

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Application for transfer of all water facilities of Suwannee Valley Estates in Columbia County to Consolidated Water Works, Inc. (holder of Certificate No. 393-W), for cancellation of Certificate No. 421-W, and for amendment of Certificate No. 393-W.

DOCKET NO. 030991-WU
ORDER NO. PSC-04-0993-PAA-WU
ISSUED: October 11, 2004

The following Commissioners participated in the disposition of this matter:

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

ORDER APPROVING TRANSFER OF WATER FACILITIES, CANCELLATION OF
CERTIFICATE NO. 421-W, AND AMENDMENT OF CERTIFICATE NO. 393-W

AND

NOTICE OF PROPOSED AGENCY ACTION
ORDER REGARDING ESTABLISHMENT OF RATE BASE
AND ACQUISITION ADJUSTMENT

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein regarding establishment of rate base and 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.

Introduction

Suwannee Valley Estates (Suwannee Valley) is a Class C water utility located in Columbia County that serves approximately 16 water customers. The Commission issued

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Suwannee Valley Water Certificate No. 421-W on December 9, 1983.¹ The utility's service area is in the Suwannee River Water Management District. It is not in a water use caution area. Wastewater service is provide by septic tanks. The utility's 2003 annual report reflects operating revenues of \$2,326 and an operating loss of (\$3,568).

On October 20, 2003, Consolidated Water Works, Inc. (CWW or Buyer) filed an application for transfer of the Suwannee Valley utility facilities and certificate to CWW. According to the application, on October 9, 2003, CWW entered into an agreement to purchase the utility and the land upon which the facilities were located for a purchase price of \$15,000. On May 10, 2004, CWW completed all of the filing requirements for its application for transfer of Certificate No. 421-W from Suwannee Valley to CWW.

As explained below, we approve the transfer of the water facilities from Suwannee Valley to CWW, the cancellation of Certificate No. 421-W, and the amendment of Certificate No. 393-W held by CWW to include the Suwannee Valley territory, effective September 21, 2004. A description of the territory to be transferred is appended to this Order as Attachment A and incorporated herein. We direct CWW to submit a warranty deed within 60 days of the date this order becomes final, showing that ownership of the land upon which the Suwannee Valley facilities are located has been properly conveyed to CWW. CWW is responsible for remitting the 2004 annual report and all future regulatory assessment fees (RAFs) and annual reports. We also find that rate base shall be set at \$0 for purposes of the transfer, and we direct CWW to provide proof within 60 days of the date this order becomes final, that it has set up the books and records for all of CWW, including the Suwannee Valley system, using the National Association of Regulatory Utility Commissioners (NARUC) Uniform System of Accounts (USOA) and that the beginning plant balances for the Suwannee Valley system reflect the balances established pursuant to this order.

The Transfer

We find that the application for transfer is in compliance with the governing statute, Section 367.071, Florida Statutes, other statutes and rules pertinent to an application for transfer, and is in the public interest.

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 contract in question here has been made contingent upon the Commission's approval. The closing is scheduled to take place thirty days after we approve the transfer.

¹ See Order No. 12762, in Docket No. 820346-W, In Re: Application of Suwannee Valley Estates for a Certificate to Operate a Water Utility Pursuant to Section 367.171, Florida Statutes.

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. No 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, regarding terms of the sale and financing of the purchase, including a copy of the purchase agreement. The purchase price for the utility and land is \$15,000. The buyer obtained a five year loan to purchase Suwannee Valley. Customer deposits were transferred to the buyer.

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. The application included an unexecuted sample of the warranty deed to be recorded after closing on the sale. CWW has asked that it be allowed to provide proof that the utility owns the land upon which its facilities are located after the closing. According to CWW, upon the issuance of our Order approving the transfer application, the ownership of all utility land will be transferred to CWW. CWW shall provide a warranty deed or proof that the utility owns or has continued use of the land upon which its facilities are located within 60 days of our order becoming final.

Public Interest. The application also contains a statement, pursuant to Rule 25-30.037(2)(j), Florida Administrative Code, that the transfer is in the public interest because the buyer has the expertise and finances to operate the utility to better serve the customers. CWW is a corporation owned by a father and son, which consists of several small utility systems. While we note that CWW has upon occasion provided poor management and questionable service², the current owners of Suwannee Valley no longer want to be in the utility business and the plant has deteriorated under their management. CWW does not have any outstanding consent orders from the Florida Department of Environmental Protection (FDEP) and has complied with the directives of this Commission. It appears at this time that CWW is making an effort to maintain and improve the utility systems that it owns. Therefore, we find that CWW can increase the quality of customer service and efficiencies of the utility through economies of scale. Further, CWW has shown sufficient technical and financial ability to operate the system. The application included the financial statements of one of the owners of CWW, which shows adequate net worth. While most of the assets are in real estate, the statement also describes liquid assets, as well as the ability to attract financing. The utility's investment capital will be provided by CWW's owner, Mr. Espenship. We find these assets are sufficient to ensure continued financial stability. With regard to technical ability, we recognize that CWW has been a certificated utility since 1983. CWW's owner has operated water utilities since 1972. Therefore, we find that the requisite technical ability has been demonstrated. Also, the application contains a statement that

