



Public Service Commission  
-M-E-M-O-R-A-N-D-U-M-

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**DATE:** October 23, 2001  
**TO:** Division of the Commission Clerk and Administrative Services  
**FROM:** Division of Legal Services (Gervasi) *RG*  
**RE:** Docket No. 011344-WS - Resolution No. 2001-128 by Nassau County, in accordance with Section 367.171, F.S., rescinding Florida Public Service Commission jurisdiction over investor-owned water and wastewater systems in Nassau County.

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Please file the attached letters dated October 22, 2001, from Mr. Walton F. Hill, and October 23, 2001, from William E. Sundstrom, Esquire, in the docket file for the above-referenced docket.

RG/dm

cc: Division of Regulatory Oversight (Rieger)  
Division of Economic Regulation (Iwenjiora)  
Division of Legal Services (Crosby)

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FPSC-COMMISSION CLERK

# United Water

**Walton F. Hill**  
Vice President  
Regulatory Business

October 22, 2001

Ms. Roseanne Gervasi, Esq., Legal Department  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850

**United Water Management and Services**

700 Kinderkamack Road  
Oradell, New Jersey 07649  
telephone 201 986 4747  
facsimile 201 986 4996  
Mailing address 200 Old Hook Road  
Harrington Park, NJ 07640-1799

Re: Docket No. 011344-WS

**VIA FEDERAL EXPRESS**

Dear Ms. Gervasi:

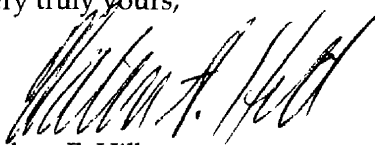
I understand that the Commission is in receipt of Nassau County's Resolution 2001-128, which attempts to rescind Public Service Commission jurisdiction over investor-owned water and wastewater assets located in Nassau County, including those of United Water Florida (UWF). A County Ordinance to this effect was scheduled to be considered at the meeting of the County Commissioners scheduled for October 22, but this has been postponed. William Sundstrom, Esq., represents the Company in this matter.

Through Mr. Sundstrom, UWF has responded in writing (attached) to Nassau County, noting that under the Beard decision (1992), its facilities located in Duval, St. John's and Nassau Counties constitute a single system whose service transverses County boundaries, which system is therefore subject to Commission jurisdiction. In fact, the Commission has recognized this jurisdiction as recently as 1997, in Docket No. 970210-WS, Order No. PSC-97-0929-FOF-WS, where in approving the acquisition of the assets of Sunray Utilities in St. John's County, the Commission held that UWF's assets in St. John's, Duval and Nassau Counties were a single system within the meaning of Chapter 367.021 (11), Florida Statutes. I have attached pages 4 and 5 of that decision. Note also that the Commission referred to UWF's prior rate proceeding at Docket No. 960451, where it accepted stipulations that UWF's land and facilities were functionally related and formed a single system. I have attached the testimony of Company Witness Heil submitted in the rate case which is the basis for the stipulation accepted by the Commission.

The facts cited at pages 4 and 5 of the Commission's Order in 970210-WS, and as set forth in the testimony of Company Witness Heil submitted in 960451, have not changed. UWF still manages and operates all of its facilities from its office in Duval County, and its rates for utility service are uniform for all customers. Central office personnel provide the same utility services across the entire service area. UWF's customers are all serviced by the same customer service representatives at the same customer service telephone number. Financial, operating and capital planning is done centrally for all utility facilities. Thus, all of UWF's facilities and land in all Counties are functionally related.

If you have any questions, please do not hesitate to call.

Very truly yours,

  
Walton F. Hill

Attachments

cc: W. Sundstrom  
J. Marino

OCT 23 2001

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application of United Water )  
Florida Inc. for Increased Water ) DOCKET NO. 960451-WS  
and Wastewater Rates in Duval, )  
Nassau and St. Johns Counties )  
)

TESTIMONY  
OF  
PHILIP HEIL  
ON BEHALF OF UNITED WATER FLORIDA INC.

Q. Please state your name and address.

A. My name is Philip Heil. My business address is 1400  
Millicoe Road, Jacksonville, Florida 32225.

Q. By whom are you employed?

A. United Water Florida Inc. ("United Water Florida"),  
formerly known as Jacksonville Suburban Utilities  
Corporation.

