

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Joint application for transfer)	DOCKET NO. 881596-SU
of Certificate No. 201-S from GATEWAY)	
UTILITY SERVICE, INC. to JACKSONVILLE)	ORDER NO. 21220
SUBURBAN UTILITIES CORPORATION and a)	
limited proceeding to adjust rates)	ISSUED: 5-11-89
in Duval County.)	

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD
 BETTY EASLEY
 GERALD L. GUNTER
 JOHN T. HERNDON

NOTICE OF PROPOSED AGENCY ACTIONORDER AUTHORIZING TRANSFER OF UTILITY
 AND ADJUSTMENT OF SEWER RATES

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the actions discussed herein, except for the transfer, the interconnection, and the amendment and the cancellation of the certificates, 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.

THE PARTIES

Gateway Utility Service, Inc. (Gateway), is a Florida corporation with offices located in Jacksonville, Duval County, Florida. Gateway provides sewer utility service in Duval County pursuant to Certificate No. 201-S.

Jacksonville Suburban Utilities Corporation (JSUC), is a Florida corporation with offices located in Jacksonville, Duval County, Florida. JSUC is a wholly-owned subsidiary of General Waterworks Corporation and provides water and sewer utility service in Duval County pursuant to Certificates Nos. 236-W and 179-S.

BACKGROUND

On March 10, 1987, the City of Jacksonville passed an ordinance entitled Environmental Protection Board (EPB) Rule No. 3. The ordinance requires that all sewer utilities with capacities of less than one million gallons per day, must connect to a regional sewer utility by March 10, 1992. The ordinance also imposed stringent fines against sewer utilities for their failure to comply with certain environmental rules and regulations dealing with the processing of effluent.

On August 26, 1987, Gateway was issued a citation for its alleged violation of EPB Rule No. 3 and a fine of \$490,000 was imposed against Gateway's owner, Mr. Parrish.

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Subsequently, on June 8, 1988, Gateway and JSUC entered into a purchase and sale agreement, as well as an agreement whereby JSUC assumed the responsibility for the operation of Gateway's sewage treatment plant.

In an attempt to dispose of the outstanding citation and fine against Gateway, on June 11, 1988, Gateway, JSUC, and the City of Jacksonville entered into a stipulated agreement under which the parties agreed that Gateway's sewage treatment plant would discontinue operation and connect to JSUC's regional sewer system no later than June 30, 1989.

On December 27, 1988, Gateway and JSUC filed a joint application with this Commission seeking our approval to: 1) Transfer Gateway's sewer utility system, utility facilities, and the other purchased assets, including, but not limited to, Certificate No. 201-S, to JSUC in accordance with the terms and provisions of a purchase and sale agreement between the two utilities; 2) Interconnect Gateway's sewer utility system with the existing sewer utility system of JSUC and the inclusion of the cost of such interconnection, including the construction of a sewage lift station, in JSUC's ratebase; and, 3) Use a limited proceeding to adjust rates in Duval County and approve the application of JSUC's current sewer service rates, charges, classifications, rules and regulations, and service availability policies to JSUC's existing customers, effective as of the closing date provided in the purchase and sale agreement.

TRANSFER OF GATEWAY'S SEWER SYSTEM AND FACILITIES

As a preliminary matter, we examined the utilities' joint application for transfer and determined that it satisfied the requirements of Section 367.071, Florida Statutes, and Rule 25-30.040, Florida Administrative Code. In particular, we determined that the utilities had properly: 1) Paid the transfer fee set by statute; 2) Filed proof with the Commission that all customers of record who will be affected by the transfer were notified of the pending transfer; 3) Filed proof of notice to all governmental/regulatory agencies, and utilities within a four-mile radius of the pending transfer; 4) Filed proof that a newspaper advertisement was run in a newspaper of general circulation in the county informing the general public of the pending transfer; and finally, 5) Provided proof of ownership of the real property on which the utility plant is located.

Our next step in processing the above-discussed transfer application was to conduct a plant site inspection of Gateway's sewage treatment plant. This was done January 19, 1989. Our inspection determined that since JSUC assumed responsibility for the operation of Gateway's sewage treatment plant in June, 1988, several improvements to the facility had taken place. Specifically, the grounds were cleaned, fencing was repaired, a new chlorine building was built, and the air systems on the steel plant were reworked. At the time of our inspection, the plant was in generally good operating condition, producing a reasonably clear effluent.

