

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for transfer  
of a portion of the water  
facilities operated by A. P.  
Utilities, Inc., holder of  
Certificate No. 380-W in Marion  
County, to Marion County  
Utilities.

DOCKET NO. 010506-WU  
ORDER NO. PSC-02-0392-PAA-WU  
ISSUED: March 22, 2002

The following Commissioners participated in the disposition of  
this matter:

LILA A. JABER, Chairman  
J. TERRY DEASON  
BRAULIO L. BAEZ  
MICHAEL A. PALECKI  
RUDOLPH "RUDY" BRADLEY

ORDER APPROVING TRANSFER AND  
AMENDING CERTIFICATE NO. 380-W TO REFLECT  
DELETION OF TERRITORY TRANSFERRED

AND

NOTICE OF PROPOSED AGENCY ACTION  
ORDER DECLINING TO INITIATE A GAIN ON  
SALE INVESTIGATION

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service  
Commission that the action discussed herein declining to initiate  
a gain on sale investigation 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.

Background

On April 17, 2001, A. P. Utilities, Inc. (APU or utility)  
filed an application with this Commission for approval of the

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transfer of four of its five systems to Marion County (County). The systems being transferred are Raven Hill, South Oak, Evergreen-Peppertree, and South Ocala Industrial Park (SOIP). The system not being transferred is Quail Run. APU, which holds Certificate No. 380-W, is a Class B utility serving approximately 1,017 residential water customers in the St. Johns River Water Management District (SJRWMD) in Marion County.

Upon review of the application, we became aware of the existence of the SOIP system that is located outside of the utility's certificated territory. According to APU, it believed the system to be exempt from Commission regulation because it was such a small system. The previous owner also believed the system to be exempt because of its size. APU just continued the service previously provided by the former owner.

During the time APU owned and operated the SOIP system, it paid all regulatory assessment fees associated with the system. According to the utility, it was easier to pay regulatory assessment fees based on all of the customer payments than to try to separate the revenue of SOIP. APU's serving outside of its territory, which is an apparent violation of Section 367.071, Florida Statutes, will be discussed later in this Order.

Show Cause

APU acquired several systems from Aqua Pure Water company, pursuant to Order No. 25075, issued September 17, 1991, in Docket No. 910118-WU. Included in the purchase was the SOIP system, which the previous owner believed to be exempt because it was a small system. After the purchase, APU continued serving the territory served by the previous owner. However, the SOIP system, which is located outside the utility's certificated territory, is not exempt from our jurisdiction because it is a part of APU's whole system. APU has served the uncertificated territory since acquiring the system, which is an apparent violation of Section 367.045(2), Florida Statutes. Section 367.045(2), states, in part,

A utility may not delete or extend its service outside the area described in its certificate of authorization until it has obtained an amended certificate of authorization from the commission . . . .

Section 367.161(1), Florida Statutes, authorizes us to assess a penalty of not more than \$5,000 for each offense, if a utility is found to have knowingly refused to comply with, or to have willfully violated any provision of Chapter 367, Florida Statutes, or any lawful rule or order of the Commission.

Utilities are charged with the knowledge of our rules and statutes. In Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL, entitled In Re: Investigation Into The Proper Application of Rule 25-14.003, F.A.C., Relating To Tax Savings Refund for 1988 and 1989 For GTE Florida, Inc., we, having found that the company had not intended to violate the rule, nevertheless found it appropriate to order it to show cause why it should not be fined, stating that "'willful' implies an intent to do an act, and this is distinct from an intent to violate a statute or rule." Id. at 6. Additionally, "[i]t is a common maxim, familiar to all minds that 'ignorance of the law' will not excuse any person, either civilly or criminally." Barlow v. United States, 32 U.S. 404, 411 (1833).

By serving outside of its certificated territory, APU's act was "willful" in the sense intended by Section 367.161, Florida Statutes. Although the utility's failure to comply with Section 367.045(2), Florida Statutes, could be said to be willful, we find that the utility's actions do not rise in these circumstances to the level which warrants the initiation of a show cause proceeding. APU simply continued service to the area served by the previous owner. Further, the territory was transferred to Marion County on June 26, 2001, and is, therefore, no longer subject to our jurisdiction. In addition, as stated previously, APU paid regulatory assessment fees for the additional territory during its time of ownership. Therefore, we do not find it appropriate to initiate a show cause proceeding against APU for serving outside of its territory.

#### Application

We find that the application is in compliance with Section 367.071, Florida Statutes, and other pertinent statutes and provisions of the Florida Administrative Code. Pursuant to Section 367.071(4)(a), Florida Statutes, we must approve the sale of facilities, in whole or part, to a governmental authority as a

matter of right. No notice of the transfer is required and no filing fees apply.

A copy of the transfer agreement was included with the application. According to the agreement, the proposed closing was to occur on or before May 19, 1999. However, the actual closing took place on June 26, 2001.

The application contains a statement that the County obtained APU's most recent income and expense statement, balance sheet, and statement of rate base for regulatory purposes and contributions-in-aid-of-construction, pursuant to Rule 25-30.037(4)(e), Florida Administrative Code. Further, all customer deposits and interest thereon were paid to the County for the benefit of the customers, as required by Rule 25-30.037(4)(g), Florida Administrative Code.

