



Public Service Commission

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COMMISSION CLERK

DATE: SEPTEMBER 25, 2003

TO: DIRECTOR, DIVISION OF THE COMMISSION CLERK & ADMINISTRATIVE SERVICES (BAYÓ)

FROM: DIVISION OF ECONOMIC REGULATION (CLAPP, REDEMANN, KAPROTH) OFFICE OF THE GENERAL COUNSEL (CROSBY, HELTON)

Handwritten initials: RPR, KK, DM, [unclear]

RE: DOCKET NO. 030340-WU - 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.
COUNTY: MARION

AGENDA: 10/07/03 - REGULAR AGENDA - PROPOSED AGENCY ACTION ISSUES 2 AND 3 - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\ECR\WP\030340WU.RCM

CASE BACKGROUND

Sunshine Utilities of Central Florida, Inc. (Sunshine, buyer, or utility) is a Class B water utility serving approximately 3,718 equivalent residential connections (ERCs) in Marion County. The utility is primarily in the St. Johns River Water Management District (St. Johns), all of which is a water use caution area. Wastewater service is provided by septic tanks. The utility's 2002 annual report shows total operating revenue of \$857,423 and net operating income of \$43,684.

On April 14, 2003, an application was filed for approval of the transfer of the water system owned by Community Water Co-op, Inc. (Community or system) to Sunshine. Community provides service to Ponderosa Estates which includes 176 residential customers in

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Half Moon Homesites Unit III, Half Moon Campsites and Mill Dam subdivisions. The water system was previously exempt from Commission regulation pursuant to Section 367.022(7), Florida Statutes, because the cooperative provided service solely to members who owned and controlled it. The application is also for an amendment of Sunshine's service territory to include the Ponderosa Estates.

Community has been supplying water service to its customers from two wells. On April 12, 2002, the main well collapsed and became non-productive. Community's inability to quickly remedy the problem led to a notice of violation from the Florida Department of Environmental Protection (DEP). After considering its various alternatives for correcting the violation, Community decided to transfer its facilities and to interconnect them with Sunshine. This will be discussed in more detail in Issue 1.

The Commission has jurisdiction over this amendment and transfer of assets pursuant to Sections 367.045(2) and 367.071, Florida Statutes, respectively.

DISCUSSION OF ISSUES

ISSUE 1: Should the transfer of water facilities from Community Water Co-op, Inc. to Sunshine Utilities of Central Florida, Inc., and amendment of Sunshine's service territory be approved?

RECOMMENDATION: Yes. The transfer of the Community water facilities to Sunshine is in the public interest and should be approved. The effective date of the transfer should be November 1, 2002. Certificate No. 363-W should be amended to include the territory described in Attachment A. Also, Sunshine should 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 of the transfer. (CLAPP, REDEMANN, KAPROTH, CROSBY)

STAFF ANALYSIS: As stated previously, on April 14, 2003, an application was filed for approval of the transfer of Community's

water facilities to Sunshine and for amendment of Sunshine's certificated territory. Community is a not-for-profit corporation which is exempt from Commission regulation pursuant to Section 367.022(7), Florida Administrative Code. Community has an outstanding notice of violation from DEP, which is a contributing factor in Community's desire to sell the system. Community has been supplying water service to the customers from two wells. On April 12, 2002, the main well collapsed and became non-productive. Community consulted a well driller and was informed that the geologic condition of the well is such that it cannot be deepened. The second well is in full operation but is not able to sustain sufficient water production for the customers' needs. DEP mandated that Community either drill another well or connect to another approved water system.

In an effort to achieve compliance with DEP's mandate, Community initiated discussion with Sunshine to interconnect to one of Sunshine's systems and transfer Community's distribution system and lease of the operating well to Sunshine. The fire marshal would not approve the interconnection because Sunshine's existing system would suffer a serious drop in water pressure. Community and Sunshine then agreed that the existing collapsed well site would be sold to Sunshine for drilling a new well. The utility and Community have been working together to correct the DEP violation. Sunshine plans to start drilling the well soon after the Commission approves the transfer and certificate amendment.

The Agreement (system transfer agreement) between Community and Sunshine was executed on November 1, 2002, contingent upon Commission approval in accordance with Section 367.071(1), Florida Statutes. Sunshine took over operations of the system on November 1, 2002.

The application as filed and amended is in compliance with the governing statute, Section 367.071, Florida Statutes, and other pertinent statutes and administrative rules pertaining to an application for the transfer of utility facilities. The application contained the correct filing fee and provided the requisite proof of noticing pursuant to Rules 25-30.020 and 25-30.030, Florida Administrative Code, respectively. No objections to noticing were filed with the Commission and the time for filing such has expired. The territory being transferred is described in Attachment A. 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. beginning on December 9, 1993, for the location of the existing operational well. In addition, the application contained 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 the Commission's 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.