² See, Order No. PSC-01-1988-PAA-WU, issued October 8, 2001, in Docket No. 001682-WU, In Re: Application for staff-assisted rate case in Columbia County by Consolidated Water Works, Inc.

the buyer will fulfill the commitments, obligations, and representations of the sellers with regard to utility matters.

Pursuant to Rule 25-30.037(2)(p), Florida Administrative Code, CWW states in the application that it has performed a reasonable investigation of the Suwannee Valley system, and it appears to be in satisfactory condition and in compliance with all applicable standards set by the FDEP. The FDEP has that there are no outstanding notices of violation. The water treatment plant is composed of one 4-inch well. Liquid chlorination is used as the primary form of treatment. The average daily flow for the calendar year 2003 was approximately 10,247 gallons per day (gpd). Given the age of the system, the new owners of Suwannee Valley have initiated replacement of approximately 16 residential meters, back flow valves, meter boxes, curb stops, locks, and electrical repairs after completing a preliminary investigation of the subdivision. The cost for these repairs is estimated to be \$5,804.

Annual Reports & Regulatory Assessment Fees. Rule 25-30.037(2)(r), Florida Administrative Code, requires that the application contain a statement regarding the disposition of any outstanding RAFs, fines, or refunds owed. The application states that all RAFs, fines, and refunds have been paid by the applicant. We have verified that the RAFs and annual reports have been filed through December 31, 2003, and that there are no outstanding penalties, refunds or interest as of December 31, 2003 for RAFs or Annual Reports. CWW will be responsible for remitting the 2004 and all future RAFs and annual reports.

As stated above we find that the transfer of the Suwannee Valley facilities to CWW is in the public interest and we approve it, effective September 21, 2004. Suwannee Valley's Certificate No. 421-W shall be canceled and CWW's Certificate No. 393-W amended to include the additional territory. CWW shall submit a warranty deed within 60 days of the date this Order becomes final, reflecting that ownership of the land upon which the Suwannee Valley facilities are located has been properly conveyed to CWW.

Rate Base

We have not been able to calculate the rate base for Suwannee Valley for transfer purposes based upon the information we have at this time. We therefore set rate base at \$0 for transfer purposes as of December 30, 2002, and we direct the utility to provide proof within 60 days of this Order becoming final that it has organized the books and records for all of CWW, including the Suwannee Valley system, using the National Association of Regulatory Utility Commissioners (NARUC) Uniform System of Accounts (USOA), and that the beginning plant balances for the Suwannee Valley system reflect the balances established pursuant to this Order.

We have not previously established a rate base for Suwannee Valley. Since it is the Commission's practice to establish rate base as of the date of transfer, our staff conducted an audit of the books and records of the utility to determine rate base. The audit report contained

several audit exceptions, and could not determine rate base from the information provided by the utility. The audit exceptions are explained below.

Audit Exception No. 1. This exception was the audit opinion that the utility was not maintaining its books pursuant to Rule 25-30.115(1), Florida Administrative Code, which requires all water and wastewater utilities to maintain their accounts and records in conformance with the NARUC Uniform System of Accounts. CWW has asserted that it does intend to bring the utility's books and records into compliance with the 1996 NARUC USOA. We direct the utility to provide proof, within 60 days of our Order becoming final, that it has set up the books and records for all of CWW, including the Suwannee Valley system, using the NARUC USOA and that the beginning plant balances for the Suwannee Valley system reflect the balances established pursuant to this Order.

Audit Exception No. 2. This exception noted that without an official starting point, a per audit balance could not be established for land. As mentioned earlier, there is no general ledger and there is no land recorded in the annual report for Suwannee Valley. The company provided a deed that listed the well and the utility on the same lot. In addition, the deed indicates that the land and the utility is owned by Mr. Bud Espenship and Mr. Dave Mangrum. The application for transfer does not mention Mr. Dave Mangrum. Mr. Mangrum informed the staff auditor that he was not aware of the application for transfer or the sale of the utility. Subsequent to the audit report Mr. Mangrum signed over his interest in the land and the utility to Mr. Bud Espenship, the owner of Suwannee Valley.

