

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for Transfer) DOCKET NO. 910498-WS
of Certificates Nos. 239-W and) ORDER NO. PSC-93-0793-FOF-WS
183-S in Putnam County from) ISSUED: May 24, 1993
ERNEST AND LUCRETIA COMBS d/b/a)
SPORTSMAN'S HARBOR UTILITIES to)
PURITY UTILITIES, INC.)

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman
THOMAS M. BEARD
SUSAN F. CLARK
JULIA L. JOHNSON
LUIS J. LAUREDO

ORDER ACKNOWLEDGING TRANSFER AND
CLOSING DOCKET

Background

Sportsman's Harbor Utilities (SHU or utility) is a Class C water and wastewater utility located in Welaka, Florida. The utility provides service to approximately 216 water and 143 wastewater customers. The utility's 1990 annual report shows water revenues of \$18,240 and operating expenses of \$29,445 resulting in a net loss of \$11,205. Wastewater revenues are reported as \$13,011 and operating expenses are \$30,123 resulting in a net loss of \$18,393.

On July 3, 1987, Lucretia Combs, owner of SHU and Sam Willis, owner of Purity Utilities, Inc. (Purity) entered into a sales contract. The sales contract contained a provision whereby Mr. Willis was responsible for managing and operating the utility. Although Ms. Combs agreed to sell the utility to Mr. Willis in 1987, there was a legal dispute over who had clear title to the utility; the case went to Circuit Court and the matter was not resolved until 1990. On December 5, 1990, Mr. Willis acquired title to the utility and on April 15, 1991, an application for the transfer of SHU to Purity was filed with the Commission.

On April 24, 1991, we received a timely objection from the Citizens Affected by Sportsman Harbor Utility (Citizens) to the notice of application for transfer of certificates. The Citizens are customers of the utility. The Citizens, in their objection basically alleged that the utility was mismanaged. Pursuant to the objection filed by the customers, the case was set for hearing.

DOCUMENT NUMBER-DATE

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FLORIDA PUBLIC SERVICE COMMISSION

On January 21, 1992, the Citizens advised the Commission that Purity and the Town of Welaka (Welaka) had entered into negotiations for the sale of the utility systems. On August 17, 1992, the Commission received an unexecuted copy of the sales contract between Purity and Welaka. In response to this information, by Order No. PSC-92-0879-PCO-WS, issued August 27, 1992, the hearing was continued until after November 1, 1992.

As Order No. PSC-92-0879-PCO-WS reflected, the objection filed by the Citizens was made moot by the utility's sale to Welaka. On December 10, 1992, the Commission received an executed copy of the sales contract (see Attachment A) between Purity and Welaka and the hearing dates were cancelled. On March 16, 1993, an application for the transfer of Purity to Welaka was filed with the Commission.

For information purposes, it is important to note here that the system was originally transferred to Purity prior to Commission approval, and SHU was in violation of Section 367.071, Florida Statutes. As stated earlier, the utility has since been transferred to a governmental body. In normal circumstances, the first transfer might have warranted an initiation of a show cause proceeding. Since the utility has now been transferred to a governmental entity, it does not appear to serve the public interest to initiate show cause proceedings.

Transfer

The transfer should be acknowledged as a matter of right pursuant to Section 367.071(4)(a), Florida Statutes. The utility shall return Certificates Nos. 239-W and 183-S for cancellation.

Welaka purchased the assets of Purity on October 21, 1992, and has been providing water and wastewater service to the customers of Purity since March 1, 1993. On March 16, 1993, an application for the transfer of Purity to Welaka was filed with the Commission. Pursuant to Section 367.071(4)(a), Florida Statutes, the sale of a utility system to a governmental authority shall be approved as a matter of right as long as the governmental authority obtains from the utility or Commission the utility's most recent available income and expense statement, balance sheet, and statement of rate base for regulatory purposes and contributions in aid of construction. Welaka obtained this information from the Commission prior to the purchase. The utility has never collected any customer deposits, therefore, there were none to be refunded or transferred to Welaka. Purity will be responsible for payment of

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all outstanding regulatory assessment fees. The utility requested and was granted a 30-day extension until April 30, 1993, for filing its 1992 annual report and regulatory assessment fees. Based on the above, we hereby acknowledge the transfer of Purity Utilities, Inc., to the Town of Welaka. Certificates Nos. 239-W and 183-S will be cancelled accordingly, and this docket shall be closed.

