

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for sale/transfer of) DOCKET NO. 910723-WS
a portion of General Development)
Utilities, Inc.'s West Coast Division's) ORDER NO. 25295
certificated territory to a governmental)
authority, amendment of Certificates Nos.) ISSUED: 11-04-91
444-W and 462-S and approve a bulk)
service agreement.)
_____)

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman
SUSAN F. CLARK
J. TERRY DEASON
BETTY EASLEY

ORDER ACKNOWLEDGING TRANSFER AND AMENDING
CERTIFICATE

AND

NOTICE OF PROPOSED AGENCY ACTION
ORDER APPROVING REQUEST FOR NEW CLASS OF SERVICE

BY THE COMMISSION:

Notice is hereby given by the Florida Public Service Commission that the action discussed herein is final except for the approval of the new class of service, which is preliminary in nature, and as such, 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 June 26, 1991, General Development Utilities, Inc., West Coast Division, (GDU) filed an application for approval of the sale and transfer of a portion of its Charlotte County water system, all of its Charlotte County wastewater system and all of its water system in Desoto County to Charlotte County. GDU also requested the amendment of Certificates Nos. 444-W and 462-S to reflect the deletion of the territory transferred.

GDU was granted multi-county certification for Sarasota, Desoto and Charlotte Counties by Order No. 22783, effective April 9, 1990, in accordance with Section 367.171(7), Florida Statutes.

DOCUMENT NUMBER-DATE

10951 NOV-4 1991

FPSC-RECORDS/REPORTING

That Section gives the Commission jurisdiction over any utility whose service transverses county boundaries, whether or not the counties involved are jurisdictional. The Order granting multi-county certification was under appeal; that appeal, however, has been withdrawn.

Application

The application is in compliance with Section 367.071(4)(a), Florida Statutes, and other pertinent statutes and administrative rules. The sale and transfer of a utility to a governmental agency is approved as a matter of right. Charlotte County requested and received financial information regarding the portion of GDU being transferred.

The sale and transfer to Charlotte County is the result of a Stipulation for Agreed Order of Taking dated June 6, 1991, decided and ordered in the Circuit Court of the Twentieth Judicial Circuit of Florida, Case No. 90-963. As a result of the exercise of the power of eminent domain, effective June 24, 1991, Charlotte County acquired GDU's Peace River Plant water treatment facility, a 36-inch water transmission line, which transverses Desoto, Charlotte and Sarasota Counties. Charlotte County also acquired all of GDU's water service territory in Desoto County, all of GDU's wastewater facilities and service area in Charlotte County and the major portion of GDU's water facilities and service territory in Charlotte County. GDU retained its North Port water and wastewater treatment facilities and service area in Sarasota County. GDU also retained a portion of its water distribution system and service territory in Charlotte County. Some of GDU's North Port water transmission and distribution system transverses Charlotte County. In addition, GDU retained a force main system from its North Port wastewater treatment facility, which conducts wastewater effluent from the treatment facility in Sarasota County through a section of Charlotte County to its deep well injection facility in Sarasota County.

The portion of GDU's facilities and service area transferred to Charlotte County is now owned and operated by the Peace River/Manasota Regional Water Authority (Authority). The transfer to the Authority occurred on June 24, 1991, the same day the facilities were taken over by Charlotte County.

A bulk water service agreement has been entered into between Charlotte County and GDU. The agreement is for water service in connection with the Authority's Peace River Water Plant and any service Charlotte County may receive from GDU's North Port Water Plant, in the event of excess demand on the Peace River System. In

addition, GDU will receive bulk water service from the Authority for its remaining water service territory in Charlotte and Sarasota Counties.

