

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for transfer ) DOCKET NO. 950880-WU  
of facilities of Forty-Eight ) ORDER NO. PSC-96-0432-FOF-WU  
Estates Water System, ) ISSUED: March 28, 1996  
cancellation of Certificate No. )  
498-W, and amendment of )  
Certificate No. 441-W in Lake )  
County by J. Swiderski )  
Utilities, Inc. )  
\_\_\_\_\_ )

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK, Chairman  
J. TERRY DEASON  
JOE GARCIA  
JULIA L. JOHNSON  
DIANE K. KIESLING

ORDER APPROVING TRANSFER  
AND  
NOTICE OF PROPOSED AGENCY ACTION  
ORDER ESTABLISHING RATE BASE FOR  
PURPOSES OF THE TRANSFER AND DECISION NOT TO  
INCLUDE A NEGATIVE ACQUISITION ADJUSTMENT  
IN THE CALCULATION OF RATE BASE

BY THE COMMISSION:

NOTICE IS HEREBY GIVEN by the Florida Public Service Commission that the action discussed herein establishing rate base for purposes of the transfer and our decision not to include a negative acquisition adjustment in the calculation of rate base are preliminary in nature and will become final unless a person whose interests are adversely affected files a petition for a formal proceeding pursuant to Rule 25-22.029, Florida Administrative Code.

BACKGROUND

Forty-Eight Estates Water System (Forty-Eight Estates) is a Class C utility providing water service in Lake County. Forty-Eight Estates was granted Certificate No. 498-W in Order No. 18839, issued February 10, 1988. According to Forty Eight Estates' 1994 annual report, the utility was providing service to 72 connections in Lake County and had total operating revenues of \$2,071 and a net loss of \$2,086.

DOCUMENT NUMBER-DATE

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FPSO-REG/REG/REPORTING

On August 9, 1994, Judge Jerry T. Lockett in the Circuit Court of the Fifth Judicial Circuit in Lake County issued an order in Case No. 88-1353-CA-01, declaring Forty-Eight Estates to be abandoned and appointing Joe Swiderski Utilities, Inc. (JSU) as receiver of the utility.

The Commission acknowledged JSU as receiver for the utility in Order No. PSC-94-1356-FOF-WU, issued November 7, 1994. JSU operates two other systems within Lake County under Certificate Nos. 441-W and 371-S. Summit Chase serves 219 water and 218 wastewater customers and King's Cove serves 148 water and 143 wastewater customers.

On October 17, 1994, JSU, as receiver, filed an application for a staff-assisted rate case for Forty-Eight Estates. This docket was concluded by Order No. PSC-95-0474-FOF-WU, issued on April 12, 1995. On July 25, 1995, JSU filed an application with this Commission for transfer of Forty-Eight Estates to JSU pursuant to Chapter 367.071(1), Florida Statutes.

#### APPLICATION

We find that the application is in compliance with the governing statute, Section 367.071, Florida Statutes, and other pertinent statutes and administrative rules concerning an application for transfer of utility assets. The application contains a check in the amount of \$750.00, which is the correct filing fee pursuant to Rule 25-30.020, Florida Administrative Code. The application includes a copy of a tax certificate issued by the Lake County Tax Collectors Office that provides proof of ownership by the seller, Mr. Busk. A copy of a deed recorded with Lake County on June 30, 1994, was submitted in the application for proof of ownership of the utility's land, facilities and distribution lines by Mr. Swiderski. Also included is a copy of the deed transfer that details the requirements and conditions for the sale.

In addition, the application contains 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 to be transferred. No objections to the notice of application have been received and the time for filing such has expired. A description of the territory to be transferred is appended to this Order as Attachment A.

The application contains a copy of the contract for sale which includes the purchase price, terms of payment and a list of the assets purchased and the liabilities assumed. The buyer reports there are no customer agreements, no customer deposits, no revenue

contracts, cash advancements or leases. Most utility records have not been maintained and therefore have not been made available to the buyer. Mr. Busk did not follow Commission guidelines for maintaining books and records for utility operation. No financing was required in the transaction. The court order appointing JSU as receiver was provided as the buyer's commitment to provide quality service. The filing by JSU requests that the transfer of service include the utility's land, facilities, distribution lines and Water Certificate No. 498-W. The Department of Environmental Protection (DEP) informed us that JSU has made significant repairs and upgrades to the water system as receiver and has brought the water system into full compliance with DEP regulations.

