

State of Florida



Public Service Commission

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COMMISSION
CLERK

DATE: September 23, 2004

TO: Director, Division of the Commission Clerk & Administrative Services (Bayo)

FROM: Division of Economic Regulation (Johnson, Brinkley, Warden) *cxp ms AW*
Office of the General Counsel (Fleming) *190 JDS*
MAY KEX

RE: Docket No. 040179-WS – Application for transfer of facilities and Certificate Nos. 336-W and 291-S in Martin County from Columbia Properties Stuart, LLC to Utilities, Inc. of Hutchinson Island.

AGENDA: 10/05/04 – Regular Agenda – Proposed Agency Action Issues 2, 4, and 5 – Interested Persons May Participate

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\ECR\WP\040179.RCM.DOC

Case Background

Columbia Properties Stuart, LLC (Columbia, utility, or seller) is a Class B utility which provides water and wastewater service in Martin County. The utility was issued Certificate Nos. 336-W and 291-S pursuant to Order No. 9885, issued March 17, 1981 in Docket No. 800754-WS, In Re: Application of Indian River Plantation Company, d/b/a Plantation Utilities, for Certificates to Operate Water and Sewer Utilities In Martin County. Columbia is located in a portion of the South Florida Water Management District (SFWMD) that has been designated as a water use caution area. According to the utility's 2003 annual report, it serves 158 water and wastewater customers. Residential customers provided 2% of the overall revenue, with the remaining 98% coming from the general service customers. In 2003, the utility had annual operating revenues of \$342,174 and \$269,161 for water and wastewater, respectively and net operating income of \$94,893 for water and a net operating loss of \$112,803 for wastewater.

On February 27, 2004, Columbia and Utilities, Inc. of Hutchinson Island (UIHI or buyer) filed a joint application for authority to transfer the water and wastewater certificates from

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FPSC-COMMISSION CLERK

Docket No. 040179-WS
Date: September 23, 2004

Columbia to UIHI. Columbia, the seller, acquired the utility as a part of the purchase of the Hutchinson Island Marriott Beach Resort and Marina (resort). While the transfer to Columbia was pending in Docket No. 030891-WS, Columbia entered into an agreement to sell the utility to UIHI. Rate base for the utility was established in Order No. PSC-04-0438-PAA-WS, issued April 29, 2004, in Docket No. 030891-WS, In Re: Joint application for transfer of Certificates Nos. 336-W and 291-S in Martin County from IHC Realty Partnership L.P. d/b/a Plantation Utilities to Columbia Properties Stuart, LLC as \$1,020,138, for the water system and \$510,917 for the wastewater system as of April 30, 2003. Pursuant to Section 367.071(5), Florida Statute, the Commission may establish rate base when there is a transfer of assets. In this case, there have been no plant additions and the parties agreed that immediately upon the closing of the sale in Docket No. 030891-WS, the utility facilities would be sold to UIHI. Therefore, rate base was not updated in this transfer proceeding.

On June 7, 2004, the application for transfer from Columbia to UIHI was protested by several condominium associations which receive both water and wastewater service from the utility. The condominium associations raised concerns about monthly invoices, proper noticing for water emergencies, and maintaining shut off valves throughout the system. The attorney for the condominium associations filed a Motion to Intervene on June 28, 2004. On August 5, 2004, a notice of withdrawal of the motion to Intervene was filed on behalf of the condominium associations as a result of the condominium associations and the utility resolving their concerns.

This recommendation addresses the transfer of Columbia to UIHI. The Commission has jurisdiction to consider this matter pursuant to Section 367.071, Florida Statutes, and Rule 25-30.037, Florida Administrative Code.

Discussion of Issues

Issue 1: Should the transfer of facilities and Certificate Nos. 336-W and 291-S from Columbia Properties Stuart, LLC to Utilities, Inc. of Hutchinson Island be approved?

Recommendation: Yes, the transfer of facilities and Certificate Nos. 336-W and 291-S from Columbia Properties Stuart, LLC to Utilities, Inc. of Hutchinson Island should be approved. The transfer should be effective on the day of the Commission vote. In addition, Columbia Properties Stuart, LLC will be responsible for the payment of all regulatory assessment fees (RAFs) due for revenues received through the date of closing. UIHI will be responsible for the payment of all RAFs due thereafter and for filing the 2004 annual report for January 1 through December 31, 2004. A description of the territory being transferred is appended to this recommendation as Attachment A. (Johnson, Brinkley, Walden)

Staff Analysis: On February 27, 2004, Columbia and UIHI jointly filed an application for transfer of the facilities and Certificate Nos. 336-W and 291-S from Columbia to UIHI. The application is in compliance with the governing statute, Section 367.071, Florida Statutes, and other pertinent statutes and rules concerning an application for transfer.

