

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for ) DOCKET NO. 930204-WS  
Amendment of Certificates Nos. ) ORDER NO. PSC-94-1213-PHO-WS  
236-W and 179-S and for a ) ISSUED: October 4, 1994  
Limited Proceeding in St. Johns )  
County by Jacksonville Suburban )  
Utilities Corporation. )  
\_\_\_\_\_)

Pursuant to Notice, a Prehearing Conference was held on September 19, 1994, in Tallahassee, Florida, before Commissioner Susan F. Clark, as Prehearing Officer.

APPEARANCES:

JAMES L. ADE, Esquire, Martin, Ade, Birchfield & Mickler, P.A., Post Office Box 59, Jacksonville, Florida 32202  
On behalf of Jacksonville Suburban Utilities Corporation.

JACK SHREVE, Public Counsel, and HAROLD L. McLEAN, Associate Public Counsel, Office of the Public Counsel, 111 West Madison Street, Room 812, Tallahassee, Florida 32399-1400  
On behalf of the Citizens of the State of Florida

ROBERT J. PIERSON, Esquire, Florida Public Service Commission, 101 E. Gaines Street, Tallahassee, Florida 32399-0863  
On behalf of the Commission Staff.

PREHEARING ORDER

I. CASE BACKGROUND

On March 1, 1993, Jacksonville Suburban Utilities Corporation (JSUC) filed an application for amendment of Certificates Nos. 236-W and 179-S, to reflect its acquisition of Ponte Vedra Utilities (Ponte Vedra), and for a limited proceeding to implement its uniform rates in St. Johns County.

By Order No. PSC-93-1480-FOF-WS, issued October 11, 1993, this Commission approved JSUC's application for amendment of Certificates Nos. 236-W and 179-S and, as proposed agency action, approved JSUC's request to implement its uniform rates.

By proposed agency action Order No. PSC-93-1819-FOF-WS, issued December 22, 1993, this Commission established rate base for the

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PSC-RECORDS/REPORTING

Ponte Vedra system, granted JSUC's request for a positive acquisition adjustment, and denied JSUC's request to capitalize, as organizational costs, the costs of its acquisition of the Ponte Vedra system. On January 12, 1994, Joanne Cody, President of the Ponte Vedra Community Association, Margaret and Weldon Johnson, and Edward M. Barrett, customers of the Ponte Vedra system, filed a protest to Order No. PSC-93-1819-FOF-WS. Pursuant to the protests, this matter was set for an administrative hearing, which is currently scheduled to be held on October 10 and 11, 1994.

## II. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

A. Any information provided pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the Commission and the parties as confidential. The information shall be exempt from Section 119.07(1), Florida Statutes, pending a formal ruling on such request by the Commission, or upon the return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been used in the proceeding, it shall be returned expeditiously to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of the proceeding, it shall be returned to the person providing the information within the time periods set forth in Section 367.156, Florida Statutes.

B. It is the policy of the Florida Public Service Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 367.156, Florida Statutes, to protect proprietary confidential business information from disclosure outside the proceeding.

In the event it becomes necessary to use confidential information during the hearing, the following procedures will be observed:

- 1) Any party wishing to use any proprietary confidential business information, as that term is defined in Section 367.156, Florida Statutes, shall notify the Prehearing Officer and all parties of record by the time of the Prehearing Conference, or if not known at that time, no later than seven (7) days prior to the beginning of the hearing. The notice shall include a procedure to assure that the

confidential nature of the information is preserved as required by statute.

- 2) Failure of any party to comply with 1) above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.
- 3) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the Court Reporter, in envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.
- 4) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise the confidential information. Therefore, confidential information should be presented by written exhibit when reasonably possible to do so.
- 5) At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the Court Reporter shall be retained in the Commission Clerk's confidential files.

### III. POST-HEARING PROCEDURE

Rule 25-22.056(3), Florida Administrative Code, requires each party to file a post-hearing statement of issues and positions. You must include in that statement, a summary of each position of no more than 50 words, set off with asterisks. If a party's position has not changed since the issuance of the prehearing order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 50 words, it must be reduced to no more than 50 words. The rule also provides that if a party fails to file a post-hearing statement in

conformance with the rule, that party shall have waived all issues and may be dismissed from the proceeding.

A party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 60 pages, and shall be filed at the same time. The prehearing officer may modify the page limit for good cause shown. Please see Rule 25-22.056, Florida Administrative Code, for other requirements pertaining to post-hearing filings.

