

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

76
In re: Application for Transfer of) DOCKET NO. 900106-WS
Assets From King Cove Utilities, Inc.)
to J. Swiderski Utilities, Inc. and) ORDER NO. 23378
Amendment of Certificates Nos. 441-W)
and 371-S in Lake County.) ISSUED: 8-21-90
_____)

The following Commissioners participated in the disposition of this matter:

MICHAEL McK. WILSON, Chairman
THOMAS M. BEARD
BETTY EASLEY
GERALD L. GUNTER
FRANK S. MESSERSMITH

ORDER APPROVING TRANSFER

AND

NOTICE OF PROPOSED AGENCY ACTION
ORDER ESTABLISHING RATE BASE FOR PURPOSES
OF THIS TRANSFER AND SETTING RATES AND CHARGES

BY THE COMMISSION:

Notice is hereby given by the Florida Public Service Commission that the action discussed herein is final except for the establishment of rate base and the setting of rates and charges, which are preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for formal proceeding pursuant to Rule 25-22.029, Florida Administrative Code.

Background

On February 12, 1990, Joe Swiderski filed an application with this Commission for the transfer of assets from Kings Cove Utilities, Inc. (Kings Cove or Utility) to J. Swiderski Utilities, Inc. (J. Swiderski). Kings Cove currently serves 118 single family homes within the King's Cove Subdivision.

Kings Cove has been owned since March of 1988 by the Citizens National Bank of Leesburg (CNB). CNB obtained the Utility as well as vacant land within the King's Cove subdivision through foreclosure and has operated the Utility pending resale.

DOCUMENT NUMBER-DATE

07538 AUG 21 1990

PSC-RECORDS/REPORTING

Under a separate contract, Mr. Swiderski also purchased the lots within the King's Cove Subdivision owned by CNB. The contract for sale of the Utility contained the provision that closing would not occur until the transfer is approved by this Commission.

Incorporation and Name Change

On February 15, 1990, Mr. Swiderski advised the Commission that on January 2, 1990 he incorporated his existing utility within Lake County. Since the utility is still jointly owned and controlled by Joe and Joan Swiderski, this action does not constitute a transfer or change in majority organizational control requiring approval of the Commission. However, the Commission must recognize this change to reflect the proper legal name of the utility upon its certificates. Therefore, we acknowledge the corporate status of J. Swiderski Utilities, Inc.

Application

The application is in compliance with Section 367.071, Florida Statutes, and other pertinent statutes and administrative rules concerning an application for transfer. In particular, the notarized application contains:

- 1) A filing fee in the amount of \$300, as prescribed by Rule 25-30.020, Florida Administrative Code.
- 2) Proof of notice to all interested governmental and regulatory agencies and all utilities within a four-mile radius of the territory, and proof of advertisement in a newspaper of general circulation in the county, as prescribed by Rule 25-30.030, Florida Administrative Code.
- 3) Proof of notice to all customers of record pursuant to 25-30.030(g), Florida Administrative Code.
- 4) Evidence that the utility owns the land upon which the utility's facilities are located as required by Rule 25-30.035(4)(f), Florida Administrative Code.

No objections to the notice of application have been received and the time for filing such has expired.

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Mr. Swiderski, initially noticed the proposed transfer under JSS Utilities, Inc., since it was his intent to operate the utility as a separate entity. Upon being advised that since he was already certificated within Lake County, he could operate both utilities under his initial certificates, Mr. Swiderski renoticed under J. Swiderski Utilities, Inc.

A description of the territory to be transferred is shown on Attachment A of this Order.

Since Mr. Swiderski has satisfactorily operated J. Swiderski Utilities, Inc. since 1988, we believe that he has shown technical expertise to operate Kings Cove. Further, within his application, Mr. Swiderski listed the Citizens National Bank of Leesburg as a credit reference. A check with the bank indicated that Mr. Swiderski has outstanding credit as well as financial resources for operation and expansion of the Utilities.

The Department of Environmental Regulation (DER) was contacted to determine if Kings Cove had any outstanding violations. DER indicated that Kings Cove presently has no outstanding notice of violations.