Commission Approval. Section 367.071, Florida Statutes, requires that no utility shall sell, assign, or transfer its certificate of authorization, facilities or any portion thereof, or majority organizational control, without prior approval of the Commission unless such sale, assignment, or transfer is made contingent upon Commission approval. The parties closed on the exchange of the utility on June 16, 2004, contingent upon the approval of the Commission.

Noticing. 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 utility to be transferred. As mentioned in the case background, the condominium associations filed a motion to intervene, but subsequently resolved their concerns with the utility and withdrew their motion on August 5, 2004. No other objections to the notice of application have been received and the time for filing such has expired.

Sales Contract and Financing. The application contains documentation to comply with Rule 25-30.037(2)(g), (h), (i), and (k), Florida Administrative Code, including a copy of the purchase agreement which includes the purchase price, terms of payment and a list of the assets purchased. There are no customer deposits, guaranteed revenue contracts, developer agreements, customer advances, or leases that must be disposed of in relation to the transfer. The utility and land were purchased for \$1,900,000. The purchase was financed with equity from the buyer's parent, Utilities, Inc.

Proof of Ownership. Rule 25-30.037(2)(q), Florida Administrative Code, requires proof that the utility owns or has provided for the continued use of the land upon which the utility facilities are located. Subsequent to the filing, a copy of the recorded special warranty deed was provided as proof that UIHI owns the land upon which the utility's facilities are located.

Public Interest. The application also contains a statement, pursuant to Rule 25-30.037(2)(j), Florida Administrative Code, regarding how the transfer is in the public interest. According to the application the transfer is in the public interest because the seller is no longer interested in continuing in the utility business. In addition, UIHI is a wholly-owned subsidiary of Utilities, Inc. UIHI will own and operate the utility system. Utilities, Inc. and its subsidiaries are not developers, nor are they developer related. According to UIHI, the transfer is also in the public interest because of Utilities, Inc.'s experience in the utility industry, and its technical and financial ability.

With regard to the buyer's technical ability, Utilities, Inc. has approximately thirty-five years of experience in the water and wastewater utility industry, including twenty-five years of experience under the regulation of this Commission. According to its application, at the present time, Utilities, Inc. provides safe and reliable water and wastewater service to approximately 230,000 customers in sixteen state.

With regard to the buyer's financial ability, a statement was provided that it has the financial ability to ensure consistent compliance with Florida Department of Environmental Protection (FDEP) regulations. Utilities, Inc. has the capability to provide investment capital at reasonable rates to UIHI. UIHI will receive the benefit of centralized management, accounting, billing, and data processing functions, resulting in the economies of scale that would be unattainable on a stand-alone basis. Additionally, the application contains a statement that the buyer will fulfill the commitments, obligations, and representations of the sellers with regard to utility matters.

The application states that the buyer has performed a reasonable investigation of the utility system as required by Rule 25-30.037(2)(p), Florida Administrative Code. The buyer included a statement that the system appears to be in satisfactory condition and in compliance with all applicable standards set by the FDEP. Staff has contacted the FDEP and verified that there are no outstanding notices of violation.

The utility's service area is essentially built out. The capacity of the water plant is 400,000 gallons per day (gpd) and the capacity of the wastewater plant is 300,000 gpd. The water treatment plant is composed of two wells and reverse osmosis is the form of treatment used. Effluent disposal is provided by evaporation, spray irrigation and percolation ponds. Reclaimed water is sent to the golf course irrigation system which is located within the property.

Annual Reports & Regulatory Assessment Fees. Rule 25-30.037(2)(r), Florida Administrative Code, requires the application to contain a statement regarding the disposition of any outstanding RAFs, fines, or refunds owed. The application states that all RAFs have been paid by Columbia and no refunds or fines are outstanding. Staff verified that the utility paid all RAFs through December 31, 2003, filed all annual reports through 2003 and that there were no outstanding penalties, refunds, or interest due as of December 31, 2003. In addition, Columbia Properties Stuart, LLC will be responsible for the payment of all RAFs due for revenues received through the date of closing. A 2004 RAFs form has been sent to Columbia. UIHI will be responsible for the payment of all RAFs due thereafter and for filing the 2004 annual report for January 1 through December 31, 2004.