#### IV. PREFILED TESTIMONY AND EXHIBITS

Testimony of all witnesses to be sponsored by the parties and Staff has been prefiled. All testimony which has been prefiled in this case will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to appropriate objections. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. After all parties and Staff have had the opportunity to object and cross-examine, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer.

#### V. ORDER OF WITNESSES

<u>Witness</u>	<u>Appearing For</u>	<u>Issues Nos.</u>
<u>Direct</u>		
Philip Heil	JSUC	1, 2, 3, 4, 5, 6
Randall W. Corbin	JSUC	4, 5
Robert D. Crenshaw	JSUC	5
Hugh Larkin	OPC	1, 2, 3, 5, 6

<u>Witness</u>	<u>Appearing For</u>	<u>Issues Nos.</u>
Charleston J. Winston	Staff	6
Edward M. Barrett	Self	2, 3

Rebuttal

Philip Heil	JSUC	1, 2, 3, 4, 5, 6
Michael E. Burton	JSUC	2
Robert D. Crenshaw	JSUC	5

VI. BASIC POSITIONS

UTILITY: The rate base for transfer purposes of the assets acquired by JSUC from Ponte Vedra should be \$1,577,195 plus an acquisition adjustment in the amount of \$212,805 and the total amount of the costs incurred by JSUC in connection with the acquisition.

Extraordinary circumstances exist in the acquisition of the Ponte Vedra facilities by JSUC that entitle JSUC to an acquisition adjustment in the amount of \$212,805. The same extraordinary circumstances and the policy of encouraging the acquisition of smaller utility companies by larger, stronger regional utility companies require that prudently incurred costs of acquisition be included in rate base.

The 1.04 acre parcel of land should be included in rate base at \$202,057 and the 0.034 acre well site should be included in rate base at \$9,800.

OPC: A positive acquisition related to the purchase of Ponte Vedra should not be granted to JSUC. To do so would grossly overstate used and useful rate base and cause harm to not only Ponte Vedra customers but to JSUC's existing customers as well.

The extraordinary circumstances upon which the commission has traditionally based its awards of positive acquisition adjustment are noticeably absent from this case. The acquired utility was apparently financially and technically viable. There was no "mom and pop",

rundown utility on its last leg to be rescued by a neighboring utility which would set all well. To the contrary, Ponte Vedra, although in need of some improvements, was not in need of rescue. This notion is elegantly reflected in the premium purchase price which was significantly more than the book value at the time of purchase.

Either Ponte Vedra was in good shape and there is no reason to reward JSUC for acquiring it, or Ponte Vedra was run down and JSUC paid too much. In either case, a positive acquisition adjustment is unwarranted.

The costs of the acquisition should not be recognized in either case. The only immediately identifiable effect of JSUC's acquisition of the Ponte Vedra system by Ponte Vedra customers is they get to pay higher utility rates. As for the JSUC customers other than the Ponte Vedra customers, they might get to pay a higher return on an acquisition adjustment and acquisitions costs. These customers have not been notified that their substantial interests might be affected.

While it is true that this acquisition was accomplished in an unusually complex regulatory environment--two regulatory agencies to deal with--it was JSUC's efforts which brought commission jurisdiction to St. John County, from petition through appeal. This self-imposed regulatory complexity may explain why of the \$249,000 acquisition costs sought, \$215,000 (86%) are attorney's fees.

This acquisition will be good for the owner of JSUC. Whereas, at best, it is not harmful to JSUC customers. Since the benefit of expanding the company flows to the owners, so should the expenses of expansion.

The 1.04 acres is a related party transaction which the acquired utility's parent correctly booked as zero cost. The land in question is special purpose land incapable of being developed for any purpose other than its immediately neighboring land: a water plant. Encompassed within the 1.04 acres are environmentally sensitive wetlands which comprise what is left of the headwaters of the Guana River.

**BARRETT:** Public utilities are only entitled to earn a reasonable return on the original cost less depreciation of the

property devoted to public service. Acquisition adjustments are not part of the original cost of any property devoted to public service. The semi-annual rate adjustment procedure of the Commission now provides sufficient inducement to insure that the financially stronger water companies will, for the most part, remain financially whole if they embark on an acquisition program. If an incentive is needed to induce the financially stronger water companies to take over weaker companies, there are other means of granting such incentives such as by granting an increase in return on equity. With respect to acquisition costs, Order No. PSC-93-1819-FOF-WS, issued December 22, 1993, in this proceeding, stated that acquisition costs in connection with a transfer of utility property should not be charged to consumers. JSUC has not presented valid reasons for changing this policy.

STAFF: The information gathered through discovery and prefiled testimony indicates, at this point, that JSUC's request for a positive acquisition adjustment should be granted and its request to capitalize acquisition costs should be denied.