Based upon the foregoing, we find that the transfer is in the public interest and it is, therefore, approved. Certificates Nos. 441-W and 371-S, currently held by J. Swiderski Utilities, Inc., are hereby amended to include the territory served by Kings Cove, as described in Attachment A of this Order. Certificate Nos. 351-W and 307-S, held by Kings Cove, are hereby cancelled. Certificates Nos. 441-W and 371-S shall be returned to this Commission within 30 days of this Order for appropriate entry. Certificate Nos. 351-W and 307-S shall be returned to this Commission within 30 days of this Order for cancellation.

Rate Base

An audit of the books and records of the Utility has been conducted to determine rate base (net book value) at the time of transfer. Rate base was last established for Kings Cove in March, 1988, the date the bank foreclosed on the Utility. Within this docket, additional plant-in-service for both the water and wastewater systems and additional contributions-in-aid-of-construction (CIAC) attributable to customer growth have

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been considered. Accumulated depreciation and amortization of CIAC have been updated based upon the 2 1/2% rate used pursuant to Order No. 21557.

Upon foreclosure, CNB became the sole shareholder of Kings Cove. CNB did not maintain separate books and records for the Utility, but instead treated it as a bank asset. The audit disclosed that 1989 plant additions in the amount of \$69,685 for water and \$46,879 for wastewater were recorded on the books of the bank instead of the Utility. According to CNB, banking laws require improvements to bank assets to be recorded on the bank's books since such improvements were made with bank revenues. Further, CNB stated that none of this cost will be treated as a gain or loss upon sale of the asset.

An additional well and lines were constructed by CNB during the time the bank owned the Utility. Since CNB did not expense these improvements, it is obvious it was not its intent to donate the improvements to the Utility. These improvements were specified within the sales contract and Mr. Swiderski is aware that they are included within the purchase price.

The audit, conducted by Commission Staff, indicates that since the improvements were not placed on the utilities books they may be considered CIAC. We have, however, treated the improvements as Utility investment.

Our calculation of rate base is shown on Schedules Nos. 1 and 2, for the water and wastewater systems, respectively. Adjustments to rate base are itemized on Schedule No. 3. Based on the adjustments set forth herein, rate base for Kings Cove Utilities, Inc. is \$87,078 for the water system and \$93,596 for the wastewater system as of March 31, 1990, the date of the audit.

This rate base calculation is used purely to establish the net book value of the property being transferred and does not include the normal ratemaking adjustments of working capital calculations and used and useful adjustments.

An acquisition adjustment results when the purchase price differs from the original cost calculation. It is Commission

policy that in the absence of extraordinary circumstances, the purchase of a utility system at a premium or discount shall not affect the rate base calculation. Since an acquisition adjustment has not been requested and since the circumstances in this exchange do not appear to be extraordinary, an acquisition adjustment is not included in the calculation of rate base.

Rates and Charges

The present rates and charges approved for Kings Cove are as follows:

Water

(Monthly)

Base Facility Charge	\$ 3.96
Gallorage (per 1,000 gallons)	.39¢

Wastewater

(Monthly)

Base Facility Charge	\$ 1.82
Gallorage (per 1,000 gallons, Maximum 10,000)	\$ 1.60

Tap-In Fees

(per connection)

Water -	\$65.00
Wastewater -	\$35.00

The Utility does not collect deposits or have approved miscellaneous service charges.

Rule 25-9.044(1), Florida Administrative Code, states that the new owner of a system must adopt and use the rates, classification and regulations of the former operating company unless authorized to change by the Commission. J. Swiderski Utilities, Inc. has not requested a change in the rates and

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charges of the Utility and we see no reason to change them at this time. Therefore, J. Swiderski shall continue to charge the rates and charges previously approved for Kings Cove. J. Swiderski shall file revised tariff sheets incorporating Kings Cove's rates, charges, territory, and the utility name change within 30 days of the date of this Order. The tariff sheets shall be effective for service provided or connections made after the stamped approval date.

