

FLORIDA PUBLIC SERVICE COMMISSION
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M E M O R A N D U M

October 26, 1995

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF WATER & WASTEWATER (TOMLINSON, REDMANN) *ppk lsm*
DIVISION OF LEGAL SERVICES (CAPELESS) *PSC JAS BL GM*

RE: DOCKET NO. 950015-WU - TAMAMI VILLAGE UTILITY, INC. -
APPLICATION FOR TRANSFER OF CERTIFICATE NO. 388-W FROM
TAMAMI VILLAGE UTILITY, INC. TO TAMAMI VILLAGE WATER
COMPANY, INC.
COUNTY: LEE

AGENDA: NOVEMBER 7, 1995 - REGULAR AGENDA - PROPOSED AGENCY
ACTION FOR ISSUES NOS. 2 AND 3 - INTERESTED PERSONS MAY
PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: Revised Recommendation on Issue 3.
Deferred from the September 26, 1995,
Agenda Conference.
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DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

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CASE BACKGROUND

Tamiami Village Utility, Inc. (TVU or utility) is a Class C utility in Lee County which provided water and wastewater service to approximately 742 customers in 1994. According to the 1994 annual report, TVU's consolidated annual revenues were \$326,371 and its consolidated net operating income was \$16,893. TVU's water system is comprised of its distribution facilities. It receives bulk water service from Lee County Utilities Department (Lee County). On August 3, 1994, TVU's shareholders voted to sell their water and wastewater facilities.

On September 13, 1994, North Fort Myers Utility, Inc. (NFMU) filed an application for amendment of its Wastewater Certificate No. 247-S to include territory served by TVU, and for cancellation of TVU's Wastewater Certificate No. 332-S, which we processed under Section 367.071, Florida Statutes, as an application for transfer of TVU's territory to NFMU, cancellation of Certificate No. 332-S, and amendment of Certificate No. 247-S. A formal hearing was held on February 2, 1995. Order No. PSC-95-0576-FOF-SU was issued May 9, 1995, approving NFMU's application. On May 24, 1995, the Office of Public Counsel (OPC) filed a Motion for Reconsideration and Motion for Clarification of Order No. PSC-95-0576-FOF-SU. On August 8, 1995, Order No. PSC-95-0965-FOF-SU was issued granting in part and denying in part OPC's Motion for Reconsideration, amending Order No. PSC-95-0576-FOF-SU, and denying OPC's Motion for Clarification. On September 7, 1995, OPC filed a Notice of Appeal of Orders Nos. PSC-95-0576-FOF-SU and PSC-95-0965-FOF-SU.

TVU considered transferring the water facilities to Lee County or to a local property owner's association. After bids were taken and upon much consideration, TVU entered into an agreement on December 8, 1994, with Tamiami Village Water Company, Inc. (TVWC). On January 3, 1995, an application was filed for the transfer of TVU's Water Certificate No. 388-W to TVWC. Section 367.071, Florida Statutes, states that no utility shall sell, assign, or transfer its certificate of authorization, facilities or any portion thereof, or majority organizational control without the approval of the Commission. Staff has reviewed the Water Service Agreement and has found that although the parties have come to an agreement on the sale, the official closing is contingent upon the approval of the Commission.

Pursuant to Sections 367.071 and 367.045, Florida Statutes, and Rule 25-30.030, Florida Administrative Code, TVWC provided notice of the transfer application. Because numerous

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customers of TVU protested the transfer application, this matter was set for a formal hearing on November 3, 1995, in Ft. Myers, pursuant to Chapter 120.57(1), Florida Statutes. However, all protesting customers later withdrew their letters of protest to the notice of the transfer application either by letter or by documented telephone contact. Accordingly, the Chairman's office cancelled the prehearing and hearing dates. The purpose of this recommendation is to address the remaining transfer issues.

This recommendation was previously on the September 26, 1995 Agenda, but was subsequently deferred due to the Chairman's concerns regarding the utility's apparent request for a negative acquisition adjustment. Following the September 26, 1995 Agenda, Staff contacted the utility to clarify its intentions regarding the negative acquisition adjustment. As a result of this discussion, Staff has filed a revision to Issue 3.