Docket No. 040179-WS
Date: September 23, 2004

The previous owner, Columbia Sussex Corporation, has provided a letter stating that the utility's original continuing property records have been transferred to Utilities, Inc. Additionally, the utility indicated that it has adjusted its books in accordance with Commission Order No. PSC-04-0438-PAA-WS, and that the utility's books and records reflect all Commission-approved balances for rate base by the applicable National Association of Regulatory Utility Commissioners (NARUC) Uniform System of Accounts (USOA) primary accounts. UIHI should be put on notice that this system will be added to the list of companies included in Docket No. 040316-WS, In Re: Analysis of Utilities, Inc.'s plan to bring Florida subsidiaries into compliance with Rule 25-30.115, Florida Administrative Code, so that it can be monitored along with other Utilities, Inc. subsidiary systems in Florida to ensure compliance with Rule 25-30.115, Florida Administrative Code.

Based on the above, staff recommends that the transfer of facilities and Certificate Nos. 336-W and 291-S from Columbia Properties Stuart, LLC to UIHI is in the public interest and should be approved. The transfer should be effective on the day of the Commission vote. A description of the territory being transferred is appended to this recommendation as Attachment A.

Issue 2: Should an acquisition adjustment be included in the calculation of rate base?

Recommendation: No. Pursuant to Rule 25-30.0371(2), Florida Administrative Code, an acquisition adjustment should not be included in rate base. (Johnson, Fleming)

Staff Analysis: An acquisition adjustment results when the purchase price differs from the rate base at the time of the acquisition. The acquisition adjustment resulting from the transfer of Columbia to UIHI would be calculated as follows:

Purchase Price	\$1,900,000
Less Staff Calculated Rate Base ¹	\$1,531,055
Positive Acquisition Adjustment	<u>\$368,945</u>

Pursuant to Rule 25-30.0371(2), 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 adjustment should not be included in the calculation of rate base for transfer purposes.

¹ Rate base established as of April 30, 2003, pursuant to Order No. PSC-04-0438-PAA-WS, In Re: Joint application for transfer of Certificates Nos. 336-W and 291-S in Martin County from IHC Realty Partnership L.P. d/b/a Plantation Utilities to Columbia Properties Stuart, LLC.

Issue 3: Should Utilities, Inc. of Hutchinson Island adopt and use the rates and charges approved by this Commission for Columbia Properties Stuart, LLC.?

Recommendation: Yes, Utilities, Inc. of Hutchinson Island should continue charging the rates and service availability charges approved for this utility system until authorized to change by the Commission in a subsequent proceeding. The tariff reflecting the change in ownership should be effective for services rendered or connections made on or after the stamped approval date. (Johnson)

Staff Analysis: The utility's current water and wastewater rates were approved November 30, 1996, pursuant to an administratively approved 1996 price index adjustment. The utility's current miscellaneous service charges and wastewater service availability charges became effective September 29, 1989 pursuant to Order No. 21415, issued June 20, 1989, in Docket No. 880654-SU, In Re: Application of Radnor/Plantation Utilities For An Increase In Sewer Rates In Martin County. The utility does not have any service availability charges for water service. The utility's approved rates and charges are as follows:

WATER

Residential and General Service

Monthly Service Rates

<u>Flat Rate per 1,000 gallons</u>	
All Customers	\$ 7.56

WASTEWATER

Monthly Service Rates

Residential

<u>Meter Size:</u>	<u>Base Facility Charge:</u>
All Meter Sizes	\$ 11.12
Charge per 1,000 gallons (Maximum 6,000 gallons)	\$ 4.47

General Service

<u>Meter Size:</u>	<u>Base Facility Charge:</u>
5/8" x 3/4"	\$ 11.12
1"	\$ 27.79
1-1/2"	\$ 55.59
2"	\$ 88.94
3"	\$177.90
4"	\$333.56
6"	\$694.91
Charge per 1,000 gallons (No Maximum)	\$ 5.38

Miscellaneous Service Charges

Initial Connection Fee	\$ 15.00
Normal Reconnection Fee	\$ 15.00
Violation Reconnection Fee:	
Water	\$ 15.00
Wastewater	Actual Cost
Premises Visit Fee (in lieu of disconnection)	\$ 10.00

Service Availability Charges

Wastewater System Capacity Charge	\$1,000.00
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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 . . . 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.