Based on the foregoing, we hereby acknowledge the transfer of a portion of GDU's facilities and territory to Charlotte County, as set forth herein. Further, Certificates Nos. 444-W and 462-S are hereby amended to reflect that GDU, as a result of the transfer, is authorized to serve only the territory described in Attachment A of this Order. GDU has filed revised tariff sheets reflecting the action taken herein. GDU is directed to return Certificates Nos. 444-W and 462-S to this Commission, within 30 days of the date of this Order, for entry reflecting the deletion of territory, as set forth herein.

Rates and Charges

The action taken herein does not affect the rates and charges currently approved for GDU's remaining customers. Therefore, GDU shall continue to charge its customers the rates and charges approved in its tariff until authorized to change by the Commission.

New Class of Service

On June 21, 1991, GDU filed a request for a new class of service involving the resale of water service to Charlotte County due to the interdependency for water between Charlotte County and GDU. GDU proposed to charge \$2.16 per 1,000 gallons, with no base facility charge. The tariff became effective without Commission action on August 21, 1991, pursuant to the 60-day provision in Section 367.091(5), Florida Statutes. The Florida Supreme Court interprets the section of the Florida Statutes regarding the filing-and-suspension of rates to mean that rates, which become effective without Commission action, are interim rates pending a final order by the Commission. After the rates went into effect, we discovered that some distribution lines had been inappropriately included in the original cost study. This discovery results in a reduction in the calculation of the rate from \$2.16 to \$2.10 per 1,000 gallons of water.

GDU believes this rate structure is necessary for two reasons. One is that water is purchased and sold by GDU through the same transmission mains. The second reason is that water is delivered at multiple points along the transmission system. The rate is designed to reflect GDU's cost of producing and transmitting water from its North Port Water Treatment Plant.

On June 4, 1991, in anticipation of the transfer, a tri-party agreement (Agreement) was executed between Charlotte County, the Authority and GDU, for the continued provision of retail water service to customers in Charlotte, Desoto, and Sarasota Counties. As stated previously, the Authority owns and operates the Peace River Plant in Desoto County. The North Port Plant, owned by GDU, is in Sarasota County. Water produced by the Peace River Plant is sold by Manasota to GDU and to Charlotte County on a bulk basis. Water produced by the North Port Plant is also sold by GDU to Charlotte County. Sometimes water is sold simultaneously, with flows to Charlotte County being a blend of water from both plants.

The Agreement includes a payment plan for the provision of water service between Charlotte County and the two water sources, North Port and Peace River. The Agreement was necessary for several reasons. First, although most of Charlotte County can be supplied with water from the Peace River Plant, some of the distribution lines connected to the transmission line are owned by GDU. Also, a small community, Gulf Cove, can only receive water from GDU due to the configuration of the transmission lines. Further, depending on the total water demand on the North Port Plant, GDU will periodically purchase additional water from the Authority. In the Agreement, the parties agreed on a method to calculate the amount of water transmitted to Charlotte County from the North Port system for billing purposes.

Charlotte County plans to construct additional transmission facilities to serve the Gulf Cove area within three years. The construction will allow Charlotte County to serve the Gulf Cove area. In the meantime, GDU's and Charlotte County's lines are interconnected at numerous points along 8-inch and 12-inch mains.

The 1990 production information from GDU indicates that Charlotte County received approximately 24 percent of the total water produced and transported by GDU for the calendar year 1990. According to GDU, this demand for water is expected to continue. After the construction of Charlotte County's lines, Charlotte County may continue to purchase metered water from GDU.

According to the Agreement, Charlotte County pays Manasota for the water it consumes by paying its share of the base rate charge each month and a water use rate charge based on 95.18 percent of the water produced by the Peace River Plant. GDU pays the remaining share of Manasota's base rate each month and a water use rate charge based on 4.82 percent of the water produced by the Peace River Plant, regardless of the amount of water actually purchased. The costs incurred by GDU for the water which it receives from the Peace River Plant and transmits to Charlotte

County are passed through to Charlotte County. If Charlotte County uses less water than the 4.82 percent which is allocated, GDU incurs the cost of the Peace River water.

