

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for transfer of facilities of Community Water Co-Op, Inc., an exempt utility in Marion County, to Sunshine Utilities of Central Florida, Inc. (holder of Certificate No. 363-W); and for amendment of Certificate No. 363-W to add territory.

DOCKET NO. 030340-WU  
ORDER NO. PSC-03-1333-PAA-WU  
ISSUED: November 24, 2003

The following Commissioners participated in the disposition of this matter:

LILA A. JABER, Chairman  
J. TERRY DEASON  
BRAULIO L. BAEZ  
RUDOLPH "RUDY" BRADLEY  
CHARLES M. DAVIDSON

ORDER APPROVING APPLICATION FOR TRANSFER OF FACILITIES,  
AMENDING CERTIFICATE NO. 363-W,  
AND  
NOTICE OF PROPOSED AGENCY ACTION  
ORDER ESTABLISHING RATE BASE AND DENYING ACQUISITION ADJUSTMENT

BY THE COMMISSION:

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

BACKGROUND

Sunshine Utilities of Central Florida, Inc. (Sunshine) is a Class B water utility serving approximately 3,718 equivalent residential connections (ERCs) in Marion County. Sunshine serves primarily in the St. Johns River Water Management District, a water

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use caution area. Wastewater service is provided by septic tanks. Sunshine's 2002 annual report shows total operating revenue of \$857,423 and net operating income of \$43,684. On April 14, 2003, Sunshine filed an application for approval of the transfer of the water system owned by Community Water Co-op, Inc. (Community) to Sunshine. Community provides service to Ponderosa Estates, which includes 176 residential customers in Half Moon Homesites Unit III, Half Moon Campsites and Mill Damn subdivisions. Community is a not-for-profit corporation that has been exempt from Commission regulation of its water system pursuant to Section 367.022(7), Florida Administrative Code, because Community has provided service solely to members who own and control it. In its application, Sunshine also included a request for an amendment of its service territory to include the Ponderosa Estates. The territory to be transferred is described in Attachment A to this Order.

We have jurisdiction over this matter pursuant to Sections 367.045(2) and 367.071, Florida Statutes.

#### APPLICATION

Community has been supplying water service to its customers from two wells. On April 12, 2002, the main well collapsed. The second well is in full operation but cannot sustain sufficient water production for the customers' needs. Community consulted a well driller and was informed that the well could not be deepened because of its geologic condition. Community was not able to remedy the problem in time to avoid a Florida Department of Environmental Protection (DEP) notice of violation. DEP ordered Community to either drill another well or connect to another approved water system. To comply with DEP's order Community initiated discussion with Sunshine to interconnect to one of Sunshine's systems, but the fire marshal would not approve the interconnection because Sunshine's existing system would suffer a serious drop in water pressure. Community then agreed to sell its existing distribution system and the collapsed well site to Sunshine to drill a new well and provide service to the Community customers. Community and Sunshine executed a System Transfer Agreement (Agreement) on November 1, 2002, contingent upon Commission approval, in accordance with Section 367.071(1), Florida

Statutes. Sunshine took over operation of the system on November 1, 2002.

The current design capacity of Community's one working well, with its two inch distribution lines, is 56 gallons per minute (gpm). Water is pumped from the well into a 2,000 gallon hydro-pneumatic tank. From the hydropneumatic tank the water flows into the water distribution system. Peak daily flows are about 54,000 gpd, and the average daily flows are about 45,000 gpd. There are 176 connections. Sunshine intends to immediately make arrangements to drill a new 4" well with a capacity of 60 gpm when the transfer is approved.

We find that the application is in compliance with Section 367.071, Florida Statutes, and other pertinent statutes and administrative rules pertaining to an application for the transfer of utility facilities. The application provided the requisite proof of notice pursuant to Rules 25-30.020 and 25-30.030, Florida Administrative Code, and no objections have been filed. Sunshine's original certificate is on file with the Commission pursuant to Rule 25-30.037(2)(t), Florida Administrative Code.