#### VII. ISSUES AND POSITIONS

Note: Staff's positions are preliminary, and are offered to assist the parties in preparing for the hearing. Staff's final positions will be based upon the record and, therefore, may differ from its preliminary positions.

ISSUE 1: Has JSUC provided any evidence substantiating that the \$1,790,000 it paid for Ponte Vedra is reasonable?

#### POSITIONS

UTILITY: Yes. (Heil)

OPC: No. Either Ponte Vedra was in good shape and there is no reason to reward JSUC for acquiring it, or Ponte Vedra was run down and JSUC paid too much. (Larkin)

BARRETT: No position.

STAFF: No position at this time.

**ISSUE 2:** Should JSUC's request for a positive acquisition adjustment be granted?

POSITIONS

**UTILITY:** Yes. There were extraordinary circumstances involved in the purchase that entitle JSUC to an acquisition adjustment. The positive acquisition adjustment which should be included in JSUC's rate base, not including the other costs of acquisition, is the difference between \$1,790,000, the purchase price, and \$1,577,195, the rate base of Ponte Vedra for purposes of transfer. Therefore, a positive acquisition adjustment of \$212,805 should be included in JSUC's rate base. (Heil, Burton)

**OPC:** No. The purchase lacks extraordinary circumstances and the inclusion of a positive acquisition adjustment causes JSUC customers to pay a return on non-existent and non-used and useful rate base. (Larkin)

**BARRETT:** No. (Barrett)

**STAFF:** Yes.

**ISSUE 3:** Should JSUC's request to capitalize the costs of acquiring Ponte Vedra as organizational costs be granted?

POSITIONS

**UTILITY:** Yes. The costs of acquisition which should be included in rate base should be \$249,418.48, as increased for an updated costs of acquisition exhibit to be later filed. (Heil)

**OPC:** No. It is Commission practice that the costs incurred for a transfer are not capitalized and shall be recorded as below the line costs of the shareholders. In addition, if a utility were bought and sold several times, the utility's rate base could be artificially inflated above the original cost of the assets. This same reason applies to the disallowance of a positive acquisition adjustment. (Larkin)

**BARRETT:** No. (Barrett).

**STAFF:** No.



ISSUE 4: What amount should be included in rate base for the well site?

POSITIONS

UTILITY: The well site should be included in rate base at \$9,800. (Heil, Corbin)

OPC: No position.

BARRETT: No position.

STAFF: No position at this time.

ISSUE 5: What amount should be included in rate base for the 1.04 acre water plant site?

POSITIONS

UTILITY: The 1.04 acre parcel should be included in rate base at \$200,000, its market value at the time of sale, plus its closing costs of \$2,057, for a total of \$202,057. (Heil, Crenshaw, Corbin)

OPC: At the time it was first dedicated to public service, the land was recorded on the books of Ponte Vedra's parent at zero cost. This parent, although in the business of developing property, apparently had no plan to establish any development consistent with the uses suggested in the Broom Moody appraisal. To the contrary, they apparently recognized the special purpose nature of the land. In that regard, the appraisal is not reflective of the use of the land. The land could only be used for a water treatment plant and should have been appraised accordingly. (Larkin)

BARRETT: No position.

STAFF: The parcel should be included in rate base at \$202,057.

**ISSUE 6:** What are the appropriate levels of rate base for the Ponte Vedra systems for purposes of the transfer?

**POSITIONS**

**UTILITY:** \$1,577,195 plus the amounts of the positive acquisition adjustment and the costs of the acquisition allowed. (Heil)

**OPC:** The appropriate levels of rate base are dependent upon the resolution of other issues. (Larkin)

**BARRETT:** The appropriate levels of rate base are dependent upon the resolution of other issues.

**STAFF:** The appropriate levels of rate base are dependent upon the resolution of other issues. (Winston)

**ISSUE 7:** Does the U.S. Constitution, the Florida Constitution, Section 120.57, Florida Statutes, and/or Rule 25-30.030, Florida Administrative Code, require that notice be given not only to the customers of the system being transferred (the Ponte Vedra customers), but to the existing (pre-transfer) customers of JSUC as well?

**POSITIONS**

**UTILITY:** No.

**OPC:** Yes. The existing customers of JSUC are entitled to a point of entry and notice with respect to the issues of an acquisition adjustment and acquisition costs, if any, engendered by the transfer.

