



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: JANUARY 25, 2001

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

FROM: DIVISION OF LEGAL SERVICES (FUDGE) *HF*
 DIVISION OF ECONOMIC REGULATION (RENDELL, LING) *RL*
 DIVISION OF POLICY ANALYSIS AND INTERGOVERNMENTAL LIAISON (BETHEA) *HL*

RE: DOCKET NO. 010087-WS - APPLICATION FOR APPROVAL FOR A REUSE PLAN IN LAKE COUNTY BY SUN COMMUNITIES FINANCE, LLC D/B/A WATER OAK UTILITY

AGENDA: 02/06/2001 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\LEG\WP\010087.RCM

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CASE BACKGROUND

Sun Communities Finance, LLC d/b/a Water Oak Utility (Sun Communities or utility) is a Class B water and wastewater utility located in Lake County. The utility provides water and wastewater service to approximately 745 residential customers and 14 general service customers. The utility was granted Water Certificate No. 454-W and Wastewater Certificate No. 388-S, pursuant to Order No. 16150, issued May 23, 1986, in Docket No. 850517-WS. The utility's rate base was last established pursuant to Order No. PSC-97-0034-FOF-WS, issued January 7, 1997 in Docket No. 960040-WS.

By Order No. PSC-00-1165-PAA-WS, issued June 27, 2000, in Docket No. 990243-WS, the Commission ordered Sun Communities to, among other things,

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file a reuse project plan (Plan) pursuant to Section 367.0817, Florida Statutes, within six months of the final order;

file semiannual reports of its conservation program; and

prepare monthly reports detailing the number of bills rendered, the consumption billed and the revenue billed. These reports shall be filed, by customer class and meter size, on a quarterly basis for a period of two years, beginning with the first billing period after the approved rates go into effect. The provision of this reporting requirement applies to all customers receiving service.

That Order was consummated by Order No. PSC-00-1301-CO-WS, issued July 19, 2000. Consequently, Sun Communities was required to file its Plan on January 19, 2001.

By letter dated January 16, 2001, the utility filed its Request for Extension of Time to File Reuse Project Plan.

This recommendation addresses Sun Communities' Request for Extension of Time. Further, staff is recommending that the utility has failed to comply with Order No. PSC-00-1165-PAA-WS, and that it should be required to show cause, in writing within 21 days, why it should not be fined \$300 for its apparent violation of that Order. The Commission has jurisdiction pursuant to Sections 367.0817 and 367.161, Florida Statutes.

ISSUE 1: Should Sun Communities' Request for Extension of Time to File the reuse project plan required by Order No. PSC-00-1165-PAA-WS be granted?

RECOMMENDATION: Yes. Sun Communities' Request for Extension of Time to June 19, 2001, to file its reuse project plan should be granted. The utility should be required to continue to defer 23.07% of monthly wastewater billings pursuant to Order No. PSC-00-1165-PAA-WS. (FUDGE, RENDELL).

STAFF ANALYSIS: Sun Communities has filed a Request for Extension of Time to file its reuse project plan to June 19, 2001. In support of its Request for Extension of Time, Sun Communities states that although it has been working with its design engineer in attempting to determine the specific type of treatment options available, as well as working with the regulators on what will be required to implement the reuse plan, there have been unforeseen delays in accumulating all of this information. Moreover, the utility is negotiating the sale of the utility, which may make the filing of the Plan moot. The utility is also determining the best available alternative for obtaining financing for the project: either through related party debt or equity arrangement. There were no other parties involved in the prior docket.

Staff agrees with Sun Communities' rationale for granting an extension of time to June 19, 2001. Staff believes that granting an extension of time until June 19, 2001, will give the utility enough time to resolve the possible sale of the utility and time to finalize the Plan that it will file, if any. Therefore, staff believes that it is reasonable to grant the utility an extension of time in which to file its Plan. Staff recommends that Sun Communities' Request for Extension of Time to June 19, 2001, to file its reuse project plan should be granted.

Order No. PSC-00-1165-PAA-WS also required the utility to "defer 23.07% of monthly wastewater billings and include the deferred revenues as a separate line item in its capital structure with a cost rate equal to the thirty-day commercial paper rate. Once the utility's reuse project plan is approved, the deferred earnings and accrued interest shall be booked to CIAC." Because the utility has not filed its reuse project plan, the utility should be required to continue to defer 23.07% of monthly wastewater billings pursuant Order No. PSC-00-1165-PAA-WS.