Q. What is your position with United Water Florida?

A. I am Vice President and Manager of United Water  
Florida.

Q. Please describe your previous utility experience and  
background.

A. In September 1960 I was employed by Citizens Utilities  
Company, a nationally known multi-service utility  
serving in various states in the United States. From  
September 1960 until October 1961, I was the new  
business representative for the Colorado District, a

- 1 Q. How were Schedules H-1 through H-13 prepared?
- 2 A. The schedules were prepared in conformance with the  
3 Commission's MFRs and rules.
- 4 Q. In your opinion, do these schedules fairly represent  
5 the information required by Rule 25-30.440, FAC, Rule  
6 25-30.436(4)(i), FAC, and Rule 25-30.4385, FAC, for  
7 United Water Florida as of the dates and for the  
8 periods of time for the respective schedules?
- 9 A. Yes.
- 10 Q. Please describe the relationship of the facilities and  
11 land used by United Water Florida.
- 12 A. All of the facilities and land used by United Water  
13 Florida to provide water and wastewater utility service  
14 to customers in Duval, Nassau, and St. Johns Counties  
15 comprise a single water and wastewater system. In  
16 Order No. 24335, issued on April 8, 1991, the  
17 Commission specifically found that "[United Water  
18 Florida's] combination of functionally related  
19 facilities and land is indeed a utility system whose  
20 service transverses county boundaries." The First  
21 District Court of Appeal agreed with the Commission and  
22 affirmed the Commission's order. The functional  
23 relationship among the utility facilities and land of  
24 United Water Florida that provide service to its  
25 customers is evidenced as follows:

- 1 • United Water Florida manages all of its utility  
2 facilities from its office in Duval County. The  
3 office is centrally located for all of United  
4 Water Florida's service area in Duval, Nassau, and  
5 St. Johns Counties. In terms of driving time from  
6 the office, it takes approximately the same amount  
7 of time to reach the most remote service area in  
8 each of the three counties;
- 9 • The same manager is responsible for managing all  
10 of United Water Florida's operations in the three  
11 counties and at all of the facilities;
- 12 • The same officers of United Water Florida are  
13 responsible for overseeing all of United Water  
14 Florida's operations in the three counties and at  
15 all of the facilities;
- 16 • The same engineers of United Water Florida are  
17 responsible for designing United Water Florida's  
18 utility facilities, establishing standards and  
19 specifications, reviewing developer plans,  
20 coordinating with regulatory agencies concerning  
21 required permits, and providing engineering  
22 services in all three counties and for all of the  
23 facilities;
- 24 • The same accountants and other administrative  
25 personnel of United Water Florida are responsible

- 1 for providing administrative support for United  
2 Water Florida's operations in the three counties  
3 and for all of the facilities;
- 4 • The same maintenance personnel of United Water  
5 Florida maintain and repair United Water Florida's  
6 utility facilities in the three counties and at  
7 all facility locations;
  - 8 • United Water Florida's customers in the three  
9 counties are serviced by the same customer service  
10 representatives at the same telephone number;
  - 11 • The water produced by all of United Water  
12 Florida's water treatment plants and the effluent  
13 and sludge by-products of all of United Water  
14 Florida's wastewater treatment plants are tested  
15 by the same personnel and independent  
16 laboratories;
  - 17 • Purchasing for United Water Florida's utility  
18 facilities is done on the larger economic scale of  
19 United Water Florida's overall operations and  
20 utility facilities and not on a county by county  
21 or a facility by facility basis;
  - 22 • Staffing requirements are reviewed in the context  
23 of United Water Florida's overall operations and  
24 utility facilities and not on a county by county  
25 or a facility by facility basis;

- 1 • United Water Florida's other planning is done in  
2 the context of United Water Florida's overall  
3 operations and utility facilities and not on a  
4 county by county or a facility by facility basis;
- 5 • United Water Florida's budgeting has been on the  
6 basis of United Water Florida's overall operations  
7 and utility facilities and not on a county by  
8 county or a facility by facility basis;
- 9 • The separate utility facilities operated by United  
10 Water Florida are not substantially different from  
11 each other;
- 12 • The cost of operating one of United Water  
13 Florida's utility facilities does not vary  
14 materially from the cost of operating another of  
15 its utility facilities merely because the utility  
16 facilities are located in different counties; and
- 17 • United Water Florida manages and operates its  
18 utility facilities as a single functionally  
19 related system.
- 20 Q. You have described United Water Florida's facilities  
21 and land as comprising one single functionally related  
22 system. What is United Water Florida's rate structure?
- 23 A. United Water Florida employs a uniform set of rates for  
24 its single system. The Commission has previously  
25 authorized United Water Florida to employ a uniform set

1 of rates in its last general rate case in Order 10531  
2 and in the three (3) counties in several orders,  
3 including Orders Nos. 22794, 23111, 23708, and 23834.  
4 It is my understanding that Jacksonville Suburban and  
5 Southern Utilities each had their own uniform rates  
6 before the merger and in 1982 the Commission approved  
7 the uniform rates for the surviving entity in Order No.  
8 10531. United Water Florida has uniform  
9 nonpreferential rates for its customers throughout its  
10 entire service area.

