BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for partial transfer of facilities in Marion County from Marion Utilities, Inc. to Silver Springs Regional Water and Sewer, Inc., a non-profit corporation, and for amendment of Certificate No. 347-W.	DOCKET NO. 020650-WU ORDER NO. PSC-03-0337-PAA-WU ISSUED: March 10, 2003

The following Commissioners participated in the disposition of this matter:

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

ORDER APPROVING THE TRANSFER OF A PORTION OF MARION UTILITIES, INC.'S FACILITIES TO SILVER SPRINGS REGIONAL WATER AND SEWER, INC. AND AMENDMENT OF CERTIFICATE NO. 347-W TO REFLECT THE DELETION OF TERRITORY

AND

NOTICE OF PROPOSED AGENCY ACTION
ORDER DECLINING TO OPEN AN INVESTIGATION TO EVALUATE THE GAIN ON SALE

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein declining to open an investigation to evaluate the gain on sale 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 July 5, 2002, Marion Utilities, Inc. (Marion or utility) filed an application for approval of the transfer of a portion of its facilities to Silver Springs Regional Water and Sewer, Inc. (Silver Springs), a non-profit corporation, and amendment of Certificate No. 347-W to reflect the deletion of territory. The transfer was effective July 31, 2002. The application for approval of the transfer was filed pursuant to Section 367.071, Florida Statutes.

Marion is a Class A utility which provides service in Marion County to approximately 4,724 water and 118 wastewater customers. The utility is located primarily in the St. Johns River Water Management District, all of which is considered a water use caution area.

This Commission assumed jurisdiction over privately-owned utilities in Marion County on May 5, 1981. The utility was granted Certificate No. 347-W by Order No. 10566, issued February 3, 1982, in Docket No. 820018-W. In the instant docket, Marion is seeking to transfer the service area known as Quadvillas Estates/Sugar Hills Quadvillas (Quadvillas), which is a residential area that has 217 customers, to Silver Springs. Silver Springs will provide both water and wastewater service to the area. Wastewater service is presently handled through the use of septic disposal systems. As a result of the contract for sale of this system, the utility has dismantled the treatment facility that provided potable water to the area and interconnected the distribution system to the Silver Springs' water system.

Application

The application is in compliance with Section 367.071, Florida Statutes, and other pertinent statutes and provisions of the Florida Administrative Code. In particular, the application contains a filing fee in the amount of $750, as required by Rule 25-30.020, Florida Administrative Code.

The application also contains proof of compliance with the noticing provisions set forth in Rule 25-30.030, Florida

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

The application also contains a copy of the contract for sale in accordance with Rule 25-30.037(2)(g), (h), (i), (l), (p), and (q), Florida Administrative Code. The contract includes information regarding financing of the purchase, value of the system being transferred, condition of the system, and ownership of the land.

Pursuant to Section 367.071, Florida Statutes, no utility shall transfer its certificate or assets without prior Commission approval. The May 31, 2002, contract for sale did not reference this requirement. Both Marion and Silver Springs have since acknowledged through an addendum to the contract that the sale is contingent upon Commission approval.

As part of the sales agreement, Marion agreed to modify the Quadvillas' distribution system to accommodate Silver Springs' system specification requirements. System improvements, including main replacement and extension, installation of fire hydrants, and replacement of meters total approximately $63,000. In addition, the utility incurred approximately $3,750 to remove well pumps, a hydropneumatic tank, and a generator, and to abandon wells. Marion intends to use some of the equipment removed from the Quadvillas' facility in its other systems.

The application contains information regarding the corporate nature of Silver Springs, as required by Rule 25-30.037(3), Florida Administrative Code. According to the information provided, Silver Springs was incorporated as a Florida non-profit corporation on October 2, 1989. Non-profit corporations are exempt from Commission regulation pursuant to Section 367.022(7), Florida Statutes.

Pursuant to Rule 25-30.037(2)(r), Florida Administrative Code, the utility provided information regarding payment of regulatory assessment fees (RAFs), penalties, interest, and refunds. Marion has paid RAFs through December 31, 2001, and has filed all annual reports through 2001. There are no outstanding interest, penalties, or refunds due as of December 31, 2001. Marion will pay the RAFs for the system being transferred for the

period from January 1, 2002, through July 31, 2002, with its RAFs due on March 1, 2003.