ISSUE 2: Should the utility be required to show cause, in writing within 21 days, why it should not be fined \$300 for its apparent violation of Order No. PSC-00-1165-PAA-WS for failing to file the quarterly and semiannual reports required by that Order?

RECOMMENDATION: Yes. The utility should be required to show cause, in writing within 21 days, why it should not be fined \$300 for its apparent violation of Order No. PSC-00-1165-PAA-WS, requiring the filing of quarterly and semiannual reports. (FUDGE, LINGO, BETHEA)

STAFF ANALYSIS: As discussed in the case background, Order No. PSC-00-1165-PAA-WS required the utility to: file semiannual reports of its conservation program; and prepare monthly reports detailing the number of bills rendered, the consumption billed and the revenue billed. The Commission required that these reports shall be filed, by customer class and meter size, on a quarterly basis for a period of two years, beginning with the first billing period after the approved rates go into effect. The provision of this reporting requirement applies to all customers receiving service.

Section 367.161(1), Florida Statutes, authorizes the Commission to assess a penalty of not more than \$5,000 for each offense, if a utility is found to have knowingly refused to comply with, or to have willfully violated any provision of Chapter 367, Florida Statutes, or any lawful rule or order of the Commission.

Utilities are charged with the knowledge of the Commission's rules, statutes, and orders. In Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL, entitled In Re: Investigation Into The Proper Application of Rule 25-14.003, F.A.C., Relating To Tax Savings Refund for 1988 and 1989 For GTE Florida, Inc., the Commission, having found that the company had not intended to violate the rule, nevertheless found it appropriate to order it to show cause why it should not be fined, stating that "'willful' implies an intent to do an act, and this is distinct from an intent to violate a statute or rule." Id. at 6. Additionally, "[i]t is a common maxim, familiar to all minds that 'ignorance of the law' will not excuse any person, either civilly or criminally." Barlow v. United States, 32 U.S. 404, 411 (1833).

As of the date of the filing of this recommendation, the utility has not responded to staff's inquiries on the status of these reports. Consequently, staff believes that the utility's failure to file the reports required by Order No. PSC-00-1165-PAA-WS is willful and an apparent violation of the Commission's Order. There are no mitigating circumstances to consider in determining

whether a show cause proceeding should be initiated. Therefore, staff believes that a show cause proceeding is warranted at this time. Staff recommends that the Commission order the utility to show cause, in writing within 21 days, why it should not be fined \$100 for each delinquent report for a total of \$300, for its apparent violation of Order No. PSC-00-1165-PAA-WS which requires certain quarterly and semiannual reports be filed.

Staff further recommends that the show cause order incorporate the following conditions: The utility's response to the show cause order must contain specific allegations of fact and law. Should the utility file a timely written response that raises material questions of fact and makes a request for a hearing pursuant to Section 120.57(1), Florida Statutes, further proceedings will be scheduled on this matter before a final determination is made. A failure to file a timely written response to the show cause order shall constitute an admission of the facts herein alleged and a waiver of the right to a hearing. In the event the utility fails to file a timely response to the show cause order, the penalty is deemed assessed with no further action required by the Commission. Reasonable collection efforts shall consist of two certified letters requesting payment. If the utility fails to respond to reasonable collection efforts by Commission staff, the collection of penalties should be referred to the Comptroller's Office for further collection efforts. The referral to the Comptroller's Office would be based on the conclusion that further collection efforts by this Commission would not be cost effective. If, however, the utility responds to the show cause by remitting the fine imposed by this Commission, no further action is required. Any collection of the fines imposed shall be deposited in the State General Revenue Fund pursuant to Section 367.161, Florida Statutes.

DOCKET NO. 010087-WS
DATE: January 25, 2001

ISSUE 3: Should this docket be closed?

RECOMMENDATION: No. This docket should remain open pending review of the reuse project plan which Sun Communities is required to provide pursuant to Order No. PSC-00-1165-PAA-WS. (FUDGE)

STAFF ANALYSIS: This docket should remain open pending review of the reuse project plan which Sun Communities is required to provide pursuant to Order No. PSC-00-1165-PAA-WS.