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DISCUSSION OF ISSUES

ISSUE 1: Should the transfer of Water Certificate No. 388-W from Tamiami Village Utility, Inc., to Tamiami Village Water Company, Inc., be approved?

RECOMMENDATION: Yes, the transfer of Water Certificate No. 388-W from Tamiami Village Utility, Inc., to Tamiami Village Water Company, Inc., should be approved. (TOMLINSON, REDEMANN)

STAFF ANALYSIS: The application is in compliance with Section 367.071, Florida Statutes, and other pertinent statutes and administrative rules concerning an application for transfer of certificate. The application contains a check in the amount of \$750, which is the correct filing fee pursuant to Rule 25-30.020, Florida Administrative Code. The applicant has provided evidence that the utility owns the land upon which its facilities are located, as required by Rule 25-30.037(1)(c), Florida Administrative Code.

In addition, the application contains proof of compliance with the noticing provisions set forth in Rule 25-30.030, Florida Administrative Code, including notice to the customers of the system to be transferred. As discussed in the Case Background, objections to the notice of application have been received and the matter was set for hearing. Later, all objections were withdrawn and the hearing was cancelled.

A description of the territory served by the utility is appended to this memorandum as Attachment A.

With regard to the purchaser's technical ability, the purchaser, Mr. John J. Ustica, has stated that he is familiar with the current operations of the facility. Mr. Ustica is a Certified Public Accountant and is presently engaged by TVU to prepare the annual report. He has also been engaged by TVU during its rate case and previous index filings and pass-throughs. In addition, Mr. Ustica has been involved in water and wastewater operations for the past fifteen years. He has served as an external auditor and has performed other accounting functions for other utilities. It is not anticipated that TVWC will be retaining any current employees of TVU. Further, Staff has contacted the Department of Environmental Protection (DEP) and has learned that there are no outstanding notices of violation against TVU.

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With regard to the purchaser's financial ability, a statement of assets was provided to Staff. TVWC has \$26,095 of capital available to operate the utility in addition to a \$30,000 approved line of credit with a local bank. Because TVU's water system consists only of a distribution system and not a treatment facility, Staff believes that TVWC has adequate funds to fulfill the commitments and obligations related to the operation of the distribution facility and to make improvements in the facility as they may be needed in the future. In addition, the investment by the purchaser was made in cash and no debt was assumed.

The application contains a copy of the contract for sale and a statement which includes the purchase price, terms of payment, and a list of the assets purchased and the liabilities assumed. TVWC provided a statement in its application that it will fulfill the outstanding commitments, obligations and representations of TVU.

Based on the above, Staff believes the transfer of Water Certificate No. 388-W from Tamiami Village Utility, Inc., to Tamiami Village Water Company, Inc., is in the public interest and should be approved.

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ATTACHMENT A

Tamiami Village Water Company, Inc.

TERRITORY DESCRIPTION

The following described lands located in portions of Section 27, Township 43 S, Range 24 E, Lee County, Florida:

Tract or Parcel of land in the South Half (S 1/2) of the Northwest Quarter (NW 1/4) and in the North Half (N 1/2) of the Southwest Quarter (SW 1/4) of Section 27, Township 43 South, Range 24 East, Lee County, Florida and in Leesure Village, a Mobile Home Park as recorded in Condominium Plat Book 3, pages 60 through 76 of the Lee County, Florida Public Records which is described as follows: From the Southwest corner of said North Half (N 1/2) of the Southwest Quarters (SW 1/4); thence North 89 degrees 48 minutes 29 seconds East along the South line of said fraction for 25.0 feet; thence North 0 degrees 19 minutes 10 seconds West parallel with the West line of said Section for 1937.92 feet to the Point of Beginning; thence continue North 0 degrees 19 minutes 10 seconds West for 378.77 feet; thence North 89 degrees 33 minutes 50 seconds East for 575.62 feet; thence South 0 degrees 18 minutes 50 seconds East for 169.78 feet; thence South 0 degrees 26 minutes 10 seconds East for 209.19 feet; thence South 89 degrees 33 minutes 50 seconds West for 576.03 feet to the Point of Beginning.

Subject to easements, restrictions and reservations of record.