JSU has consistently met DEP standards and provided customers with adequate service. We find that this transfer is in the public interest and that JSU is capable of fulfilling the commitments, obligations and representations of the utility. Therefore, the transfer of facilities from Forty-Eight Estates to JSU shall be approved, Certificate No. 441-W shall be amended and Certificate No. 498-W shall be cancelled.

#### RATE BASE

Rate base was previously established by this Commission in Docket No. 941107-WU, a staff-assisted rate case. The Commission set rate base at \$19,187 for the water system by Order No. PSC-95-0474-FOF-WU, issued April 12, 1995. See Schedule 1 and Schedule 2 below for additional information concerning the establishment of rate base.

An audit of the utility's books and records was conducted to determine the rate base (net book value) during the staff assisted rate case. The auditors reported that after reviewing the books and records of Forty-Eight Estates, all necessary components to determine rate base were in compliance with Commission rules and regulations. Therefore, the rate base for purposes of this transfer shall be set at \$19,187.

#### ACQUISITION ADJUSTMENT

An acquisition adjustment results when the purchase price differs from the original cost calculation. The acquisition adjustment resulting from the transfer of Forty-Eight Estates Water System is calculated as follows:

|                                     |    |                   |
|-------------------------------------|----|-------------------|
| Purchase Price:                     | \$ | 50                |
| Commission Calculated Rate Base:    |    | <u>\$ 19,187</u>  |
| Negative<br>Acquisition Adjustment: |    | <u>\$(19,137)</u> |

The application includes an agreement for purchase that transfers the utility from Mr. Busk to JSU for an amount substantially less than the actual value of the system. In order to consider being named receiver, Mr. Swiderski negotiated with Mr. Busk to transfer the deed to the land for the sum of \$50.00. JSU has incurred considerable expense in bringing the water system into compliance with DEP regulations.

JSU did not request an acquisition adjustment in its application. The application states that the Commission's policy is to not make an acquisition adjustment unless extraordinary circumstances exist and JSU did not claim any extraordinary circumstances. 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 for transfer purposes. Therefore, we find it appropriate not to include a negative acquisition adjustment in the calculation of rate base.

#### RATES AND CHARGES

The utility's approved rates and charges were effective April 12, 1995, pursuant to Order No. PSC-95-0474-FOF-WU issued in Docket No. 941107-WU, which was an application for a staff assisted rate case. Rule 25-9.044(1), Florida Administrative Code, provides that:

In cases of change of ownership or control of a utility which places the operation under a different or new utility...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)...

JSU has not requested a change in the rates and charges of the utility and we find no reason to change them at this time. Accordingly, we find that the utility shall continue operations

under the existing tariff and apply the approved rates and charges. The utility has filed a tariff reflecting the transfer of ownership. The tariff shall be effective for services provided or connections made after the stamped approval date.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the transfer of facilities of Forty-Eight Estates Water System to Joe Swiderski Utilities, Inc. and the amendment of Certificate No. 441-W for additional territory and cancellation of Certificate No. 498-W are hereby approved. It is further

ORDERED that the rate base, which for transfer purposes reflects the net book value, is \$19,187 for the Forty-Eight Estates Water System. It is further

ORDERED that Joe Swiderski Utilities, Inc. shall charge the rates and charges approved in Forty-Eight Estates Water System's tariff until authorized to change by this Commission. It is further

ORDERED that the provisions of this Order regarding the establishment of rate base for purposes of the transfer and our decision not to include a negative acquisition adjustment in the calculation of rate base are issued as proposed agency action and shall become final and effective 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, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings or Judicial Review" attached hereto. It is further

ORDERED that in the event this Order becomes final, Docket No. 950880-WU shall be closed.

By ORDER of the Florida Public Service Commission, this 28th  
day of March, 1996.

BLANCA S. BAYÓ, Director  
Division of Records and Reporting

by: Kay Flynn  
Chief, Bureau of Records

( S E A L )

MTR

Commissioner Deason dissented from the majority regarding the  
negative acquisition adjustment in the calculation of rate base.

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 actions  
establishing rate base for purposes of the transfer and our  
decision not to include a negative acquisition adjustment in the  
calculation of rate base are 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 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on April 18, 1996. In the absence of such a petition, this order shall become effective on the date subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

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 the date described above, 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 wastewater 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 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 wastewater 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.

ATTACHMENT A

Territory Description of Joe Swiderski Utilities, Inc.  
for the Forty-Eight Estates Water System

Order No. 18839 simplified

Section 12, Township 19 South, Range 25 East, Lake County, Florida

Beginning at the Southeast corner of the Southwest 1/4 of Section 12, Township 19S, Range 25E, Lake County run West 508 feet (to the East boundary of the Forty-Eight Estates) for a Point of Beginning.