Rule 25-30.037(2)(q), Florida Administrative Code, requires evidence that the utility owns or has provided for the continued use of the land upon which the utility facilities are located. The application contained a copy of a 99-year ground lease between the Community and Ponderosa Estates Home Owner's Association, Inc. for the location of the existing operational well beginning on December 9, 1993, along with a copy of an assignment of the 99-year lease to Sunshine effective July 7, 2003. Sunshine will provide copies of the recorded original 99-year lease and the recorded assignment within 30 days of our order approving the transfer and certificate amendment. In accordance with the rule, a 99-year lease is acceptable proof of continued use of the land. Sunshine also provided copies of a Contract for Sale and Purchase and an addendum, both dated July 10, 2003, for the purchase of two lots, three hydropneumatic tanks, a metal building, an existing pump, chlorine containers, water main pipes, and perimeter fencing, for \$10,000. According to the addendum, the purchase will take place no later than 10 days after we approve the transfer. Sunshine will file a copy of the recorded warranty deed with the Commission within 30 days of the order approving the transfer.

As required by Rules 25-30.037(2)(g), (h), (i), and (k), Florida Administrative Code, the application contained a copy of the transfer agreement. Sunshine will purchase the utility system for cash and thus will not need financing for the purchase. Community did not maintain customer deposits, but advanced payments on utility bills were transferred to Sunshine.

When Sunshine started operating the Community water system on November 1, 2002, that system became subject to our jurisdiction, because Sunshine is a jurisdictional utility. Sunshine has filed annual reports and regulatory assessment fees (RAFs) through 2002. Sunshine has paid RAFs for the Community water system for the period November 1 through December 31, 2002, and will be responsible for all future RAFs for the system.

Pursuant to Rule 25-30.037(2)(p), Florida Administrative Code, the buyer is to provide a statement regarding any outstanding DEP Notices of Violation or any consent orders. As noted above, DEP has required that an additional source of water be provided as soon as possible.

Pursuant to Rule 25-30.037(2)(j), Florida Administrative Code, the application contained a statement of public interest, including a summary of the buyer's experience in utility operations and a showing of the buyer's technical and financial ability to provide service. Sunshine has over 20 years of experience in the water utility industry and currently provides safe and reliable water service to approximately 3,718 customers. Sunshine also has the desire and financial ability to drill the required well needed by the Community customers. Sunshine has the regulatory experience and financial wherewithal to ensure consistent compliance with environmental regulations. Further, the minutes of Community's special general membership meeting on June 29, 2002, indicate that Community's board members have been physically maintaining the system and do not wish to continue to do so. At that meeting all members in attendance and 10 voters who mailed in their votes approved the transfer of the system to Sunshine.

Sunshine provided the following financial cost analysis to show that the financial impact of the transfer would not adversely affect Sunshine's current customers:

Community Water Co-op, Inc.  
Cost Analysis - Based on 2002 Annual Report

Revenues  $177 \times \$15 \times 12 =$  \$31,860

Estimated Operating Expenses

Salaries	\$ 7,333
Pension & Benefits	2,099
Purchased Power	2,110
Chemicals	540
Materials & Supplies	835
Accounting/Legal	2,383
Operator	1,320
Testing	1,077
Rental/Building	449
Rental/Equipment	118
Transportation Expense	809
Insurance	532
Misc Expenses	2,321
RAF's	1,434
Property Tax	122
Depreciation	1,189
Total Estimated Expenses	24,671
Estimated Profit	\$7,189

Capital		Service Life	Depreciation
Land	\$ 10,000		
Pump	2,302	20	115
Well	22,000	30	747
Meters	6,549	20	327

Sunshine has asserted that it will use a contract operator to monitor the system and collect water samples for environmental testing. The Community system is a little over two miles from one of Sunshine's current systems and Sunshine will use its existing personnel for repair and maintenance. Since the Community customers will represent 5 percent of Sunshine's current customer base, the salaries, pensions, materials, accounting/legal, rent,

transportation, insurance, and miscellaneous expenses are based on 5 percent of Sunshine's current annual expense for those items. Chemicals, purchased power, property tax and testing expenses are based on actual and projected costs for this system. Sunshine's estimated revenue and expenses appear reasonable, and we find that the existing rate is sufficient to cover the utility's cost of operating the Community system. The transfer of this system to Sunshine should provide a positive financial impact on the current customers.

For these reasons, we find that the transfer of Community's water system to Sunshine is in the public interest and we approve it. The effective date of the transfer shall be November 1, 2002. Certificate No. 363-W shall be amended to include the territory described in Attachment A. Also, Sunshine shall provide copies of the recorded 99-year lease, the recorded assignment of the 99-year lease, and the recorded warranty deed within 30 days of the issuance of this Order approving the transfer.

