

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Objection to application) DOCKET NO. 910847-SU
for transfer of Certificate No.) ORDER NO. PSC-92-0407-POF-SU
395-S in Lee County from Springs) ISSUED: 05/26/92
Plaza Sewer System, Inc. to)
Forty-One Corporation.)
_____)

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK
J. TERRY DEASON
BETTY EASLEY
LUIS J. LAUREDO

FINAL ORDER APPROVING TRANSFER OF CERTIFICATE NO. 395-S

AND

NOTICE OF PROPOSED AGENCY ACTION

ORDER ADJUSTING RATE BASE AND

APPROVING NEGATIVE ACQUISITION ADJUSTMENT

Denying

BY THE COMMISSION:

NOTICE IS HEREBY GIVEN by the Florida Public Service Commission that the action discussed herein establishing rate base and not recognizing negative acquisition adjustment is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for formal proceedings pursuant to Rule 25-22.029, Florida Administrative Code.

BACKGROUND

Springs Plaza Sewer System, Inc. (SPSS or utility) is a Class C wastewater utility providing service in Lee County. The utility's primary customer is Springs Plaza Shopping Center. SPSS also provides service to several other commercial establishments. In its 1990 Annual Report, SPSS reported gross operating revenues of \$60,426 with a \$23,237 operating loss.

On March 6, 1991, Forty-One Corporation obtained possession of SPSS along with acreage within the Springs Plaza development area through a foreclosure sale. Forty-One Corporation is a subsidiary

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of the Huntington Mortgage Company which held the mortgage for the Springs Plaza development area. The Springs Plaza development area includes the wastewater utility.

While we were aware of the financial difficulties of the prior owner, we did not know that Forty-One Corporation had taken over the utility until June, 1991. While it is true that the prior owner transferred the utility without our approval, in violation of Section 367.071(1), Florida Statutes, we will not order a show cause because since it was a foreclosure, we view the transaction as an involuntary transfer. We also believe that the prior owner did not show any disregard for this Commission. Forty-One Corporation filed a completed transfer application on August 8, 1991.

Initially, Springs Plaza Associates, owner of the Springs Plaza Shopping Center, protested the notice of application. The case was referred to the Division of Administrative Hearings (DOAH). However, on January 2, 1992, Springs Plaza Associates withdrew its petition for formal hearing upon learning that Forty-One Corporation had entered into a Consent Order with the Department of Environmental Regulation (DER) on December 2, 1991. As a result of the withdrawal, DOAH relinquished jurisdiction to this Commission.

TRANSFER OF CERTIFICATES

The application filed by Forty-One Corporation is in compliance with Section 367.071, Florida Statutes, and all other pertinent statutes and Commission rules concerning an application for a transfer. In particular, the notarized application contains:

- 1) A check in the amount of \$150, which upon calculation, equates to the correct filing fee as prescribed by Rule 25-30.020, Florida Administrative Code.
- 2) Proof of notice of application to all interested governmental/regulatory agencies and all utilities within a four-mile radius of the territory, and proof of advertisement in a newspaper of general circulation in the county, as prescribed by Rule 25-30.030, Florida Administrative Code.

- 3) Proof of notice to all customers of record pursuant to Rule 25-30.030(g), Florida Administrative Code.
- 4) Evidence that the utility owns the land upon which the utility's facilities are located as required by Rule 25-30.037(1)(o), Florida Administrative Code.

As previously noted, the sole objection was withdrawn and the time for filing protests against the transfer of Certificate No. 395-S has expired. Also, a description of the territory served by the utility is included in this Order as Attachment A.

Forty-One Corporation has contracted with the engineering firm of Post, Buckley, Schuh & Jernigan for the operation of the utility. We are familiar with this firm and know it to have extensive experience in the operation of both water and wastewater plants. As a subsidiary, Forty-One Corporation is internally funded by the Huntington Mortgage Corporation which has sufficient funds to improve and operate the system. Since signing a Consent Order with DER dealing with both operational and capacity problems of the wastewater treatment plant, Forty-One Corporation has invested over \$50,000 in improvements. The utility continues to make improvements to comply with the Consent Order in order to operate the plant until an anticipated interconnection is made with the Bonita Springs Water System's Regional Wastewater System in 1993.

Upon consideration, we find that this transfer is in the public interest. Accordingly, we hereby approve the transfer of Certificate No. 395-S from SPSS to Forty-One Corporation.

RATE BASE

Our evaluation of the utility's rate base began with an examination of the rate base approved by this Commission in SPSS' last staff-assisted rate case in Order No. 17200, issued February 18, 1987, Docket No. 860032-WS. We audited the books and records of the utility to determine rate base, based on net book value, at the time of transfer. We have adjusted the rate base listed on the utility's books as a result of the investigation in the following areas: accumulated depreciation, contributions-in-aid-of-construction (CIAC) amortization for wastewater; and land value for the wastewater system.

The results of our adjustments are shown in Schedules Nos. 1 and 2. Based on the adjustments set forth herein, we determined that the rate base for SPSS is \$217,274 for the wastewater system as of March 6, 1991. This rate base calculation is used purely to establish the net book value of the property being transferred and does not include the normal ratemaking adjustments of working capital calculations and used and useful adjustments.