As previously discussed, the fire marshal would not allow interconnection of the two systems so a new well must be drilled. Therefore, Community agreed to sell the lots containing the collapsed well site to Sunshine. Sunshine provided copies of a Contract for Sale and Purchase and an Addendum to Contract, 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 the Commission approves of the transfer. Sunshine also stated that a copy of the recorded warranty deed will be filed with the Commission within 30 days of the Commission's 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 pay cash, therefore there are no entities upon which Sunshine will rely for financing. Community did not maintain customer deposits; however, customer advanced payments on utility bills were transferred to Sunshine.

As noted above, Community was exempt from Commission regulation pursuant to Section 367.022(7), Florida Statutes, prior to the acquisition by Sunshine. However, when Sunshine started operating the system on November 1, 2002, the Community water system became jurisdictional because it was operated by a jurisdictional utility and therefore subject to Commission

regulation. Staff has verified that Sunshine is current on annual reports and regulatory assessment fees (RAFs) through 2002. Sunshine paid the RAFs for the period of November 1 through December 31, 2002, and will be responsible for all the future RAFs for the Community water system.

The utility has one 4" well that is working. Another well has failed. The current design capacity of the one well, with its two inch distribution lines, is 56 gallons per minute (gpm). Water is pumped from the well into a 2,000 gallon hydropneumatic tank. From the hydropneumatic tank the water flows into the water distribution system. The peak daily flows are about 54,000 gpd, and the average daily flows are about 45,000 gpd. There are 176 connections. The utility will immediately make arrangements to drill a new 4" well with a capacity of 60 gpm when the transfer is approved.

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. DEP has required an additional source of water be provided as soon as possible. The violation because of the failed well was discussed earlier.

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.

Staff notes that in its review of the Community's June 29, 2002, special meeting notice and minutes with regard to the transfer it was clear that Community's board no longer wishes to carry the burden of maintaining its water system. The board members have been physically maintaining the system and, because of advancing age of its members, the board finds that it is unwilling to continue to do so. According to the minutes of the special general membership meeting of June 29, 2002, the transfer of the system to Sunshine was approved by all members in attendance and 10 mail-in votes.

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Based on all the above, staff recommends that the transfer of Community's water system to Sunshine is in the public interest and should be approved. The effective date of the transfer should be November 1, 2002. Certificate No. 363-W should be amended to include the territory described in Attachment A. Also, Sunshine should 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.

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ISSUE 2: What is the rate base for Community's water facilities at the time of the transfer?

RECOMMENDATION: The rate base for the Community water facilities is zero as of November 1, 2002. (CLAPP, REDEMANN)

STAFF ANALYSIS: Prior to the transfer to Sunshine, Community's water system was exempt from Commission regulation. As a consequence, rate base had never been established nor was there any requirement for Community 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, staff recommends that the rate base for the Community facilities as of November 1, 2002, be set at zero.

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ISSUE 3: Should an acquisition adjustment be approved?

RECOMMENDATION: No. An acquisition adjustment should not be approved. (CLAPP)

STAFF ANALYSIS: An acquisition adjustment results 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 is calculated as follows: "

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|---------------------------------|------------------|
| 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. The buyer has neither requested an acquisition adjustment nor identified any extraordinary circumstances. Therefore, staff recommends that a positive acquisition adjustments should not be included in the calculation of rate base for transfer purposes.

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ISSUE 4: What rates and charges should be approved for Community?

RECOMMENDATION: The existing monthly service rate and service availability charge for customers in Ponderosa Estates should be continued. The tariff sheets reflecting these rates should be effective for services rendered or connections made on or after the stamped approval date. (CLAPP, REDEMANN)

STAFF ANALYSIS: 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 which 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 serviced by Community until the Public Service 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.

Based on all the above, staff recommends that the monthly flat rate of \$15 per month for the Ponderosa Estates customers be continued. Staff also recommends that the existing service availability charge of \$500 per hook-up be continued. Sunshine has filed proposed tariff sheets which reflect these rates and charges. The tariff sheets reflecting these rates and charges should be effective for services rendered or connections made on or after the stamped approval date.

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ISSUE 5: Should this docket be closed?

RECOMMENDATION: Yes. If no timely protest is received to the proposed agency action issues, upon the expiration of the protest period a Consummating Order should be issued and the docket should be closed. (CROSBY)

STAFF ANALYSIS: If no timely protest is received to the proposed agency action issues, upon the expiration of the protest period a Consummating Order should be issued and the docket should be closed.

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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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