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that the transfer of Purity Utilities, Inc., to the Town of Welaka is hereby acknowledged. It is further

ORDERED that Purity Utilities, Inc., shall return Certificates Nos. 239-W and 183-S for cancellation. It is further

ORDERED that this docket be closed.

By ORDER of the Florida Public Service Commission this 24th day of May, 1993.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

LAJ

by: Kay Hynan
Chief, Bureau of Records

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.

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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 Civil Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.

CONTRACT FOR SALE AND PURCHASE

Purity Utilities, Inc., hereinafter referred to as "Seller", whose address is P. O. Box 1453, Palatka, Florida 32178, and the Town of Welaka, hereinafter referred to as "Buyer", whose address is 4th Street, Welaka, Florida, hereby agree that the Seller shall sell and Buyer shall buy the following real property, hereinafter referred to as "Real Property", and personal property, hereinafter referred to as "Personalty", and collectively known as "Property", upon the following terms and conditions, to-wit:

1. Description: a. Legal Description of Real Property located in Putnam County, Florida, to-wit:

Water Plant: Pomona Heights Subdivision: Part of Block 19, O.R. 355, Page 985. Parcel #36-11-26-7350-0190-000

Sewer Plant: Lots 46, 47, 48, 49, 50, 51, 52 of Sportsman Harbor Subdivision, Unit III, Putnam County, Florida, together with all easements of record in the public records of Putnam County, Florida pertaining to said properties and in which seller has the power of assignment or conveyance.

Together with all equipment, inventory and fixtures of the utility system of Purity Utilities in Sportaman Harbor together with any and all accounts associated with said system.

2. Purchase Price: The total purchase price shall be \$250,000.00 payable as follows, to-wit:

- a. Deposit to be held in escrow by Holmea & Pickens, P.A. in the amount of \$100,000.
- b. Cash at closing of \$249,900.00.

3. Time for Acceptance; Effective Date: If this offer is not executed by and delivered to all parties OR FACT OF EXECUTION communicated in writing between the parties on or before September 25, 1992, the deposit will, at Buyer's option, be returned to Buyer and the offer withdrawn. The date of this Contract ("Effective Date") will be the date when the last one of the Buyer and the Seller has signed this offer.

4. **Title Evidence:** At least 15 days before closing date, seller shall, at seller's expense, obtain a commitment for title insurance issued by a Florida licensed title insurer agreeing to issue to Buyer, upon recording of the deed to Buyer, an owner's policy of title insurance in the amount of the purchase price, insuring Buyer's title to Real Property, subject only to liens, encumbrances, exceptions or qualification set forth in this Contract and those which shall be discharged by Seller at or before closing. Seller shall convey a marketable title subject only to liens, encumbrances, exceptions or qualifications set forth in Contract. Marketable title shall be determined according to applicable title standards adopted by authority of the Florida Bar and in accordance with law. Buyer shall have 5 days from date of receiving evidence of title to examine it. If title is found defective, Buyer shall, within 3 days, notify Seller in writing specifying defect(s). If the defect(s) render title unmarketable, or there is no access, Seller shall 120 days from receipt of notice within which to remove said defect(s), and if Seller is unsuccessful in removing them within said time, Buyer shall have the option of either accepting the title as it then is or demanding a refund of all monies paid hereunder which shall forthwith be returned to Buyer and thereupon Buyer and Seller shall be released; as to one another, of all further obligations under Contract; however, Seller agrees that Seller will, if title is found to be unmarketable or uninsurable, use diligent effort to correct the defect(s) in title within the time provided therefor, including the bringing of necessary suits.

5. **Closing Date:** This transaction shall be closed and the deed and other closing documents delivered on or before Oct 21st 1992, unless extended by other provisions of Contract. Either party may unilaterally extend the closing date for thirty (30) days by providing the other with written notice of their election to extend for said thirty (30) days. The unilateral election to extend the closing date may be exercised for three (3) thirty (30) day periods.

6. **Financing:** This contract is contingent upon buyer obtaining financing from the United States Department of Agriculture, Farmers Home Administration.

7. **Restrictions; Easements; Limitations:** Buyer shall take title subject to: zoning, restrictions, prohibitions and other requirements imposed by governmental authority; restrictions and matters appearing on the plat or otherwise common to the subdivision; public utility easements of record (easements are to be located contiguous to Real Property lines and not more than 10 feet in width as to the rear or front lines and 7 1/2 feet in width as to the side lines, unless otherwise specified herein); taxes for year of closing and subsequent years; assumed mortgages and purchase money

mortgages, if any; provided, that there exists at closing no violation of the foregoing and none of them prevents use of Real Property for a water and sewer plant.