It is, therefore,

ORDERED by the Florida Public Service Commission that the transfer of assets from Kings Cove Utilities, Inc., Post Office Box 490047, Leesburg, Florida 34749-0047, to J. Swiderski Utilities, Inc., 10041 US Highway 441, Suite B, Leesburg, Florida 34788, is hereby approved. It is further

ORDERED that Certificates Nos. 441-W and 371-S, held by J. Swiderski Utilities, Inc., shall be returned to this Commission within 30 days of the date of this Order for appropriate entry. It is further

ORDERED that Certificates Nos. 351-W and 307-S, held by Kings Cove Utilities, Inc., shall be returned to this Commission within 30 days of the date of this Order for cancellation. It is further

ORDERED that rates base, which for transfer purposes reflects the net book value, is \$87,078 for the water system and \$93,596 for the wastewater system. It is further

ORDERED that J. Swiderski Utilities, Inc. shall continue to charge the rates and charges previously approved for Kings Cove Utilities, Inc., as set forth in the body of this Order. It is further

ORDERED that J. Swiderski Utilities, Inc. shall file revised tariff sheets incorporating Kings Cove's rates, charges, territory and the Utility name change within 30 days of the date of this Order. The tariff sheets shall be effective for service provided or connections made after the stamped approval date. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective unless

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an appropriate petition in the form provided by Rule 25-22.36, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 101 East Gaines Street, Tallahassee, Florida 32399-0870, 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 that this Order becomes final, this docket shall be closed.

By ORDER of the Florida Public Service Commission,
this 21st day of AUGUST, 1990.



STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

ALC

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 action establishing rate base and setting rates and charges is 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

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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 his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on September 11, 1990. 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, and as reflected in a subsequent order.

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 sewer 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 sewer 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

- Township 19 South, Range 24 East
Section 1
King's Cove Subdivision

Commencing at the Southeast corner of the Southwest 1/4 of said Section 1, thence South 89°52'46" West, along the South line of the said 1/4 1118.22 feet to the POINT OF BEGINNING: thence continue South 89°52'46" West, along said South line 339.27 feet; thence North 00°07'14" West, 150.00 feet; thence South 89°52'46" West, 16.72 feet; thence North 00°07'14" West 75.00 feet to the beginning of a curve concave to northwest and having a radius of 25.00 feet; thence southwesterly along said curve through a central angle of 90°00'00", an arc distance of 39.27 feet to the end of said curve; thence South 89°52'46" West, 144.79 feet; thence North 00°07'14" West, 95.47 feet; thence North 43°02'46" West, 95.56 feet; thence North 46°57'14" East, 25.00 feet; thence North 43°02'46" West 150.00 feet to a point on the southerly right-of-way of Twin Palms Road (District Number 1-5915); thence South 46°57'14" West, along said right-of-way 9.25 feet to the beginning of curve concave to the northwest and having a radius of 516.40 feet; thence along the curve through a central angle of 26°21'52" an arc distance of 237.62 feet to the end of said curve; thence South 73°19'06" West, 322.25 feet to the beginning of a curve concave to the Southeast and having a radius of 25.00 feet; thence along said curve through a central angle of 97°42'28", an arc distance of 42.63 feet to the end of said curve and a point on a curve concave to the southwest and having a radius of 1950.08 feet, said point also being on the northeasterly right-of-way of State Road 466-A; thence northwesterly along said right-of-way line through a central angle of 6°55'41", an arc distance of 235.80 feet; thence North 58°40'57" East, 150.00 feet to a curve concave to the southwest and having a radius of 2100.08 feet; thence southerly along said curve through a central angle of 5°19'18" an arc distance of 195.06 feet to a point on the northerly right-of-way line of Twin Palms Road (Dist. 1-5915), thence North 73°19'06" East, along said right-of-way 207.10 feet to a point on a curve concave to the northwest and having a radius of 466.40 feet; thence along said curve through a central angle of 26°21'52", an arc distance of 214.61 feet to the end of said curve; thence North 46°57'14" East, 288.00 feet; thence North 47°35'22" East, 383.18 feet; thence North 48°11'49" East, 325.10 feet to the beginning of a curve concave to the northwest and having a radius of 25.00 feet; thence northerly along said curve through a central angle of 90°00'00", an arc distance