A tract or parcel of land in the Southeast 1/4 of the Southwest 1/4 of Section 27, Township 43 South, Range 24 East, Lee County Florida, which is described as follows:

From the Southwest corner of said fraction of Section; thence N.0°19'10"W. along the West line of said Section for 25.0 feet; thence S. 89°53'40" E. along the North right of way (25.0 feet from center line) of Littleton Road and parallel with the South line of said Section for 1877.70 feet to an intersection with a Southerly prolongation of a line parallel with and 290.00 feet (as measured on a perpendicular) from the Westerly line (S.05°56'20"W.) of the Tamiami Trail (U.S. 41, State Road No. 45) and the Point of Beginning.

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Thence N. 05°56'20"E. along said prolongation for 348.19 feet; thence S. 84°03'40"E. for 290.00 feet; thence S.05°56'20"W. along the Westerly right of way (100.00 feet from center line) of said Tamiami Trail for 208.00 feet to a point of curvature of a curve to the left (radius 5829.58 feet, Delta Angle 01°05'08"); thence Southwesterly along the arc of said curve for 110.46 feet; thence N.89°53'40"W. along said North right of way of Littleton Road for 292.55 feet to the Point of Beginning. Containing 2.220 acres more or less.

A tract or parcel of land in the Southeast 1/4 of the Southwest 1/4 of Section 27, Township 43 South, Range 24 East, Lee County, Florida, which is described as follows:

From the Southwest corner of said fraction of Section; thence N.0°19'10"W. along the West line of said Section for 25.0 feet; thence S. 89°53'40"E. along the North right of way (25.0 feet from center line) of Littleton Road and parallel with the South line of said Section for 1877.70 feet to an intersection with a Southerly prolongation of a line parallel with and 290.00 feet (as measured on a perpendicular) from the Westerly right of way (S.05°56'20"W.) of the Tamiami Trail (U.S. 41, State Road 45); thence N.05°56'20"E. along said prolongation for 348.19 feet to the Point of Beginning.

Thence continue N.05°56'20"E. along said prolongation for 371.45 feet; thence S.89°53'40"E. along the Southerly line of an 80.00 feet wide parcel II land as recorded in O.R.B. 1687, page 1106 for 291.50 feet; thence S.05°56'20"W. along said Westerly right of way (100.00 feet from the center line) of said Tamiami Trail for 401.00 feet; thence N.84°03'40"W. for 290.00 feet to the Point of Beginning. Containing 2.572 acres more or less.

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ISSUE 2: What is the rate base of Tamiami Village Utility, Inc., at the time of transfer?

RECOMMENDATION: The rate base, which for transfer purposes reflects the net book value, is \$57,795 for the water system as of December 31, 1994. (TOMLINSON)

STAFF ANALYSIS: According to the application, the net book value of the system being transferred as of the date of the proposed transfer is \$76,517. Rate base was previously established by this Commission in Docket No. 910560-WS, which was an application for approval of rate increase. According to Order No. PSC-92-0807-FOF-WS, issued August 11, 1992, rate base at that time was \$108,485.

Staff conducted an audit of the books and records of the utility to determine the rate base (net book value) at the time of transfer. The rate base was examined by Staff and the beginning balances were reconciled to the last order. Additions since the last order were traced by Staff to the supporting documentation. Staff recomputed the 1993 depreciation and amortization. In addition, contributions-in-aid-of-construction (CIAC) were traced to the deposit slips, and the deposits and tax returns were reviewed for unrecorded CIAC. Staff found that the utility's books and records were maintained in substantial compliance with Commission directives.

According to the company ledger, the plant balances for the assets being transferred is \$61,236 (Schedule No. 1). The only adjustment made by Staff was to correct the accumulated amortization of CIAC. Staff discovered that the company has used an amortization rate for CIAC of 4.1%. This rate should have been changed based on current depreciation expense to plant. The depreciation expense net of office equipment and general plant is \$6,867. Plant net of office equipment and general plant is \$207,178. The composite rate would be 3.31%. Therefore, Staff reflected a negative adjusted to the accumulated amortization of CIAC by \$3,441.

Staff's calculation of rate base is shown on Schedule No. 1 for the water system. Adjustments to rate base are itemized on Schedule No. 2. Based on the adjustments set forth herein, Staff recommends that rate base for TVWC be established as \$57,795 for the water system as of December 31, 1994. 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.

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SCHEDULE NO. 1

Tamiami Village Utility, Inc.