From the Point of Beginning run South (into Section 13, Twp. 19S, Rge. 25E) 396 feet, thence West 792 feet, to the East boundary of Haines Creek Road, thence Northerly along Haines Creek Road 300 feet, thence West 225 feet (more or less) to the SW corner of Lot #2, Block B, Hilltop Subdivision; thence North 180 feet, thence East 75 feet, thence North 190 feet to the Southeast corner of Lot #4 Block A, thence West 225 feet to the Southwest corner of Lot #6 Block A, thence North 190 feet to the North boundary of Moore Street. Thence run West 150 feet to the Southwest corner of Lot #9 Block A, thence North 140 feet, thence East 100 feet, thence North 140 feet to the South boundary of Lackabee Street. Thence run East 516 feet to the East boundary of Haines Creek Road, thence North along Haines Creek Road 100 feet, thence 1,300 feet, thence South 200 feet, thence West 220 feet, thence South 130 feet, thence West 193 feet, thence South 100 feet, thence East 100 feet, thence South 105 feet, thence West 100 feet, thence South 180 feet, thence West 100 feet (to the East boundary of the Forty-Eight Estates), thence South along the East boundary of the Forty-Eight Estates 370 feet (more or less) to the Point of Beginning.



Schedule 1

Forty-Eight Estates Water System  
Schedule of Rate Base  
Test Year Ending December 31, 1994

|   | <u>Per<br/>Utility<br/>Books</u> | <u>Commission<br/>Adjustment<br/>to Utility Balance</u> | <u>Balance<br/>Per<br/>Commission</u> |
|---|----------------------------------|---|---------------------------------------|
| Utility Plant<br>in Service             | \$ 41,540                        | \$ 8,776  | \$ 50,316                             |
| Land/Non-depreciable<br>Assets          | 1,430                            | 0   | 1,430                                 |
| Plant held for<br>Future Use            | 0                                | (3,145)   | (3,145)                               |
| Contributions In<br>Aid of Construction | (11,900)                         | (4,125)   | (16,025)                              |
| Accumulated<br>Depreciation             | (17,839)                         | (2,994)   | (20,833)                              |
| Amortization<br>of CIAC                 | 4,334                            | 442   | 4,776                                 |
| Working Capital<br>Allowance            | <u>1,573</u>                     | <u>1,095</u>  | <u>2,668</u>                          |
| RATE BASE                               | \$ <u>19,138</u>                 | \$ <u>49</u>  | \$ <u>19,187</u>                      |

Schedule 2

Forty-Eight Estates Water System  
Schedule of Rate Base  
Test Year Ending December 31, 1994

UTILITY PLANT IN SERVICE

|   |                 |
|---|-----------------|
| to reclassify electric switch from account #630 | \$ 50,316       |
| to reflect proforma plant                       | 9,425           |
| to reflect averaging adjustment                 | <u>(676)</u>    |
|   | \$ <u>8,776</u> |

PLANT HELD FOR FUTURE USE

|  |                   |
|--|-------------------|
| to reflect non-used and useful plant               | \$ (5,542)        |
| to reflect average non-used and useful accumulated | <u>2,397</u>      |
| to reflect averaging adjustment                    | \$ <u>(3,145)</u> |

CONTRIBUTIONS IN AID OF CONSTRUCTION

|   |                   |
|---|-------------------|
| to bring utility books to proper amount | \$ (3,850)        |
| to reflect average averaging adjustment | 138               |
| to reflect CIAC for margin reserve      | <u>(413)</u>      |
|   | \$ <u>(4,125)</u> |

ACCUMULATED DEPRECIATION

|   |                   |
|---|-------------------|
| to bring utility balance to proper amount | \$ (3,190)        |
| to reflect average averaging adjustment   | 468               |
| to reflect CIAC for margin reserve        | <u>(664)</u>      |
|   | \$ <u>(2,994)</u> |

AMORTIZATION OF CIAC

|   |               |
|---|---------------|
| to bring utility balance to proper amount | \$ 699        |
| to reflect average averaging adjustment   | (277)         |
| to reflect CIAC for margin reserve        | <u>20</u>     |
|   | \$ <u>442</u> |

|                                  |                 |
|----------------------------------|-----------------|
| <u>WORKING CAPITAL ALLOWANCE</u> | \$ <u>1,095</u> |
|----------------------------------|-----------------|