#### RATE BASE FOR COMMUNITY'S WATER FACILITIES

The rate base for the Community water facilities is zero as of November 1, 2002. Because Community's water system was exempt from Commission regulation prior to the transfer to Sunshine, rate base had never been established, and Community was not required to maintain its books and records in accordance with the National Association of Regulatory Utility Commissioners' (NARUC's) uniform system of accounts. Sunshine agreed to accept the water system from Community and to correct the DEP water violation for Community on November 1, 2002. It appears that all of the water facilities were contributed by the customers. Therefore, we find that the rate base for the Community facilities as of November 1, 2002, shall be zero.

#### ACQUISITION ADJUSTMENT

We will not approve an acquisition adjustment in this case. An acquisition adjustment may be made when the purchase price differs from rate base at the time of the acquisition. The acquisition adjustment resulting from the transfer of Community's water systems to Sunshine would be calculated as follows:

Purchase Price	\$10,000
Rate Base at November 1, 2002	<u>\$0</u>
Positive Acquisition Adjustment	\$10,000

Pursuant to Rule 25-30.0371, Florida Administrative Code, a positive acquisition adjustment shall not be included in rate base absent proof of extraordinary circumstances. Sunshine has not requested an acquisition adjustment or identified any extraordinary circumstances to warrant it. Therefore, we will not include it in the calculation of rate base for transfer purposes.

#### RATES AND CHARGES

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

In case of change of ownership or control of a utility which places the operation under a different or new utility, or when its name is changed, 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).

Community has 176 customers who pay a monthly flat rate of \$15.00 for water service. According to the transfer agreement, Sunshine will charge the existing \$15 flat rate to all customers currently served by Community until the Commission approves a different rate upon proper notice and application. The Community service territory is about 90% built out with service availability charges of \$500 per hook-up.

We find that Sunshine should continue to charge the Ponderosa Estates customers the monthly flat rate of \$15 per month and the existing service availability charge of \$500 per hook-up. Sunshine has filed proposed tariff sheets that reflect these rates and charges. The tariff sheets shall be effective for services rendered or connections made on or after the stamped approval date.

Based on the foregoing, it is

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ORDERED BY THE Florida Public Service Commission that the Application for the transfer of facilities of Community Water Co-Op, Inc. to Sunshine Utilities of Central Florida, Inc., and for the amendment of Certificate No. 363-W held by Sunshine to reflect the transfer, is approved. The effective date of the transfer shall be November 1, 2002. Certificate No. 363-W shall be amended to include the territory described in Attachment A. Sunshine shall provide copies of the recorded 99-year lease, the recorded assignment of the 99-year lease, and the recorded warranty deed within 30 days of the Commission's order approving the transfer. It is further

ORDERED, as explained in the body of this order, that Sunshine Utilities shall continue the existing monthly service rate and service availability charge for customers in Ponderosa Estates. The tariff sheets reflecting those rates shall be effective for services rendered or connections made on or after the stamped approval date. It is further

ORDERED that the rate base for the Community Co-Op water facilities, as of November 1, 2002, is zero. It is further

ORDERED that no acquisition adjustment is approved for this transfer. It is further

ORDERED that the provisions of this Order that establish rate base and deny an acquisition adjustment, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "notice of Further Proceedings" attached hereto. It is further

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



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By ORDER of the Florida Public Service Commission this 24th  
Day of November, 2003.

BLANCA S. BAYÓ, Director  
Division of the Commission Clerk  
and Administrative Services

By: Kay Flynn  
Kay Flynn, Chief  
Bureau of Records and Hearing  
Services

( S E A L )

MCB

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), 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.

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As identified in the body of this order, our action establishing rate base for purposes of the transfer and declining to include an acquisition adjustment is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of the Commission Clerk and Administrative Services, at 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on December 15, 2003. If such a petition is filed, mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing. In the absence of such a petition, this order shall become effective and final upon the issuance of a Consummating 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.

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 the Commission Clerk and Administrative Services 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 wastewater utility by filing a notice of appeal with the Director, Division of the Commission Clerk and Administrative Services 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.

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**Attachment A**

Sunshine Utilities of Central Florida, Inc.  
Ponderosa Pines  
Water Service Area

Township 15 South, Range 25 East  
Section 19

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