**BARRETT:** No position.

**STAFF:** No.

VIII. EXHIBIT LIST

<u>Witness</u>	<u>Sponsored By</u>	<u>I.D. No.</u>	<u>Description</u>
Heil	JSUC	PH-1	Map showing location of Ponte Vedra service area, San Pablo service area, and Ponce de Leon service area.
Heil	JSUC	PH-2	Summary and Schedules of Estimated Costs of Acquisition and supporting documents.
Heil	JSUC	PH-3	The Fountains Condominium Comparison of Water and Wastewater Connection Charges.
Heil	JSUC	PH-4	Schedule of Water Rate Base.
Heil	JSUC	PH-5	Schedule of Wastewater Rate Base.
Heil	JSUC	PH-6	Accounting Instruction No. 21 from NARUC Uniform System of Accounts for Class A Water Utilities.
Heil	JSUC	PH-7	Estimate of Annual Cost Savings After Ponte Vedra is Transferred to JSUC.
Heil	JSUC	PH-8	Bill Analysis comparing the rates of JSUC to those of Ponte Vedra.

<u>Witness</u>	<u>Sponsored By</u>	<u>I.D. No.</u>	<u>Description</u>
Heil	JSUC	PH-9	Comments of Ponte Vedra to Audit Report.
Heil	JSUC	PH-10	Comments of JSUC to Audit Report (first 6 pages only).
Corbin	JSUC	RWC-1	Closing Statement for purchase of 1.04 acre parcel and well site.
Corbin	JSUC	RWC-2	Deed for purchase of 1.04 acre parcel.
Corbin	JSUC	RWC-3	Deed for purchase of well site.
Crenshaw	JSUC	RDC-1	Resume.
Crenshaw	JSUC	RDC-2	Appraisal Report of 1.04 acre parcel on Corona Road.
Burton	JSUC	MEB-1	Resume.
Burton	JSUC	MEB-2	Summary of study performed for St. Johns Water and Sewer Authority and County in connection with transfer of Ponte Vedra to JSUC.
Burton	JSUC	MEB-3	Report to St. Johns Water and Sewer Authority and County in connection with transfer of Ponte Vedra to JSUC.
Winston	Staff	CJW-1	Audit report
Winston	Staff	CJW-2	Audit workpapers

Parties and Staff may identify additional exhibits for the purpose of cross-examination.

IX. PROPOSED STIPULATIONS

There are no proposed stipulations at this time.

X. RULINGS ON MOTIONS

By letter dated September 15, 1994, Mr. Barrett requested to be excused from the prehearing conference due to a scheduling conflict between the prehearing conference and a meeting of the Ponte Vedra Zoning Board, of which Mr. Barrett is a member. Mr. Barrett's request appears reasonable and is, therefore, granted.

At the prehearing conference, JSUC made an oral objection to OPC's first set of interrogatories and first request for production of documents. The objection pertained mainly to the timeliness of the discovery requests; however, JSUC also objected to Interrogatory No. 5, which asked JSUC to list those cases and orders upon which it intends to rely. Upon consideration, the discovery requests, as a whole, do not appear terribly burdensome. Accordingly, JSUC shall produce for OPC's inspection, in Jacksonville, those documents in its possession, custody, or control in Jacksonville, by no later than October 5, 1994. JSUC shall also respond to the interrogatories, except for Interrogatory No. 5, which would appear to require it to divulge its legal theories, by no later than October 5, 1994.

JSUC also made an oral motion to take notice of this Commission's orders and all Staff recommendations filed in this docket. This Commission always takes notice of its orders; however, to the extent that it is able, JSUC should provide reasonable notice of the orders it wishes to use. As for the Staff recommendations, there does not appear to be any provision in the Florida Evidence Code for taking notice of such documents. Accordingly, to the extent that its motion included taking notice of Staff recommendations, it is denied.

It is therefore,

ORDERED by Commissioner Susan F. Clark, as Prehearing Officer, that Mr. Edward M. Barrett's request to be excused from the prehearing conference is granted. It is further

ORDERED that Jacksonville Suburban Utilities Corporation shall respond to the Office of Public Counsel's first request for

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production of documents and first set of interrogatories to the extent and in the manner set forth in the body of this Order. It is further

ORDERED that Jacksonville Suburban Utilities Corporation's request to take notice of this Commission's orders and the Staff recommendations filed in this docket is granted, in part, and denied, in part, as set forth in the body of this Order. It is further

ORDERED that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

By ORDER of Commissioner Susan F. Clark, as Prehearing Officer, this 4th day of October, 1994.

  
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SUSAN F. CLARK, Commissioner and  
Prehearing Officer

( S E A L )

RJP

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.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.038(2), Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) 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 wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.