We have also determined that a negative acquisition adjustment shall not be included in the calculation of rate base for transfer purposes. An acquisition adjustment results when the purchase price differs from the original cost calculation. The acquisition adjustment resulting from the transfer of SPSS is calculated as follows:

Rate Base (Net Book Value):	\$217,274
Purchase Price:	\$200,000
Negative Acquisition Adjustment:	\$ 17,274

The \$200,000 purchase price is the bid price used by Huntington National Mortgage Company at the foreclosure sale. At the time of the sale, the balance due on the loan, with accrued interest, was approximately \$5,000,000. The mortgage company bid \$3,600,000 for the undeveloped acreage in the Springs Plaza development area and \$200,000 for the utility. Forty-One Corporation indicates that the split of the bid was arbitrary and represents a book transaction. Forty-One Corporation has and continues to invest funds to upgrade the system and has indicated its intent to operate under existing rates and charges until the system is interconnected to the Bonita Springs Water System's wastewater system in 1993. Therefore, the rate base determination in this case should have no impact on future rates and charges.

In the absence of extraordinary circumstances it has been Commission policy that a subsequent purchase of a utility system at a premium or discount shall not affect the rate base calculation. The circumstances in this exchange do not appear to be extraordinary; therefore, a negative acquisition adjustment shall not be included in the calculation of rate base.

RATES AND CHARGES

Rule 25-9.044(1), Florida Administrative Code, States the following:

In cases 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 (unless authorized to change by the Commission)
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The utility's present rates and charges were approved in Order No. 17200 and were effective May 6, 1987. SPSS has not requested a change in these previously-approved rates and charges, and we see no reason to change them at this time. Accordingly, SPSS will continue to operate under the existing tariff and apply the existing rates and charges. The utility has filed a tariff reflecting the transfer of ownership. We will approve the tariff filing effective for services provided or connections made after the stamped approval date.

It is, therefore,

ORDERED by the Florida Public Service Commission that the application for the transfer of Certificate No. 395-S from Springs Plaza Sewer System, Inc. to Forty-One Corporation is hereby approved. It is further

ORDERED that Forty-One Corporation shall adopt and use the rates, charges, classifications and regulations of Springs Plaza Sewer System, Inc. until such time as we approve otherwise. It is further

ORDERED that the tariff filing shall become effective for services provided or connections made after the stamped approval date. It is further

ORDERED that the provisions of this Order establishing rate base and not recognizing a negative acquisition adjustment are issued as proposed agency action, and shall become final, unless an appropriate petition in the form provided by Rule 25-22.036, Florida Administrative Code, is received by the Director, Division

of Records and Reporting at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the date set forth in the Notice of Further Proceedings attached hereto. It is further

ORDERED that the rate base of Springs Plaza Sewer System, Inc. for purposes of this transfer is \$217,274 for the wastewater system. It is further

ORDERED that if no timely protest is received to the proposed agency action portions of this Order, this docket shall be closed.

By ORDER of the Florida Public Service Commission, this 26th day of May, 1992.

STEVE TRIBBLE, Director
Division of Records and Reporting

by: Kay Hlyon
Chief, Bureau of Records

(S E A L)

DISSENT: Commissioner J. Terry Deason dissents from only the part of this Order that fails to recognize a negative acquisition adjustment.

NRF

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 actions herein establishing rate base and not recognizing a negative acquisition adjustment are 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 16, 1992. 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 wastewater 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 wastewater 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

Springs Plaza Sewer System, Inc.

TERRITORY DESCRIPTION

The following described lands located in portions of Section 4, Township 48 South, Range 25 East, in Lee County, Florida:

That portion of the East 1/2 of the East 1/2 of Section 4, Township 48 South, Range 25 East, Lee County, Florida, lying East of U.S. 41 (S.R. 45)

SCHEDULE NO. 1

Springs Plaza Sewer System, Inc.

Schedule of Wastewater Rate Base

As of March 6, 1991

<u>DESCRIPTION</u>	<u>BALANCE PER UTILITY</u>	<u>COMMISSION ADJUSTMENTS</u>	<u>BALANCE PER COMMISSION</u>
Utility Plant in Service	\$454,940	\$14,055 (1)	\$468,995
Land	25,858	0	25,858
Accumulated Depreciation	(290,330)	61,571 (2)	(228,759)
Contributions-in- aid-of-Construction	0	(52,548) (3)	(52,548)
CIAC Amortization	<u>0</u>	<u>3,728</u> (4)	<u>3,728</u>
TOTAL	<u>\$190,468</u>	<u>\$26,806</u>	<u>\$217,274</u>

SCHEDULE NO. 2

Springs Plaza Sewer System, Inc.

SCHEDULE OF WATER/SEWER RATE BASE ADJUSTMENTS

<u>EXPLANATION</u>	<u>ADJUSTMENT</u>
<u>Utility Plant in Service</u>	
1) To record adjustments made in Order No. 17200	<u>\$(33,243)</u>
To reflect contributed lines	<u>47,298</u>
Total Plant-in-Service	<u>\$ 14,055</u>
<u>Accumulated Depreciation</u>	
2) To record adjustments made in Order No. 17200	<u>\$ 9,947</u>
To depreciate additional plant in Adjustment No. 1	<u>8,078</u>
To adjust for overstated depreciation due to the utility using the wrong rates	<u>43,546</u>
Total Accumulated Depreciation	<u>\$ 61,571</u>
<u>Contributions-in-Aid-of-Construction</u>	
3) To record cash contributions	<u>(\$5,250)</u>
To record property contributions	<u>(47,298)</u>
Total CIAC	<u>(\$52,548)</u>
<u>CIAC Amortization</u>	
4) To record amortization associated with Adjustment No. 3	<u>\$ 3,728</u>
Total Adjustments	<u>\$ 26,806</u>