

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Application for approval of reuse plan in Lake County by Sun Communities Finance, LLC d/b/a Water Oak Utility. | DOCKET NO. 010087-WS
ORDER NO. PSC-06-0324-PAA-WS
ISSUED: April 21, 2006

The following Commissioners participated in the disposition of this matter:

LISA POLAK EDGAR, Chairman
J. TERRY DEASON
ISILIO ARRIAGA
MATTHEW M. CARTER II
KATRINA J. TEW

NOTICE OF PROPOSED AGENCY ACTION
ORDER APPROVING MOTION TO MODIFY ORDER AND CLOSE DOCKET

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein 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

Sun Communities Finance LLC d/b/a Water Oak Utility (Water Oak or utility) is a Class B water and wastewater utility serving approximately 958 customers in Lake County. According to its 2004 Annual Report, the utility had gross revenues of \$331,738 and operating expenses of \$335,438. This resulted in a net operating loss of \$3,700.

On December 22, 2005, Water Oak filed a Motion to Modify Order and Close Docket. We have jurisdiction pursuant to Sections 367.081 and 367.0817, Florida Statutes.

Motion to Modify Order and Close Docket

Pursuant to Order No. PSC-00-1165-PAA-WS, issued June 27, 2000, in Docket No. 990243-WS, In re: Application for limited proceeding increase and restructuring of water rates by Sun Communities Finance Limited Partnership in Lake County, and overearnings investigation, this Commission ordered Water Oak, among other things, to file a reuse project plan within six months of the final order and to defer 23.07% of monthly wastewater revenues to be applied to the cost of its future reuse system. In addition, we ordered the deferred earnings

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and accrued interest be booked to contributions in aid of construction (CIAC) once the reuse project plan was approved. The utility filed an Application for Approval of Reuse Project Plan and Increase for Wastewater Rates on June 19, 2001. In July, 2001, the utility requested a discontinuance of all action on the reuse plan because of a potential sale of the utility to the City of Lady Lake. However, in December, 2001, the utility notified this Commission that the sale would not take place. An audit of the utility's books and records was conducted and an audit report was filed on October 1, 2002.

By Order No. PSC-03-0416-PAA-WS, issued March 26, 2003, in Docket No. 010087-WS, In re: Application for approval of reuse plan in Lake County by Sun Communities Finance LLC d/b/a Water Oak Utility, we found that there were no overearnings for the wastewater system for the period January 1, 2001, to March 2003, and that it appeared the underearnings would continue. Therefore, we discontinued the requirement that the utility escrow 23.07% of wastewater revenues for the reuse project and approved the utility's request to release all monies held in escrow with the exception of \$6,000 of overearnings plus associated interest in 2000. We also ordered that Docket No. 010087-WS remain open pending completion of the reuse docket.

After numerous delays in receiving construction permits, soliciting bids, and another potential sale of the system to the City of Lady Lake which failed, in a February 9, 2005 letter, the utility stated that its analysis for updating the reuse project plan resulted in estimates of costs substantially higher than those that had been originally estimated for the project. As a result, management now questions the cost effectiveness of the reuse project. If it was determined that Water Oak must implement reuse, the utility would need to update its cost information and refile its reuse project plan and proposed increase in rates and charges.

On December 22, 2005, the utility filed a Motion to Modify Order and Close Docket. The utility requested that we issue an order modifying the requirements of Order Nos. PSC-00-1165-PAA-WS and PSC-03-0418-PAA-WS to no longer require the filing of a reuse project plan by the utility and to close Docket Nos. 990243-WS and 010087-WS. In its Motion, the utility states that it has kept staff informed of the delays in the implementation of the reuse project plan, the reasons for the delays, and that it has booked to CIAC all of the overearnings agreed to by the Commission in Order No. PSC-03-0416-PAA-WS. The utility asserts that through further investigation and discussion among its lawyers and engineers and issuance of a new Water Use Permit from the St. Johns River Water Management District (SJRWMD), it has determined that the implementation of a reuse system is not imminent and that it has decided to delay implementation of such an expensive project until it is determined that the reuse project must be implemented immediately. The utility further stated that because we determined in Order No. PSC-03-0416-PAA-WS that Water Oak was not in an overearnings position, and that no additional funds were being escrowed to apply toward the reuse project, there is no reason for the Commission to continue to require the utility to file a reuse project plan. Finally, the utility stated that it does not wish to implement a reuse project plan until required to do so by environmental regulatory authorities because of the substantial cost and rate impact on its customers. Therefore, Water Oak requests that we no longer require a reuse plan until the implementation of that project is imminent.

A review of the Water Oak and golf course consumptive use permits (CUP) shows that issuance of the CUPs was based on the expectation that: "Reclaimed water from the proposed reuse treatment plant upgrade will be supplied to the golf course (CUP No. 95654) for irrigation by the end of 2006." Based on our Memorandum of Understanding with the water management districts, our staff telephoned SJRWMD to advise them of the assertion by the utility that reuse was not imminent. By letter dated January 18, 2006, our staff requested clarification and information from Water Oak and from SJRWMD.

In response to staff's inquiry, the utility reiterated its position that there were no requirements under the existing permits or conservation plans for the wastewater treatment plant to provide reuse at any specific date. Water Oak believes that circumstances have changed since the utility originally proposed to move forward with reuse, such as substantial increases in the cost of implementation of reuse, as well as the success of other conservation measures. Therefore, the utility does not believe that reuse is appropriate at this time. The utility stated that it will work with the SJRWMD and DEP in future permitting to determine when, or if, reuse is appropriate for its system.

The SJRWMD stated that for Water Oak's CUP (No. 282), the District did not rely on the representation that reuse would become available; therefore, failure to implement the reuse would not cause the utility to be out of compliance with the current permit. With respect to the golf course permit (CUP No. 95654), the District did rely on the applicant's statement that reclaimed water would be available from Water Oak Utility. The SJRWMD stated:

At this time, the District is limited in its ability to pursue enforcement against the utility based on the permit conditions and the content of the application for permit number 282. Upon permit renewal, or a request for a modification, the District will require that the reclaimed water supply be developed to meet lower quality demands in the area. We will encourage the utility to fulfill the obligations provided in support of application 95654 to strengthen their application for renewal of permit number 282 in 2010.

The District fully expected the utility to provide reuse to the golf course during 2006, and it plans to require Water Oak to implement a reuse system at the time of renewal of the current permit in April, 2010.

Based on the above, it appears that the utility is in compliance with its current permit and that the SJRWMD has no cause for action against Water Oak for failure to implement a reuse system. It also appears that implementation of a reuse system is not imminent but may be required in the future. Therefore, the utility's Motion is granted and we modify Order Nos. PSC-00-1165-PAA-WS and PSC-03-0418-PAA-WS to no longer require the filing of a reuse project plan by the utility and Docket No. 010087-WS shall be closed.

The utility also requested that Docket No. 990243-WS be closed; however, that docket was closed by Consummating Order No. PSC-00-1301-CO-WS, issued July 19, 2000.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Motion of Sun Communities Finance, LLC d/b/a Water Oak Utility to Modify Order and Close Docket is granted 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 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 if no timely protest is filed by a substantially affected person within 21 days of the Proposed Agency Action Order, a Consummating Order shall be issued and the docket closed.

By ORDER of the Florida Public Service Commission this 21st day of April, 2006.

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

By:



Kay Flynn, Chief
Bureau of Records

(S E A L)

RRJ

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 that is available under Section 120.57, 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 will be granted or result in the relief sought.

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.

The action proposed herein 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, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on May 12, 2006.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

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