UIHI has not requested a change in the rates or service availability charges of the utility. Accordingly, staff recommends that the utility continue operations under the existing tariff and apply the approved rates and charges until authorized to change by the Commission in a subsequent proceeding. UIHI has filed a tariff reflecting the transfer of ownership. The tariff should be effective for services rendered or connections made on or after the stamped approval date.

Docket No. 040179-WS
Date: September 23, 2004

Issue 4: Should Utilities, Inc. of Hutchinson Island's request to use the uniform Allowance for Funds Used During Construction (AFUDC) rate granted in Order No. PSC-04-0262-PAA-WS be approved?

Recommendation: Yes. An annual AFUDC rate of 9.03% with a discounted monthly rate of 0.751966% should be approved for UIHI's which is consistent with Order No. PSC-04-0262-PAA-WS. The rate should be applicable for eligible construction projects. (Johnson)

Staff Analysis: UIHI is a subsidiary wholly owned by Utilities, Inc. Pursuant to Order No. PSC-04-0262-PAA-WS, issued March 8, 2004, in Docket No. 031006-W In Re: Petition by Utilities, Inc. for approval of allowance for funds used during construction (AFUDC) rate for its Florida subsidiaries including Water Service Corp., all Commission-regulated subsidiaries of Utilities, Inc., including Utilities, Inc. of Florida were authorized to use the uniform AFUDC rate of 9.03% with a monthly discounted rate of 0.751966%. The Commission found it to be equitable, prudent and cost effective to approve a uniform AFUDC rate for all Commission-regulated subsidiaries of Utilities, Inc. Therefore, staff recommends that an AFUDC rate of 9.03% with a monthly discounted rate of 0.751966% be approved for eligible construction projects.

Issue 5: Should the Commission approve a wastewater tariff reflecting the reclaimed water class of service for the golf course located in the Hutchinson Island Resort?

Recommendation: Yes. The utility has filed a wastewater tariff reflecting the reclaimed water class of service at a zero rate for the golf course located within the Hutchinson Island Resort. The tariff should be effective for services rendered on or after the stamped approval date of the tariff. The utility should return to the Commission for a determination regarding rates for reclaimed water service prior to providing that service to any other customers. (Walden)

Staff Analysis: Due to growing concerns over water conservation, reclaimed water is increasingly being viewed as an alternative source of water for irrigation of golf courses and, in some cases, residential communities. Along with the increased use of reclaimed water comes a recognition that there are costs associated with the provision of reclaimed water. Consequently, it has become Commission practice to recognize reclaimed water service as a class of service which should be included in the utility's tariff, even if the utility is not currently assessing a charge for the service.

Although there are costs associated with the provision of reclaimed water service, there are cases in which the "avoided costs" outweigh the actual cost of the service, and thus not charging for the effluent is justified. For example, disposing of effluent on non-utility property may delay or even eliminate the need for the utility to purchase additional land for spray fields or percolation ponds, thereby resulting in lower rates for the utility's existing wastewater customers.

In this case, UIHI operates a 300,000 gpd wastewater treatment plant. The utility's reclaimed water goes into percolation ponds owned by the utility. The percolation ponds are defined as rapid-rate infiltration basins (RIBS), and have a disposal capacity of .100 million gallons per day. UIHI is permitted to use the reclaimed water to irrigate the golf course. During periods when the reclaimed water is not needed for irrigation or does not meet reclaimed water standards, the water is discharged into the RIBS for disposal.

The utility believes, and staff agrees, that a zero charge for reuse should be approved in order to encourage the golf course to take the reclaimed water. Should the utility wish to charge for reuse service at a later time, an application will need to be filed with the Commission to establish a charge for reuse service, pursuant to Section 367.091, Florida Statutes.

For the foregoing reasons, the utility's wastewater tariff reflecting the reclaimed water class of service at a zero rate for the Resort's golf course should be approved. The tariff should be effective for services rendered on or after the stamped approval date of the tariff. The utility should return to the Commission for a determination regarding rates for reclaimed water service prior to providing that service to any other customers.

Docket No. 040179-WS
Date: September 23, 2004

Issue 6: Should this docket be closed?