Based on the foregoing, we find that the transfer of a portion of Marion's facilities to Silver Springs is in the public interest and it is approved. Certificate No. 347-W, held by Marion, is hereby amended to reflect the deletion of the territory described on Attachment A of this Order, which by reference is incorporated herein. Marion is responsible for payment of RAFs for the system being transferred for the period from January 1, 2002, through July 31, 2002. In addition, Marion shall include the operations related to the system transferred in its 2002 annual report.

Gain on Sale

The issue of whether a gain on the sale of a utility system should be shared with the remaining customers has been addressed by this Commission in a number of dockets. In each case, we evaluated whether the remaining customers had contributed to the utility's recovery of its investment in the system being sold, and, therefore, should share in the gain on sale. See Dockets Nos. 911188-WS, 920199-WS, 950495-WS, 991890-WS, and 001826-WS.

On July 31, 2002, Marion transferred Quadvillas, with 217 customers, to Silver Springs. After the transfer, Marion has approximately 4,500 customers served by over 30 remaining systems. The utility reported the proceeds of the sale, book basis of plant, and seller's closing costs, and our staff estimated the tax relating to the sale.

Sales Proceeds	$ 259,413
Deductions:	
Book Basis of Plant	34,785
Cost of Improvements Required by Contract	62,986
Seller's Closing Costs	30,164
Pre-Tax Gain	$ 131,478
Taxes (30%)	39,443*
Net Gain	$ 92,035*

*Staff Estimate

Utility's Position

In response to our inquiry, Marion provided its comments as to why the gain on the sale of the system to Silver Springs should not be shared with its remaining customers. According to the utility, the system was purchased in 1981. Rates and rate base were last established for the utility by Order No. PSC-95-1193-FOF-WS, issued on September 22, 1995, in Docket No. 950170-WS. According to the Order, rate base for the water system was $765,344 as of June 30, 1994. Rate base was not established for the individual systems at that time.

All of Marion's customers have uniform rates except the 137 customers of the Windgate East system. Although the utility's billing procedures accumulate separate revenue numbers for each system, expenses are recorded on a utility-wide basis. The utility provided an analysis using assumptions about the relationship between expenses, net income, and gross revenues showing that because the Quadvillas system contributed to the utility's net income, the remaining customers did not subsidize the Quadvillas system. The Quadvillas system is not contiguous to nor interconnected with any of Marion's other water and sewer systems.

The utility further supported its position by stating that it did not achieve its authorized rate of return in 2001. With the sale of the Quadvillas system, the utility will lose the revenue from those customers as well as the future income. The gain on sale will, in part, compensate the shareholders for the loss of future earnings.

The utility believes that its customers do not acquire a proprietary interest in the property, plant and equipment that are used for utility service. The ownership of the property, plant, and equipment resides with the shareholders. Likewise, any risk of loss in their investment is borne by the shareholders and not the utility customers. This risk of loss is generally rewarded with compensation for the risk. The gain on sale is this compensation. Therefore, it is the utility's position that the customers should not share in that gain. Certainly, if the sale resulted in a loss, that loss would be borne by the shareholders, not by the remaining customers.

Commission Practice regarding Gain on Sales

There are a number of cases in which we allocated all or a substantial part of the gains on sale of utility assets to ratepayers. However, all of these cases involved the sale of specific assets, not complete systems including customer bases. There are also cases wherein we addressed the gains on sale of utility facilities which included customer bases.

In Docket No. 911188-WS, we considered whether the customers of Lehigh Utilities, Inc. (Lehigh) should share in the gain on sale of the St. Augustine Shores (SAS) water and wastewater facilities to St. Johns County as a result of a condemnation. Both SAS and Lehigh had been owned by Southern States Utilities, Inc. (SSU). We decided that sharing the gain was not appropriate in Order No. PSC-93-0301-FOF-WS, issued February 25, 1993, stating:

> We agree with the utility that ratepayers do not acquire a proprietary interest in utility property that is being used for utility service. We also agree that it is the shareholders who bear the risk of loss in their investments, not the Lehigh ratepayers. Further, we find that Lehigh's ratepayers did not contribute to the utility's recovery of its investment in St. Augustine Shores. Based on the foregoing, we find no adjustment for the gain on the sale of St. Augustine Shores to be appropriate.