Because of the complexity of the circumstances surrounding the provision of water to Charlotte County, Charlotte County cannot be classified as a typical general service customer. One reason is the physical layout of the system, which has numerous connection points. Since the large transmission lines at the connection points do not lend themselves to metering without considerable expense, Charlotte County is not metered at any point in the transmission system for the delivery of water. Other reasons are the large volume of water transported to Charlotte County and GDU's purchase and transmittal of water from the Peace River Plant through the same lines as those that transmit water to Charlotte County and other GDU customers.

Due to the circumstances, the provision of water to Charlotte County presents a challenge for billing purposes. The rate structure is unlike any other bulk water rate previously approved for GDU's West Coast Division. At the time of our analysis of the filing, we were concerned that the proposed gallonage charge might not be sufficient, creating possible cross-subsidization by other GDU customers. We also questioned the lack of a proposed rate by GDU for the "wheeling" of water from the Peace River Plant to Charlotte County through GDU's transmission lines. Other concerns included the effect of the rate on earnings and the impact, if any, on the quality of service to GDU's other customers. The answers to these questions were predicated on understanding how the rate was developed from the cost study and how the quantity of water to be billed by GDU to Charlotte County was derived.

One of our concerns was the lack of Commission-audited data on the North Port system, which was needed as a starting point. The original rates were grandfathered in on April 9, 1991, and this GDU system has not had a rate case since that time. Therefore, there was no standardized foundation or starting point against which to evaluate the cost study data. However, GDU was able to provide a listing of its plant and expense accounts, which were traced to GDU's annual report.

The cost study used actual North Port 1990 operations numbers as a foundation and identified the expenses incurred in the production and transmission of water. Allocation factors were developed that estimated the amount of these accounts associated with the production and transmission of water from the North Port Plant to Charlotte County. A rate base and full return requirement were calculated. This was then added to the total operating

expense number, providing a revenue requirement relating to production and transmission expense. This requirement was divided by the total production at the North Port water plant, which yielded the bulk rate per 1,000 gallons, which is \$2.10.

In order to apply the rate, GDU developed a formula that attempted to calculate the amount of water sent to Charlotte County from both Peace River and North Port, and the amount of water actually consumed by GDU's customers, in order to determine the amount of water consumed by Charlotte County. The methodology uses the difference between total water production from both plants, less actual metered water sales and the estimated unaccounted-for-water (five-year average). This number is factored by the amount of usage by the Peace River Plant as stated in the Agreement. The result is the number of gallons of water consumed by Charlotte County from both plants. The final result provides an estimate of Charlotte County's payment to GDU for water received from the North Port and Peace River systems.

From our evaluation of the tariff request, it appears that GDU's approach to isolating the plant involved in the delivery of water to Charlotte County is reasonable, and that associated expenses have been fairly allocated. We are, however, concerned about GDU's decision not to charge Charlotte County any more than it paid for the water purchased from Manasota and transported through GDU's system. The Agreement and tariff refer to this as a "pass-through." Upon our initial review of the "pass-through" provision of the contract, we were of the opinion that GDU should receive compensation for transporting the water from Peace River to Charlotte County over and above the purchase price of the water. However, it is difficult to isolate the costs associated only with the "pass-through" water since it is not known which lines are used.

GDU, Manasota and Charlotte County are in agreement with the arrangement for purchase and sale of water. Further, it does not appear that GDU's existing customers will be harmed by the terms of the Agreement. Without requiring GDU to file data which would be required in a rate case, it is difficult to assess the actual impact on GDU's customers and the actual cost of service to Charlotte County and other customers. However, a case of this magnitude would cause GDU to incur additional expenses that could cause the rates to increase for all customers.