With regard to regulatory assessment fees, APU pays its regulatory assessment fees on a monthly basis into an escrow account that is controlled by this Commission, pursuant to Order No. PSC-98-0044-PCO-WS, issued January 6, 1998, in Docket No. 971504-WS. The utility has paid all regulatory assessment fees and filed annual reports through 2000. The amount of regulatory assessment fees owed by APU from January 1, 2001, to June 26, 2001, for the systems being transferred was \$4,372.77, which was paid on October 19, 2001. APU shall remain responsible for all regulatory assessment fees and annual reports due for the Quail Run System.

Based on the foregoing, the transfer of facilities from APU to Marion County is hereby approved. The systems being transferred from APU to the County are Raven Hill, South Oak, Evergreen-Peppertree, and South Ocala Industrial Park. Certificate No. 380-W is hereby amended to reflect the territory deleted from the service area effective June 26, 2001. A description of the remaining territory the utility is authorized to serve is shown on Attachment A of this Order, which by reference is incorporated herein.

#### Gain on Sale

The proposition that a gain on sale should be shared with customers has been considered in other dockets. In each case, the Commission evaluated whether or not ratepayers in the remaining utility service area were entitled to share the gain when another

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portion of the utility's operating facility was sold. See Order No. PSC-93-0301-FOF-WS, issued February 25, 2003, in Docket No. 911188-WS; Order No. PSC-93-0423-FOF-WS, issued March 22, 1993, in Docket No. 920199-WS; Order No. PSC-96-1320-FOF-WS, issued October 30, 1996, in Docket No. 950495-WS; and Order No. PSC-01-1986-PAA-WU, issued October 8, 2001, in Docket No. 0018260-WU.

Rate base was last established for the APU's South Oaks and Raven Hill systems by Order No. 16145, issued May 23, 1986, in Docket No. 850366-WU. Rate base was established for the Evergreen, Indian Trails, and Peppertree systems by Order No. 25075, issued September 17, 1991, in Docket No. 910118-WU, the transfer docket. Rate base was established for the Quail Run system by Order No. 25063, issued September 13, 1991, in Docket No. 910119-WU. In each of the transfer dockets, APU continued charging the existing rates and charges of the system being transferred. As a result, APU's tariff has different rates for residential customers in each service area. Quail Run, which is the only system not metered, has a flat rate of \$9.00 per month.

Because APU has unique rates established specifically for each system on a stand alone basis, and Quail Run has a flat rate of \$9.00, it appears unlikely that the customers of the Quail Run system have subsidized the rates of the other systems' customers. There appears to be no basis for opening a docket to determine if a gain on sale resulted from this transfer. Therefore, we do not find it appropriate to establish a docket to examine whether the sale of APU's facilities involves a gain that should be shared with the remaining customers.

It is, therefore,

ORDERED by the Florida Public Service Commission that the transfer of the Raven Hill, South Oak, Evergreen-Peppertree, and South Ocala Industrial Park systems from A. P. Utilities, Inc., 3925 Southeast 45 Court, Suite E, Ocala, Florida 34480, to Marion County Utilities, 463 Emerald Road, Post Office Box 7160, Ocala, Florida 34472, is hereby approved. The transfer occurred on June 26, 2001. It is further

ORDERED that Certificate No. 380-W is hereby amended to reflect the deletion of territory, effective June 26, 2001. A

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description of the remaining territory A. P. Utilities, Inc. is authorized to serve is shown on Attachment A of this Order, which by reference is incorporated herein. It is further

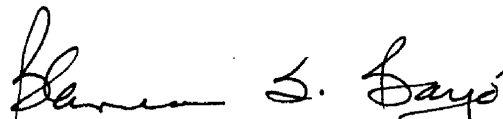
ORDERED that A. P. Utilities, Inc. shall not be ordered to show cause in writing why it should not be fined for serving outside of its certificated territory in apparent violation of Section 367.045(2), Florida Statutes. It is further

ORDERED that an investigation into the gain on sale shall not be initiated. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, 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 in the event this Order becomes final, this docket shall be closed.

By ORDER of the Florida Public Service Commission this 22nd day of March, 2002.



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

( S E A L )

ALC

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.

As identified in the body of this order, our action declining to initiate a gain on sale investigation is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of the Commission Clerk and Administrative Services, at 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on April 12, 2002. If such a petition is filed, mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing. In the absence of such a petition, this order shall become effective and final upon the issuance of a Consummating 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.

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 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 wastewater utility by filing a notice of appeal with

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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.



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ATTACHMENT A

A. P. UTILITIES, INC.

MARION COUNTY

QUAIL RUN SUBDIVISION

(Formerly owned by Marico Properties, Inc.)

The following described lands located in portions of Section 25,  
Township 16 South, Range 21 East, Marion County, Florida:

Section 25:

The Southeast 1/4 of the Southeast 1/4 of said Section 25

LESS AND EXCEPT

The South 209 feet thereof and that portion lying North  
and East of State Road 475-A