In 1992, shortly after the Lehigh docket was filed, SSU filed an application for a rate increase for several of its systems under our jurisdiction. In Docket No. 920199-WS, the issue of the gain on sale of SAS was again considered in the context of whether the gain should be shared with the remaining shareholders of SSU. By Order No. PSC-93-0423-FOF-WS, issued March 22, 1993, in that docket, we found as follows:

> We agree with Mr. Sandbulte that customers who did not reside in the SAS service area did not contribute to recovery of any return on investment in the SAS system. Further, when this system was acquired by St. Johns County, SSU's investment in the SAS system and its future contributions to profits were forever lost. Thus, the

> gain on the sale serves to compensate the utility's shareholders for the loss of future earnings. Arguably, if the sale of this system had been accompanied by a loss, any suggestion that the loss be absorbed by the remaining SSU customers would be met with great opposition. However, the rationale for sharing a loss is basically the same as the rationale for sharing a gain. Since SSU's remaining customers never subsidized the investment in the SAS system, they are no more entitled to share in the gain from that sale than they would be required to absorb a loss from it.

The issue of the gain on the SAS sale was considered once again in SSU's subsequent rate case, Docket No. 950495-WS, along with several additional gains, including the sale of SSU's Venice Gardens (VGU) system to Sarasota County, also under condemnation. The Office of Public Counsel (OPC) argued that the remaining ratepayers should benefit from the gain because SSU had been found to be a single system and ratepayers had been required to pay a return on used and useful property. Further, OPC argued that the jurisdictional systems were absorbing administrative and general expenses and general plant costs that otherwise would have been paid by the VGU ratepayers. OPC also reiterated its objection to our decision in Docket No. 920199-WS regarding the SAS gain. SSU rebutted OPC's arguments, stating that the remaining customers did not contribute to SSU's recovery of its investment and did not bear the risk of loss. Further, SSU noted that the sale of VGU involved not only the sale of SSU's assets but also the loss of customers, and that the Commission's policy concerning gains and losses should be consistent with the (then) recently confirmed acquisition adjustment policy.

In Order No. PSC-96-1320-FOF-WS, issued October 30, 1996, we voted not to allocate any of the gains of the sales of SAS or VGU to the ratepayers, stating in relevant part:

> We first observe that the sales of VGU and SAS were similar in many respects: they were involuntarily made by condemnation or under threat of condemnation; SSU lost the ability to serve the customers in both service areas, which were both regulated by non-FPSC counties; and the facilities served customers who were never included in a

uniform rate structure. By Order No. PSC-93-0423-FOF-WS, issued on March 22, 1993, we found that the gain on the sale of the SAS facilities should not be allocated to the ratepayers.

This part of Order No. PSC-93-0423-FOF-WS was affirmed by the First District Court of Appeal in the Citrus County decision.

Although OPC argued that the ratepayers have benefitted from the gains on the sale of property devoted to public service in previous dockets and absorbed a loss on the sale of the Skyline facility, we do not find the circumstances to be the same. Had either the SAS and VGU facilities been regulated by the FPSC at the time of the sale or previously included in a uniform rate structure, the situation would be different. However, we conclude that similar treatment should be afforded based on the previous decision in Docket No. 920199-WS. The record lacks sufficient evidence to support the contrary. Therefore, we shall not allocate either the VGU or SAS gains to the ratepayers.

Pursuant to Order No. 98-0688-FOF-WS, issued May 19, 1998, in Docket No. 971667-WS, we approved the transfer of all of Florida Water Services Corporation's (FWSC) water and wastewater facilities in Orange County to Orange County, with the exception of the Druid Hills water system. Since FWSC charged uniform rates within Orange County and there was a remaining system, we ordered that a docket be opened to evaluate any gain on sale. On June 15, 1998, Docket No. 980744-WS was established for that purpose. OPC filed a notice of intervention in this docket on June 29, 1998. The docket is set for hearing on August 7, 2003.

In Docket No. 001826-WU, we considered the gain on sale of two facilities, including customer base. In that case, Heartland Utilities, Inc. requested Commission approval for the transfer of two of its three facilities to the City of Sebring at an estimated gain of $1,035,774. Approximately 700 customers were served by the systems sold, compared with 37 customers served by the remaining system. In Order No. PSC-01-1986-PAA-WU, issued October 8, 2001 (Consummating Order No. PSC-01-2179-CO-WU, issued November 6,

2001), we voted not to address the gain on sale at that time, because it did not appear, based on available facts, that the remaining customers had subsidized the cost of the systems transferred.