Based on the foregoing, we find that the rate (\$2.10 per 1,000 gallons) for service to Charlotte County is reasonable. The rate shall be effective upon approval by the Commission Staff of the revised tariff sheets. If, in the future, it is found that the

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rate is less than compensatory, GDU's other customers would not be subsidizing the cost of service to Charlotte County since their rates are not affected by this Agreement. Instead, the rate would reduce the investors' return on equity. If the rate is too high, any overearnings will be determined in the review of GDU's annual report. It appears that the quality of service to GDU's customers will not be affected by the agreement since GDU will provide water to customers outside of Gulf Cove in Charlotte County only if GDU has excess capacity.

Further, GDU shall credit Charlotte County's account for the amount billed in excess of \$2.10 per 1,000 gallons of water since initiation of the interim rate of \$2.16 per 1,000 gallons.

It is, therefore,

ORDERED by the Florida Public Service Commission that the transfer of a portion of General Development Utilities, Inc., West Coast Division, 2601 South Bayshore Drive, Miami, Florida 33133-5461, to Charlotte County, 18500 Murdock Circle, Port Charlotte, Florida 33948-1094, is hereby acknowledged. It is further

ORDERED that Certificates Nos. 444-S and 462-S, held by General Development Utilities, Inc., are hereby amended to reflect the deletion of the territory transferred to Charlotte County. General Development Utilities, Inc. shall return the Certificates to this Commission within 30 days of the date of this Order for entry reflecting the amendment. It is further

ORDERED that General Development Utilities, Inc. shall charge the customers in its remaining service area the rates and charges approved in its tariff until authorized to change by this Commission. It is further

ORDERED that General Development Utilities, Inc.'s request for a new class of service is hereby approved at a rate of \$2.10 per 1,000 gallons of water, as set forth herein. It is further

ORDERED that the rate shall be effective upon approval of the revised tariff sheets. It is further

ORDERED that GDU shall credit Charlotte County's account for the amount billed in excess of \$2.10 per 1,000 gallons of water since initiation of the interim rate of \$2.16 per 1,000 gallons. It is further

ORDERED that the provisions of this Order, issued as Proposed Agency Action, shall become final unless an appropriate petition in

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the form provided by Rule 25-22.036, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 101 East Gaines Street, Tallahassee, Florida 32399-0870, 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 4th day of NOVEMBER, 1991.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

ALC

by: Kay Hagan
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.

As identified in the body of this order, our action approving the request for a new class of service 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

11/25/91. In the absence of such a petition, this order shall become effective on the date subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

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 the relevant portion of this order becomes final and effective on the date described above, 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.

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

ATTACHMENT A

GENERAL DEVELOPMENT UTILITIES, INC.
WEST COAST DIVISION

The following described lands located in portions of Sarasota County for both water and wastewater service:

Sections 12, 13 and 14 in Township 39 South and Range 20 East;
and

Sections 1 through 36 in Township 39 South and Range 21 East;
and

Sections 7, 8 and 16 through 36 in Township 39 South Range 22
East; and

Sections 1, 2, 11 through 14, 22 through 27, and 34 through 36
in Township 40 South and Range 20 East.

Described more specifically as:

TOWNSHIP 39 SOUTH, RANGE 20 EAST

Section 12

The South 1/2 of Section 12, lying South of Interstate 75.

Section 13

All of Section 13.

Section 14

The East 1/2 of Section 14.

More specifically described as:

All Lots and Blocks lying in Section 13.

The East 1/2 of Section 14.

The South 1/2 of Section 12, lying South of Interstate 75.

TOWNSHIP 39 SOUTH, RANGE 21 EAST

Section 1

All of Section 1.

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Section 2

All of Section 2.

Section 3

All of Section 3.

Section 4

All of Section 4.

Section 5

All of Section 5.

Section 6

All of Section 6.

Section 7

All of Section 7.

Section 8

All of Section 8.

Section 9

All of Section 9.

Township 39 South, Range 21 East
Section 10

All of Section 10.

Section 11

All of Section 11.

Section 12

All of Section 12.

Section 13

All of Section 13.