SCHEDULE OF WATER RATE BASE

As of December 31, 1994

<u>DESCRIPTION</u>	<u>BALANCE PER UTILITY</u>	<u>STAFF ADJUSTMENTS</u>	<u>BALANCE PER STAFF</u>
Utility Plant in Service	216,505		216,505
Land	0		0
Accumulated Depreciation	(116,293)		(116,293)
Contributions-in- aid-of-Construction	(103,713)		(103,713)
Amortization of Accumulated CIAC	<u>64,736</u>	<u>(3,441)</u>	<u>61,295</u>
TOTAL	<u>\$61,236</u>	<u>(\$3,441)</u>	<u>\$57,795</u>

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SCHEDULE No. 2

Tamiami Village Utility, Inc.

SCHEDULE OF WATER RATE BASE ADJUSTMENTS

EXPLANATION

ADJUSTMENT

Accumulated Amortization of CIAC

To adjust accumulated amortization
rate from 4.1% to 3.31%.

\$ 37,587

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ISSUE 3: Should a negative acquisition adjustment be approved?

RECOMMENDATION: No, a negative acquisition adjustment should not be included in the calculation of rate base for transfer purposes. (TOMLINSON)

STAFF ANALYSIS: An acquisition adjustment results when the purchase price differs from the rate base for transfer purposes. The acquisition adjustment resulting from the transfer of TVU would be calculated as follows:

Purchase Price:	\$24,000
Staff Calculated Rate Base:	<u>57,795</u>
Negative Acquisition Adjustment:	<u>\$33,795</u>

In the application, TVWC requested an acquisition adjustment in order to balance the books. However, on October 5, 1995, Mr. Ustica, President of TVWC, filed an affidavit stating that TVWC withdraws this request, and that TVWC agrees that a negative acquisition adjustment should not be included in the calculation of rate base for transfer purposes. Mr. Ustica explains that he originally believed that the Commission would require that an acquisition adjustment be made in order for the utility to balance the books for reporting purposes. He now understands that this is not necessary. Mr. Ustica further states that he did not realize that an acquisition adjustment would affect the rate base, and that it was not his intention to ask for a negative acquisition adjustment because he agrees with Staff's calculation of rate base.

In the absence of extraordinary circumstances, it has been Commission practice that a subsequent purchase of a utility system at a premium or discount shall not affect the rate base calculation. Staff does not view TVWC's desire to balance the books as extraordinary. Moreover, TVWC has withdrawn its request for inclusion of an acquisition adjustment and agrees with the Staff's recommendation that a negative acquisition adjustment should not be included in the calculation of rate base for transfer purposes. Therefore, Staff recommends that a negative acquisition adjustment should not be included in the calculation of rate base.

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ISSUE 4: Should Tamiami Village Water Company, Inc., adopt and use the rates and charges approved by this Commission for Tamiami Village Utility, Inc.?

RECOMMENDATION: Yes, Tamiami Village Water Company, Inc., should continue charging the rates and charges approved for this utility system. The tariff reflecting the change in ownership should be effective for services provided or connections made on or after the stamped approval date. (TOMLINSON)

STAFF ANALYSIS: The utility's current approved rates and charges were effective August 31, 1992, pursuant to Order No. PSC-92-0807-FOF-WS, issued in Docket No. 910560-WS. The Commission approved these rates when TVU filed for a rate increase. Since then, the utility has filed for a price index increase every year, the most recent being the 1994 index which became effective May 15, 1995.

Rule 25-9.044(1), Florida Administrative Code, provides that:

[i]n 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 (unless authorized to change by the Commission).

TVWC does not requested a change in the rates and charges of the utility. Accordingly, Staff recommends that the utility continue operations under the existing tariff and apply the approved rates and charges. The utility has filed a tariff reflecting the transfer of ownership. Staff will approve the tariff filing effective for services provided or connections made on or after the stamped approval date.

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ISSUE 5: Should this docket be closed?

RECOMMENDATION: Yes. This docket should be closed if no person, whose interests are substantially affected by the proposed actions in Issues 2 and 3, files a protest within the 21 day protest period. (CAPELESS)

STAFF ANALYSIS: This docket should be closed if no person, whose interests are substantially affected by the proposed actions in Issues 2 and 3, files a protest within the 21 day protest period.