Most recently, we again addressed the investigation into ratemaking consideration of gain on sale from sales of the facilities of Utilities, Inc. of Florida (Utilities, Inc.) to the City of Maitland in Orange County and the City of Altamonte Springs in Seminole County in Order No. PSC-02-0657-PAA-WU, issued on May 14, 2002, in Docket No. 991890-WS. In that investigation, our staff found that this Commission has generally based its decisions on treatment of gains on sale of utility property on the following key factors:

1. Whether the property sold was used and useful in providing utility services;

2. Whether the property was included in uniform rates;

3. Whether a system, including customer base, was sold, as opposed to specific assets;

4. The extent to which ratepayers would have borne the risk, had the sale been at a loss; and

5. Consistency with other Commission practice, such as the calculation of rate base when a facility is purchased for more or less than its net book value.

On June 4, 2002, OPC protested our decision in Order No. PSC-02-0657-PAA-WU. In the meantime, Docket No. 020071-WS was established to process Utilities, Inc.'s application for a rate increase in Seminole, Orange, Pasco, Marion, and Pinellas Counties. OPC filed a notice of intervention in that docket. Order No. PSC-02-1467-PCO-WS, issued October 25, 2002, in Dockets Nos. 991890-WU and 020071-WS, ordered that Docket No. 991890-WU be closed and Docket No. 020071-WS remain open in order to conduct a hearing on the utility's rate case as well as the protest to the gain on sale. This docket is set for hearing on June 4, 2003.

Applicability of Commission Practice to this Case

The sale of the Quadvillas system involved the sale of facilities included in rate base, along with the customer base served by these facilities. Based on our review of prior Orders and the utility's cancelled tariff sheets, all of the utility's systems in Marion County, except for the Windgate East system, have been under a uniform rate structure since 1981. We agree with the utility that it would be very difficult to determine how much any customer or group of customers contributed to the utility's investment in, or operation of, the facility.

Further, we have consistently acknowledged that where the utility is losing the revenue stream provided by the transferred customer base, it is reasonable for the shareholders to be compensated by receiving the gain on sale of the facility. Further, we have consistently found that paying rates for utility service does not vest ratepayers with an ownership interest in the utility's assets. Accordingly, we do not find it appropriate to open an investigation to further evaluate the gain on sale aspects for the Quadvillas system at this time.

It is, therefore,

ORDERED by the Florida Public Service Commission that the transfer of a portion of Marion Utilities, Inc.'s facilities from Marion Utilities, Inc., 710 Northeast 30th Avenue, Ocala, Florida 34470, to Silver Springs Regional Water and Sewer, Inc., 5300 East Silver Springs Boulevard, Suite A, Silver Springs, Florida 34488, is hereby approved. It is further

ORDERED that Certificate No. 347-W, held by Marion Utilities, Inc., is hereby amended to reflect the deletion of the territory being transferred. A description of the territory being deleted is shown on Attachment A of this Order, which by reference is incorporated herein. It is further

ORDERED that Marion Utilities, Inc. shall pay regulatory assessment fees for the system being transferred for the period from January 1, 2002, through July 31, 2002. It is further

ORDERED that Marion Utilities, Inc. shall include in its 2002 annual report the operations of the system being transferred for the period from January 1, 2002, through July 31, 2002. It is further

ORDERED that no investigation to evaluate whether Marion Utilities, Inc.'s sale of its Quad Villas Estates/Sugar Hill Quadvillas system involves a gain on sale that should be shared with the remaining customers shall be opened at this time. 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 10th day of March, 2003.

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

By: Marcia Sharma
Marcia Sharma, Assistant Director
Division of the Commission Clerk
and Administrative Services

(S E A L)

ALC/JB

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 open an investigation to evaluate the gain on sale 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 March 31, 2003. 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 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.

ATTACHMENT A

MARION UTILITIES, INC.

Amended Water Territory Description
Marion County

Section 1 Township 15 South, Range 22 East

QUADVILLAS ESTATES:
The East ½ of the Northeast 1/4 of the Northwest 1/4 of the Northwest 1/4.

SUGAR HILLS QUADVILLAS:
The Northwest 1/4 of the Northwest 1/4 of Section 1, except the East ½ of the Northeast 1/4 of the Northwest 1/4 of the Northwest 1/4 of said Section 1.