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We next turned our attention to consideration of the viable options available to Gateway in deciding whether to approve the transfer application of the utilities. In our opinion, there are only four alternatives available to Gateway in light of the pending citation and fine against Gateway, and the above-discussed stipulation which is due to become effective no later than June 30, 1989.

First, the possibility exists that Gateway could connect to the City of Jacksonville and become a bulk customer. This alternative would cost the utility \$300,000 to \$400,000 to hook up to a pumping station to direct the wastewater to an adequate treatment plant. Additionally, the utility would have to pay JSUC to run a line through JSUC's territory and would have to pay the city's service availability charges. The charges would be:

Peak Month Average Daily Flow for August 1988 =	\$ 200,000
City's Charge per Gallon	x 1.26
City's Service Availability Charges	\$ 252,000
Total Estimated Cost	<u>\$ 602,000</u>
(\$350,000 + \$252,000 = \$602,000)	

Second, the City of Jacksonville could possibly acquire Gateway's sewage treatment facilities. The City's Public Works Department advises us that this alternative would not be economically feasible for the City.

Third, Gateway could possibly become a bulk rate customer of JSUC. This alternative would require that Gateway install a lift station and build a force main to JSUC's system (Monterey Regional Facility) at an estimated cost of \$150,000. Additionally, the utility would have to pay JSUC's service availability charges which would be:

Cumberland Forest Apartments	\$ 43,260
Oaks Condominium	11,550
Office Complex (3 units) and Restaurant	<u>40,000</u>
Subtotal	\$ 94,810
Total Estimated Cost	<u>\$244,810</u>
(\$150,000 - \$94,810 = \$244,810)	

Fourth, and in our opinion the best alternative, would be to allow Gateway to simply transfer its system and facilities to JSUC as proposed by the utilities. This alternative would require JSUC to install a lift station and build a force main to JSUC's Monterey facility at an estimated cost to JSUC of \$150,000.

Based on the foregoing, we find that the proposed transfer of Gateway Utility Service, Inc. to Jacksonville Suburban Utilities Corporation to be in the public interest, and thus is approved.

AMENDMENT AND CANCELLATION OF SEWER CERTIFICATES

The utilities' transfer application requested that

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Gateway's sewer certificate No. 201-S in Duval County be transferred to JSUC. However, having approved the transfer of Gateway to JSUC, we find that Gateway's certificate No. 201-S shall be returned to this Commission for cancellation no later than May 31, 1989. We further direct that JSUC's certificate No. 139-S is hereby amended to include the area previously serviced by Gateway as described in Attachment A affixed hereto.

RATE BASE

JSUC, as the purchasing utility, requested a zero rate base at the time of transfer with no adjustment for acquisition. Our staff recommended a rate base of \$10,400 to reflect the net book value of Gateway's land. Nevertheless, we find that JSUC should be granted the zero rate base requested in its application.

INTERCONNECTION AND ASSOCIATED COSTS

The utilities' transfer application requested that we approve the interconnection of the two utilities and permit JSUC to recover the associated costs, including the cost of constructing a sewage lift station, as prudent capital expenditures for inclusion in JSUC's rate base. We find that the interconnection of the two utilities' sewer systems to be reasonable and is approved. However, we find that the recovery of the costs associated with such interconnection should be considered during JSUC's next rate case proceeding.

LIMITED RATE CASE PROCEEDING

In addition to its request for the transfer, JSUC requested authority to charge existing JSUC rates to Gateway's customers through a limited rate case proceeding. Approval of a request for application of the buying utility's tariff to the seller's customers would be inconsistent with Rule 25-9.044(1), Florida Administrative Code. This rule provides, in pertinent part:

In case of change of ownership or control of a utility which places the operation under a different or new utility . . . the company which will thereafter operate the utility business must adopt and use the rates, classification and regulations of the former operating company . . .

Section 367.081(1), Florida Statutes, also provides that rates and charges shall be changed only by approval of the Commission. However, circumstances in this docket are unique and require our special consideration. It is JSUC's intent to tie the Gateway sewer system into its present Monterey Regional Facility, and Gateway's present sewer plant will be retired. Therefore, since the Gateway customers will be provided service from JSUC under a regional service concept, the applicability of rates is more akin to a territory amendment than a normal transfer. We find that the uniform application of JSUC's rates to its entire service area, old and new, will insure that all JSUC's customers receive non-preferential treatment with respect to sewer rates.