Recommendation: Yes. If no timely protests are filed by a substantially affected person to the proposed agency action Issue Nos. 2, 4, and 5, a Consummating Order should be issued upon the expiration of the protest period and the docket should be closed. (Fleming)

Staff Analysis: If no timely protests are filed by a substantially affected person to the proposed agency action Issue Nos. 2, 4, and 5, a Consummating Order should be issued upon the expiration of the protest period and the docket should be closed.

UTILITIES, INC. OF HUTCHINSON ISLAND

MARTIN COUNTY

WATER AND WASTEWATER TERRITORY DESCRIPTION

UTILITY SERVICE AREA

Being a parcel of land lying in Government Lots 3, 4, 5, 6, 7, 8, 9 and 10 of Section 31, Township 37 South, Range 42 East and a portion of Government Lot 1 of Section 32, Township 37 South, Range 42 East, more particularly described as follows:

Begin at a point of intersection of the Southeasterly Right-of-Way line of State Road A-1-A (being a 200 feet Right-of-Way) and the South line of the North 1000 feet of Government Lots 3, 4 and 5 of said Section 31; thence North $88^{\circ}44'44''$ said South line of the North 1000 feet of Government Lots 3, 4 and 5, a distance of 1650 feet more or less to the Mean High Water line of the Atlantic Ocean; thence Southeasterly along the Mean High Water line of the Atlantic Ocean, a distance of 1880 feet more or less to the Easterly prolongation of the South line of Government Lot 6 of Section 31, Township 37 South, Range 42 East; thence North $89^{\circ}3'27''$ West along the Easterly prolongation of the South line of Government Lot 6, a distance of 510 feet more or less to the Easterly Right-of-Way of MacArthur Boulevard relocated, as recorded in O.R. Book 438, Page 293 through 295, Public Records of Martin County, Florida; thence along said South line of Government Lot 6 of Section 31, Township 37 South, Range 42 East, a distance of 396.89 feet; thence departing said South line of Government Lot 6, North $01^{\circ}10'31''$ East, a distance of 45.00 feet; thence North $89^{\circ}23'27''$ West, a distance of 231.50 feet; thence North $01^{\circ}10'31''$ East, a distance of 45.00 feet; thence North $89^{\circ}23'27''$ West, a distance of 60.00 feet; thence South $01^{\circ}10'31''$ West, a distance of 735.34 feet; thence South $43^{\circ}49'29''$ East, a distance of 69 feet more or less to the Mean High Water line of the Indian River; thence along the Mean High Water line of the Indian River, Southerly, Westerly and Northwesterly, a distance of 4950 feet more or less; thence North $12^{\circ}15'46''$ West, a distance of 174 feet more or less to the Easterly Right-of-Way line of State Road A-1-A; thence along the Easterly Right-of-Way of State Road A-1-A, (being a 200 foot Right-of-Way), North $62^{\circ}27'20''$ East, a distance of 1937.31 feet to the **Point of Beginning**.

TOGETHER WITH THE FOLLOWING:

Commence at a point of intersection of the Southeasterly right-of-way of State Road A-1-A being a 200 foot right-of-way and the South line of the North 1000 feet of Government Lot 4 of said Section 31, thence North $88^{\circ}44'44''$ West, along said South line of the north 1000 feet, a distance of 415.17 feet to the Northwesterly right-of-way line of State Road A-1-A and the Point of Beginning of the following described parcel:

Thence continue North $88^{\circ}44'44''$ West, along the aforesaid South line of the North 1000 feet, a distance of 1505.00 feet more or less to the intersection with the Mean High Water line of the

Docket No. 040179-WS

Date: September 23, 2004

Indian River; thence meander the said Mean High Water line Southerly, a distance of 375.00 feet more or less to the intersection with the North line of said Government Lot 8; thence South $89^{\circ}07'26''$ East, along said North line of Government Lot 8, a distance of 351.00 feet more or less to that point of intersection with a line that is 880.00 feet West of, as measured at right angles and parallel with the East line of said Government Lot 8, thence South $00^{\circ}59'59''$ West, along lastly said line, a distance of 248.73 feet to the said Northwesterly right-of-way line of State Road A-1-A; thence North $62^{\circ}27'20''$ East, along said Northwesterly right-of-way line, a distance of 1245.66 feet to the **Point of Beginning**.