8. Ingress and Egress: Seller warrants and represents that there is ingress and egress to the Real Property sufficient for its intended use as described herein.

9. Liens: Seller shall furnish to Buyer, at time of closing, an affidavit attesting to the absence, unless otherwise provided for herein, of any financing statements, claims of lien or potential lienors known to Seller and further attesting that there have been no improvements or repairs to Property for ninety (90) days immediately preceding date of closing. If Property has been improved or repaired within that time, Seller shall deliver releases or waivers of mechanic's liens executed by all general contractors, subcontractors, suppliers, and materialmen in addition to Seller's liens affidavit setting forth the names of all such general contractors, subcontractors, suppliers and materialmen and further affirming that all charges for improvements or repairs which could serve as a basis for a mechanic's lien or a claim for damages have been paid or will be paid at closing.

10. Documents for Closing: Seller shall furnish deed, including all applicable easements, bill of sale, mechanic's lien affidavit, assignment of leases, tenant and mortgagee estoppel letters, and corrective instruments. Buyer shall furnish closing statement, mortgage, mortgage note, security agreement and financing statements.

11. Expenses: Seller shall pay for documentary stamps on the deed. Buyer shall pay all other closing costs with the exception of Seller's attorney's fee.

12. Prorations; Credits: Taxes, assessments, rent, interest, insurance and other expenses and revenue of Property shall be prorated through day before closing. Buyer shall have the option of taking over any existing policies of insurance, if assumable, in which event premiums shall be prorated. Cash at closing shall be increased or decreased as may be required by prorations. Prorations will be made through day prior to occupancy if occupancy occurs before closing. Advance rent and security deposits will be credited to Buyer and escrow deposits held by mortgagee will be credited to Seller. Taxes shall be prorated based on the current year's tax with due allowance made for maximum allowable discount, homestead and other exemptions. If closing occurs at a date when the current year's millage is not fixed, and current year's assessment is available, taxes will be prorated based upon such assessment and the prior year's millage. If current year's assessment is not available, then taxes will be prorated on the prior year's tax. If there are completed improvements on Real Property by January 1st of year of closing which improvements were not in existence on January 1st of the prior year then taxes shall be prorated based upon the prior year's millage and at an equitable assessment to be agreed upon between the parties, failing which, request will be made to the County Property Appraiser for an informal assessment taking into consideration available exemptions. Any tax proration based on an estimate may, at request of either Buyer or Seller, be subsequently readjusted upon receipt of tax bill on condition that a statement to that effect is in the closing statement.

13. **Special Assessment Liens:** Certified, confirmed and ratified special assessment liens as of date of closing (and not as of Effective Date) are to be paid by Seller. Pending liens as of date of closing shall be assumed by Buyer. If the improvement has been substantially completed as of Effective Date, such pending lien shall be considered as certified, confirmed or ratified and Seller shall, at closing, be charged an amount equal to the last estimate of assessment for the improvement by the public body.

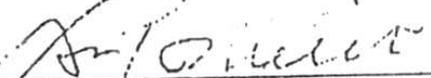
14. **Risk of Loss:** If the Property is damaged by fire or other casualty before closing and cost of restoration does not exceed three percent (3%) of the assessed valuation of the Property so damaged, cost of restoration shall be an obligation of the Seller and closing shall proceed pursuant to the terms of Contract with restoration costs escrowed at closing. If the cost of restoration exceeds three percent (3%) of the assessed valuation of the improvements so damaged, Buyer shall have the option of either taking the Property, as is, together with either the three percent (3%) or any insurance proceeds payable by virtue of such loss or damage, or of canceling Contract and receiving return of deposit(s).

15. **Attorney's Fees; Costs:** If any litigation arising out of this Contract, the prevailing party shall be entitled to recover reasonable attorney's fees and costs.

16. **Warranties:** Seller warrants that there are not facts known to Seller materially affecting the value of the Real Property which are not readily observable by Buyer or which have not been disclosed to Buyer.

17. **As is:** This is an "as is" sale, and Seller makes no representations or warranties, whatsoever, with respect to the condition of the buildings, equipment, machinery, etc. located on said premises.

Date: 9/24/92



Samuel P. Willis, President
Purity Utilities, Inc.
"Seller"

Seller's Social Security Number: 265-23-6260

Date: 9/24/92



Edward H. Dollar, Mayor
The Town of Walaka
"Buyer"

Buyer's Social Security Number: 264-26-7638