of 39.27 feet to the end of said curve; thence North 41°48'11" West, 349.61 feet to the beginning of a curve concave to the northwest and having a radius of 25.00 feet; thence southwesterly along said curve through a central angle of 89°33'21", an arc distance of 39.08 feet to the end of said curve; thence South 47°45'10" West, 689.81 feet; thence North 42°14'50" West, 518.77 feet; thence South 71°33'26" West 15.82 feet; thence North 8°21'41" West 101.57 feet; thence North 71°33'26" East 55.31 feet; thence North 84°10'30" West 126.10 feet; thence North 61°04'44" East 125.86 feet; thence North 68°08'51" East 91.78 feet; thence North 51°36'12" East 147.29 feet; thence North 54°50'04" East 97.10 feet; thence North 30°13'13" East 72.73 feet; thence South 62°58'24" East 100.16 feet; thence South 30°13'13" West 51.40 feet to a point on a curve concave to the south and having a radius of 50.00 feet; thence northeasterly, easterly, and southeasterly along said curve through a central angle of 107°58'36" an arc distance of 94.23 feet to the end of said curve; thence South 41°48'11" East 744.32 feet to the beginning of a curve concave to the southwest and having a radius of 145.36 feet; thence southeasterly along said curve through a central angle of 13°47'46" an arc distance of 35.00 feet; thence North 70°00'00" East 585.43 feet; thence South 46°20'00" East 178.77 feet; thence South 43°40'00" West 156.00 feet; thence South 320.00 feet; thence West 383.85 feet; thence South 6°30'00" West 115.64 feet; thence South 19°15'00" West 320.00 feet; thence South 45°00'00" West 200.00 feet; thence South 00°07'14" East 110.00 feet; thence South 89°52'46" West 90.00 feet; thence South 00°07'14" East 115.00 feet to the POINT OF BEGINNING.

King's Cove Subdivision

First Addition

Commence at the Southeast corner of the Southwest 1/4 of said Section 1; thence run North along the East line of said Southwest 1/4 a distance of 1481.74 feet to a point of beginning; from said POINT OF BEGINNING run South 55°09'37" East, a distance of 51.01 feet to the beginning of a curve concave to the northerly and having a radius of 523.41 feet; thence run Easterly along said curve through a central angle of 27°50'23", a distance of 254.32 feet to the end of said curve; thence South 83°00'00" East, a distance of 792.23 feet; thence North 07°20'20" West, a distance of 243.14 feet; thence South 82°39'40" West, a distance of 360.00 feet; thence North 83°00'00" West, a distance of 330.00 feet; thence North 07°00'00" East, a distance of 70.00 feet; thence North 83°00'00" West, a distance of 210.00 feet; thence due North 60 feet, thence due West 50.00 feet; thence North 75°56'54" West, a distance of 116.37 feet; thence North

51°39'40" West, 123.16 feet to the beginning of a curve concave Southerly and having a radius of 461.86 feet; thence Westerly and Southwesterly along said curve through a central angle of 80°08'31" a distance of 646.01 feet to the end of said curve; thence South 48°11'49" West 586.30 feet to the Northeasterly right-of-way of Maple Leaf Drive, according to the Plat of King's Cove Subdivision; recorded in Plat Book 22, Pages 44 and 45 of the Public Records of Lake County, Florida; thence run South 41°48'11" East along said right-of-way of Maple Leaf Drive 250.00 feet to the beginning of a curve concave Southwesterly and having a radius of 145.36 feet; thence Southeasterly along said curve through a central angle of 13°47'46", a distance of 35.00 feet; thence North 70°00'00" East 585.43 feet; thence South 46°20'00" East, 178.77 feet; thence North 34°50'11" East, 182.17 feet; thence North 37°51'20" East, 150.00 feet; thence South 51°39'40" East, 103.28 feet to the East line of the Southwest 1/4; thence North along said East line of the Southwest 1/4, 63.74 feet to the POINT OF BEGINNING.