Audit Exception No. 3. The utility collected deposits from its customers at the rate of two times the monthly flat charge of \$12. The utility has a total of sixteen customers and a deposit of \$24 from each customer, which amounts to \$384 in customer deposits. Rule 25-30.311(4)(a), Florida Administrative Code, requires each utility that requires deposits from its customers to pay a minimum interest on such deposits of 6 percent per annum. Subsequent to the purchase agreement, the deposits of \$384 were transferred to the purchaser of the utility. The new owner has stated that the customers deposits will be refunded with interest as required by Rule 25-30.311(4)(a), Florida Administrative Code.

Audit Exception No. 4. The utility could not provide original source documents for plant in service, due to the lack of books and records. The utility's tax return and the annual report to the Commission listed no plant. Our audit staff found five invoices for plant replacement items. **The five plant items have a combined plant total of \$2,359.** The corresponding accumulated depreciation is \$918 for a net plant balance of \$1,441. The rate base for this system could be set at \$1,441, based on the records that are available, but that amount would not include the cost of land, lines and CIAC. Due to the lack of books and records, the auditors could not determine the value of these items. Our staff suggested that CWW should prepare an original cost study to calculate the value of the plant, but CWW stated that the plant is practically fully depreciated and it would not be prudent to incur the expense for a cost study. CWW acknowledged that without an original cost study and books and records, it expects that

we will set rate base at \$0. In light of the absence of books and records and the utility's decision not to prepare an original cost study, we find that we must set rate base at \$0 for the water system as of December 30, 2002, for transfer purposes. We note with approval that CWW has hired an accountant to handle its books and records and has agreed to use the NARUC USOA going forward.

Acquisition Adjustment

We do not intend to include an acquisition adjustment in our calculation of rate base. In this case, because we have set rate base at \$0, the purchase price of \$15,000 would produce a positive acquisition adjustment. Rule 25-30.0371(2), Florida Administrative Code, provides that a positive acquisition adjustment shall not be included in rate base absent proof of extraordinary circumstances. CWW has not requested an acquisition adjustment, and no extraordinary circumstances have been identified.

Rates and charges

We approved Suwannee Valley's rates and charges December 9, 1983.³ Those rates and charges are as follows:

Monthly Water Service Rates

Residential

Flat Rate per month	\$12.00
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Miscellaneous Service Charges

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

³ See Order No. 12762, in Docket No. 820346-W, In Re: Application of Suwannee Valley Estates for a Certificate to Operate a Water Utility Pursuant to Section 367.171, Florida Statutes.

Service Availability Charges

Meter Installation Charge \$200.00

Rule 25-9.044(1), Florida Administrative Code, provides that in cases of change of ownership or control of a utility that place the operation under a different or new utility, the company that will thereafter operate the utility business must adopt and use the rates, classifications and regulations of the former operating company unless authorized to change by the Commission. We find that the utility shall continue operations under the existing tariff and apply the approved rates and charges until authorized to change by the Commission in a subsequent proceeding. As noted above, CWW intends to file a rate proceeding at a later date. CWW has filed a revised tariff reflecting the transfer to CWW. The tariff filing should be effective for services rendered or connections made on or after the stamped approval date.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Application for transfer of all water facilities of Suwannee Valley Estates in Columbia County to Consolidated Water Works, Inc. (holder of Certificate No. 393-W), for cancellation of Certificate No. 421-W, and for amendment of Certificate No. 393-W is approved, effective September 21, 2004. It is further

ORDERED that Attachment A to this Order is incorporated herein. It is further

ORDERED that the utility shall continue to operate under its existing tariffs and apply its approved rates and charges as described in the body of this Order until authorized to change them in a subsequent proceeding. It is further

ORDERED that the utility's rate base for transfer purposes is \$0, and an acquisition adjustment shall not be included in rate base. It is further

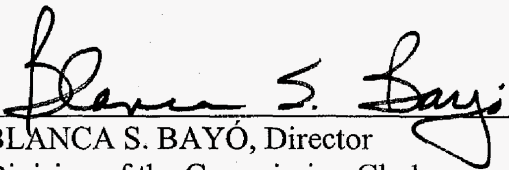
ORDERED that the portion of this Order establishing the utility's rate base for purposes of the transfer and denying an acquisition adjustment shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative 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 this docket shall remain open pending receipt of evidence that CWW owns or has continued use of the land upon which its facilities are located, and pending receipt of proof that it has set up its books and records using the NARUC Uniform System of Accounts. Once the recorded deed and proof of appropriate accounting procedures have been received, and

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it is verified that the submissions satisfy the requirements of Rule 25-30.037(2)(q), Florida Administrative Code, this docket may be closed administratively if no timely protest to the portion of this Order establishing rate base and denying an acquisition adjustment has been filed by a substantially affected person.

By ORDER of the Florida Public Service Commission this 11th day of October, 2004.



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

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, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, 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 and/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.