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Based on the foregoing, we hereby approve the request of Jacksonville Suburban Utilities Commission for the application of its existing tariff to Gateway Utility Service, Inc.'s present customers.

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that the joint application for transfer of Gateway Utility Service, Inc. to Jacksonville Suburban Utilities Corporation is approved as shown in the body of this Order. It is further

ORDERED that Certificate No. 139-S held by Jacksonville Suburban Utilities Corporation in Duval County is amended to include the Gateway Utility Service, Inc.'s service area as shown on Attachment A hereto. It is further

ORDERED that Certificate No. 201-S held by Gateway Utility Service, Inc. shall be returned to this Commission no later than May 31, 1989 for cancellation. It is further

ORDERED that the interconnection of Gateway Utility Service, Inc.'s sewage treatment system with that of Jacksonville Suburban Utility Corporation is hereby approved. It is further

ORDERED that the costs associated with the interconnection of the two utilities' systems shall be considered in Jacksonville Suburban Utilities Corporation's next rate case proceeding. It is further


ORDERED that the remaining provisions of this Order are preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding in the form provided by Rule 25-22.036, Florida Administrative Code, with the Director, Division of Records and Reporting, 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on June 1, 1989. It is further

ORDERED that the rate base for Gateway Utility Service, Inc. at the time of the transfer shall be zero. It is further

ORDERED that Jacksonville Suburban Utilities Corporation's existing tariff shall be applicable to Gateway Utility Service, Inc.'s service territory. It is further

ORDERED that Jacksonville Suburban Utility Corporation's rates and charges shall become effective on the date that Gateway Utility System, Inc.'s customers are physically connected to the JSUC's system, and as otherwise shown in the body of this Order.

By ORDER of the Florida Public Service Commission
this 11th day of MAY, 1989.


STEVE TRIBBLE, Director
Division of Records and Reporting

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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.

The action proposed herein 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 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 June 1, 1989. In the absence of such a petition, this order shall become effective June 2, 1989 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 this order becomes final and effective on June 2, 1989, 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.

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ATTACHMENT "A"

JACKSONVILLE SUBURBAN UTILITIES CORPORATION, DUVAL COUNTY

Cumberland Forest Apartments, The Oaks Condominiums & The Oaks Plaza Offices

In Section 52, Township 2 South, Range 27 East, in Duval County, Florida.

A portion of Farm Lots 8, 9, 21, 22, 23, 24, and 33, known as Alderman Farms and recorded in Plat Book 5, page 99 of the current public records of Duval County, Florida, being more particularly described as follows:

For POINT OF BEGINNING, commence at the intersection of the Southerly prolongation of the Easterly right-of-way line of Townsend Boulevard with the Southerly right-of-way line of State Road No. 10, said point lying and being in a curve, said curve being concave Southerly and having a radius of 2265.63 feet; thence Westerly along the Southerly right-of-way line of said State Road No. 10 and along the arc of said curve on arc distance of 316.75 feet; said arc being subtended by a chord bearing of North 86 degrees, 18 minutes, 28 seconds West and a chord distance of 316.48 feet to the point of tangency of said curve; thence continuing along said Southerly right-of-way line, South 89 degrees, 41 minutes, 14 seconds West, 2452.18 feet to the Southeasterly right-of-way line of Alderman Road as now established; thence South 54 degrees, 51 minutes, 29 seconds West along said Southeasterly right-of-way line, 450.53 feet to the Northeasterly right-of-way line of Bert Road, County Road No. 1739 (as now established for a 50 foot right-of-way); thence South 35 degrees, 08 minutes, 16 seconds East along the Northeasterly right-of-way line of said Bert Road, 1096.0 feet, more or less to the approximate centerline, or run, of Mill Creek; thence in a Northeasterly direction along the centerline of said Mill Creek, 2613.0 feet, more or less, to a point which bears a South 4 degrees, 52 minutes, 50 seconds West, 750.0 feet, more or less, from the point of beginning; thence North 4 degrees, 52 minutes, 50 seconds East, 750.0 feet, more or less, to the POINT OF BEGINNING.