King's Cove Subdivision

Second Addition

From the Southeast corner of the Southwest 1/4 of said Section 1, run South 89°52'46" West along the South line of said Southwest 1/4, 1457.49 feet to the Southwest corner of Lot 11, Block "A", King's Cove Subdivision, according to the plat thereof as recorded in Plat Book 22, Pages 44 and 45 of the Public Records of Lake County, Florida, and the POINT OF BEGINNING of this description. From said POINT OF BEGINNING continue South 89°52'46" West, 624.55 feet to a point on a curve concave Westerly and having a radius of 2100.08 feet, run thence Northwesterly along said curve through a central angle of 9°04'26", a distance of 332.24 feet to the Southerly right-of-way of Twin Palms Road; run thence North 73°19'06" East along the Southerly right-of-way of Twin Palms Road 199.52 feet to the beginning of a curve concave Northerly and having a radius of 516.40 feet; run thence Northeasterly along said curve through a central angle of 26°21'52", a distance of 237.62 feet; thence North 46°57'14" East, 9.25 feet; thence South 43°02'46" East, 150.00 feet; thence South 46°57'14" West, 25.00 feet; thence South 43°02'46" East, 95.56 feet; thence South 00°07'14" East, 95.47 feet; thence North 89°52'46" East, 144.79 feet to the beginning of a curve Northwesterly and having a radius of 25.00 feet; run thence Northeasterly along said curve through a central angle of 90°00'00" a distance of 39.27 feet; thence South 00°07'14" East, 75.00 feet; thence North 89°52'46" East, 16.72 feet to a point that is North 00°17'14" West of the POINT OF BEGINNING; run thence South 00°07'14" East, 150.00 feet to the POINT OF BEGINNING.

SCHEDULE NO. 1

KING COVE UTILITIES, INC.
SCHEDULE OF WATER RATE BASE
AS OF MARCH 31, 1990

<u>DESCRIPTION</u>	<u>BALANCE PER ORDER NO. 21557</u>	<u>COMM. ADJUSTMENTS</u>	<u>BALANCE PER COMM.</u>
Utility plant-in-service	\$ 73,567	\$ 69,685 (1)	\$143,252
Land	1,902		1,902
Accumulated Depreciation	(16,166)	(4,868)(2)	(21,034)
Contributions-in-Aid-of- Construction	(48,845)	(455)(3)	(49,300)
CIAC Amortization	<u>9,569</u>	<u>2,689 (4)</u>	<u>12,258</u>
TOTAL	<u>\$ 20,027</u>	<u>\$ 67,051</u>	<u>\$ 87,078</u>

KING COVE UTILITIES, INC.
SCHEDULE OF SEWER RATE BASE
AS OF MARCH 31, 1990

<u>DESCRIPTION</u>	<u>BALANCE PER ORDER NO. 21557</u>	<u>COMM ADJUSTMENTS</u>	<u>BALANCE PER COMM</u>
Utility plant-in-service	\$ 148,708	\$ 46,879 (1)	\$195,587
Land	13,314		13,314
Accumulated Depreciation	(38,795)	(8,339)(2)	(47,134)
Contributions-in-Aid-of- Construction	(98,198)	(245)(3)	(98,443)
CIAC Amortization	<u>24,887</u>	<u>5,385 (4)</u>	<u>30,272</u>
TOTAL	<u>\$ 49,916</u>	<u>\$ 43,680</u>	<u>\$ 93,596</u>

SCHEDULE NO. 3

KING COVE UTILITIES, INC.
SCHEDULE OF RATE BASE ADJUSTMENTS

<u>Explanation</u>	<u>Water</u>	<u>Sewer</u>
<u>Utility Plant-in-Service</u>		
1) To include 1989 additions	<u>\$69,685</u>	<u>\$46,879</u>
<u>Accumulated Depreciation</u>		
2) To reflect accumulated depreciation to date using the 2.5% rate approved in Order No. 13388, Docket No. 830447-WS	<u>\$(4,868)</u>	<u>\$(8,339)</u>
<u>Contributions-in-Aid-of-Construction</u>		
3) To reflect seven additional water and sewer customers	<u>\$(455)</u>	<u>\$(245)</u>
<u>CIAC Amortization</u>		
4) To reflect CIAC Amortization to date using the 2.5% rate approved in Order No. 13388, Docket No. 830447-WS	<u>\$ 2,689</u>	<u>\$ 5,385</u>