Section 14

All of Section 14.

Section 15

All of Section 15.

Section 16

All of Section 16.

Section 17

All of Section 17.

Section 18

All of Section 18.

Section 19

All of Section 19.

Section 20

All of Section 20.

Section 21

All of Section 21.

Section 22

All of Section 22.

Section 23

All of Section 23.

Section 24

All of Section 24.

TOWNSHIP 39 SOUTH, RANGE 21 EAST

Section 25

All of Section 25.

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Section 26

All of Section 26.

Section 27

All of Section 27.

Section 28

All of Section 28.

Section 29

All of Section 29.

Section 30

All of Section 30.

Section 31

All of Section 31.

Section 32

All of Section 32.

Section 33

All of Section 33.

Section 34

All of Section 34.

Section 36

All of Section 36.

More specifically described as:

All of Sections 1 through 36.

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TOWNSHIP 39 SOUTH, RANGE 22 EAST
Section 7

All of that portion of the South 1/2 of Section 7, lying South of Interstate 75.

Section 8

All of that portion of Section 8 lying South and West of Interstate 75.

Section 16

All of that portion of Section 16 lying Southwesterly of Interstate 75.

Section 17

All of Section 17.

Section 18

All of Section 18.

Section 19

All of Section 19.

Section 20

All of Section 20.

Section 21

All of Section 21.

Section 22

All of Section 22.

Section 23

All of Section 23.

Section 24

All of Section 24.

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Section 25

All of Section 25.

Section 26

All of Section 26.

Section 27

All of Section 27.

Section 28

All of Section 28.

TOWNSHIP 39 SOUTH, RANGE 22 EAST

Section 30

All of Section 30.

Section 31

All of Section 31.

Section 32

All of Section 32.

Section 33

All of Section 33.

Section 34

All of Section 34.

Section 35

All of Section 35.

Section 36

All of Section 36.

More specifically described as:

Portions of Sections as described:

Section 2 less the Southeast 1/4 thereof.

Section 11 less the Northeast 1/2 of the Northeast 1/4, and less the Southeast 1/4 of the Southeast 1/4.

Section 12, the North 1/2.

Section 13

All of Section 13.

Section 14

All of Section 14.

Section 22

All of Section 22.

Section 23

All of Section 23.

Section 24

All of Section 24.

Section 25

All of Section 25.

Section 26

All of Section 26.

Section 27

All of Section 27.

Section 34

All of Section 34.

Section 35

All of Section 35.

Section 36

All of Section 36.

The following described lands located in portions of Charlotte County for water service only:

Sections 1 and 3 through 6 in Township 40 South and Range 21 East; and

Sections 3 through 5 in Township 40 South and Range 22 East.

Described more specifically as:

POINTS OF CONNECTION

TOWNSHIP 40 SOUTH, RANGE 21 EAST

Section 1

Two Points of Connection located in the West 1/2 of the Northwest 1/4 of Section 1.

Section 3

One Point of Connection located in the West 1/2 of the Northeast 1/4 of Section 3. Also another Point of Connection located on the West Section line in the Northwest 1/4 of Section 3.

Section 4

One Point of Connection located in the West 1/2 of the Northwest 1/4 of Section 4.

Section 5

One Point of Connection located on the North section line of Section 5. Another two Points of Connection located in the West 1/2 of the Northeast 1/4 of Section 5.

Section 6

One Point of Connection located in the West 1/2 of the Northwest 1/4 of Section 6.

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TOWNSHIP 40 SOUTH, RANGE 22 EAST

Section 3

One Point of Connection located in the East 1/2 of the Northeast 1/4 of Section 3.

Section 4

One Point of Connection located in the West 1/2 of the Northeast 1/4 of Section 4.

Section 5

One Point of Connection located on the east Section line of the Northeast 1/4 of Section 5. Another Point of Connection located in the East 1/2 of the Northeast 1/4 of Section 5.