assets from Sun Country to Windstream is in the public interest and it is approved. Because Windstream holds Certificate No. 427-W in Marion County, we find that Certificate No. 348-W, held by Sun Country, should be cancelled. Certificate No. 427-W, held by Windstream, shall be amended to include the territory served by Sun Country, as described on Attachment A of this Order, which by reference is incorporated herein. Windstream is directed to return Certificate No. 348-W to this Commission within 20 days of the date of this Order for cancellation. Windstream shall also return Certificate No. 427-W to this Commission within 20 days of the date of this Order for entry reflecting the amendment.

Rate Base

Rate base has never been established for Sun Country, which was granted an original certificate and initial rates and charges in 1982. The utility has never been involved in a rate proceeding where rate base would have been established.

According to Section 367.071(5), Florida Statutes, this Commission may establish rate base at the time of transfer, but it is not required to do so. Since the system was in foreclosure when Windstream took over, Sun Country's books and records are not available. Therefore, in order to establish rate base in this Docket, an original cost study would have to be performed. Due to the expense and time involved, we do not find it appropriate to require Windstream to conduct an original cost study at this time.

An original cost study can be performed and rate base can be established if and when Windstream files a rate case.

Rates and Charges

Sun Country's rates and charges became effective pursuant to Order No. 11055, issued on August 25, 1982, in Docket No. 810478-WU. 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 operating company unless authorized to change by this Commission.

Windstream has not requested to change the rates and charges and we see no reason to change them at this time. Windstream shall continue to charge the rates and charges approved in Sun Country's tariff until authorized to change by this Commission in a subsequent proceeding. Windstream has filed a tariff reflecting the change in ownership. The tariff shall be effective for service rendered or connections made on or after the stamped approval date on the tariff sheets.

It is, therefore,

ORDERED by the Florida Public Service Commission that the transfer of assets of Sun Country Estates Utility, Inc., from the estate of Roy Thagard Boyd, Jr., Post Office Box 1868, Ocala, Florida 34478, to Windstream Utilities Company, Post Office Box 4201, Ocala, Florida 32678, is hereby granted. It is further

ORDERED that Certificate No. 348-W, held by Sun Country Estates Utilities, Inc., is hereby cancelled. Windstream Utilities Company shall return Certificate No. 348-W to this Commission within 20 days of the date of this Order for cancellation. It is further

ORDERED that Certificate No. 427-W, held by Windstream Utilities Company, is hereby amended to include the territory described on Attachment A of this Order. Windstream Utilities Company shall return Certificate No. 427-W to this Commission within 20 days of the date of this Order for entry reflecting the amendment. It is further


ORDERED that Windstream Utilities Company shall charge the customers in the territory being transferred the rates and charges approved in Sun Country Estates Utility, Inc.'s tariff until authorized to change by this Commission. The tariff filed reflecting the change in ownership shall be effective for service

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rendered or connections made on or after the stamped approval date on the tariff sheets. It is further

ORDERED that Docket No. 900496-WU is hereby closed.

By ORDER of the Florida Public Service Commission, this 24th day of January, 1994.



STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

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

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ATTACHMENT A

WINDSTREAM UTILITIES COMPANY

Territory Description

The following described lands located in portions of Section 17, Township 16 South, Range 21 East, Marion County, Florida:

The South 1/4 of the Northwest 1/4 less the East 290.40 feet. Also, the Northeast 1/4 of the Southwest 1/4 less the East 290.40 feet. Also, the North 1/2 of the Southeast 1/4 of the Southwest 1/4.