11 Q. Are there any advantages to having a uniform set of  
12 rates?

13 A. Yes. With a uniform set of rates, United Water Florida  
14 has cost savings due to reductions in fees and expenses  
15 for accounting, data processing, and other  
16 administrative fees. For United Water Florida to be  
17 required to have separate rates for each of its  
18 separate facilities would result in a logistical,  
19 operational, and administrative nightmare, as well as  
20 causing higher rates because of the higher costs  
21 involved in managing the facilities in such a manner.  
22 Such separate rates are unjustified because United  
23 Water Florida operates its facilities and land as a  
24 single system. Of course, the cost savings currently  
25 experienced from the uniform rates will benefit the



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October 15, 2001

VIA Fax and Mail

ROBERT M. C. ROWE  
OF COUNSEL

Michael S. Mullin, Esq.  
Nassau County Attorney  
Post Office Box 1010  
Fernandina Beach, FL 32035

Re: United Water Resources\Nassau County

Dear Mike:

We are in receipt of Marianne Marshall's letter to United Water advising of Nassau County's Resolution revoking Florida Public Service Commission jurisdiction over investor-owned water and wastewater systems located within Nassau County. Attached to that letter was a copy of County Resolution 2001-128 and reference was made to a draft Ordinance. The Ordinance was not attached, and we request that a copy of the Ordinance that will be considered by the Board of County Commissioners on October 22 be provided to the undersigned for review and comment. We will appear at the October 22 meeting to amplify the position of United Water ("United") in this regard.

In short, United's position is that its system in St. Johns, Duval and Nassau Counties are but one single system, subject to the jurisdiction of the Florida Public Service Commission pursuant to Chapter 367, Florida Statutes. In that regard, we have rendered our opinion to United that notwithstanding Nassau County's adoption of Resolution No. 2001-128, United remains subject to the jurisdiction of the Public Service Commission, and thus the action of the County, as regards United, is of no legal force and effect. We do not represent any other water and wastewater systems in Nassau County, and thus decline to comment on the applicability of Resolution No. 2001-128 to those systems.

We were further advised, just this morning, of a request of one developer in Nassau County to secure alternative water and wastewater providers to his property, notwithstanding the fact that said developer's land is located within the exclusive certificated service area of United. Obviously, the County does not have the legal jurisdiction to grant such request, and United will resist, through all appropriate means, any efforts by the County to the contrary. I intend to appear before your Commission next Monday to further elaborate on United's position in this regard. In the meantime, we respectfully request that the County take no action on the developer's request as outlined above.

Michael S. Mullin, Esq.  
October 15, 2001  
Page 2

Should you have any questions or comments regarding this matter, please do not  
hesitate to contact me.

Sincerely,

ROSE, SUNDSTROM & BENTLEY, LLP

William E. Sundstrom, P.A.  
For the Firm

WES:jmc

cc: John Marino  
Bob Gerber  
Kevin Mulshine  
Todd Mackey  
John Jenkins

United\Mullin letter of October 15

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application by United  
Water Florida Inc. for amendment  
of Certificates Nos. 236-W and  
179-S and for limited proceeding  
to adjust rates in St. Johns  
County.

DOCKET NO. 970210-WS  
ORDER NO. PSC-97-0929-POF-WS  
ISSUED: August 4, 1997

The following Commissioners participated in the disposition of  
this matter:

JULIA L. JOHNSON, Chairman  
J. TERRY DEASON  
SUSAN F. CLARK  
DIANE K. KIESLING  
JOE GARCIA

NOTICE OF PROPOSED AGENCY ACTION  
ORDER ON JURISDICTION, ESTABLISHING RATE BASE  
AND APPROVING RATES AND CHARGES

AND

FINAL ORDER AMENDING CERTIFICATES NOS. 236-W AND 179-S  
TO INCLUDE ADDITIONAL TERRITORY

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the actions discussed herein regarding the Commission's jurisdiction over United Water Florida Inc.'s (UWF or utility) facilities in St. John's County (County), establishing rate base, and approving rates and charges, are preliminary in nature and 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 February 19, 1997, UWF, a Florida corporation formerly known as Jacksonville Suburban Utilities Corporation, filed an application for amendment of its operating certificates to include additional territory in St. Johns County. The amendment request concerns customers formerly served by Sunray Utilities - St. Johns, Inc. (Sunray), a wholly-owned subsidiary of Rayonier, Inc. In 1995, Sunray served two customers; a commercial customer with a

two-inch meter, and the Cimarrone Property Owners Association (Cimarrone), which is served through an eight-inch master meter.

UWF provides water and wastewater service in three neighboring counties in northeast Florida; Duval, St. Johns, and Nassau. The Commission has previously found that UWF's facilities are functionally related and comprise a single utility system whose service transverses county boundaries. UWF has asked us to reaffirm our jurisdiction over UWF's operating facilities in St. Johns County for the purpose of this proceeding.

In this proceeding, UWF also filed a request for a limited proceeding to establish rate base balances for the acquired facilities. In addition, with two exceptions, UWF has requested authority to implement its own rates and charges in the Sunray area. The exceptions concern retention of Sunray's plant capacity and guaranteed revenue charges.

A customer meeting was conducted on June 10, 1997. Two customers attended, both of whom were mostly interested in Sunray's commercial rates. No residents of the Cimarrone community attended.

#### JURISDICTION

In its application, UWF asked that we affirm our jurisdiction over UWF and the Sunray facilities in St. Johns County, and that we exercise such jurisdiction. Because this Commission does not have jurisdiction over water and wastewater utilities in St. Johns County, we find it necessary to determine whether UWF's application is subject to our jurisdiction before addressing the specific issues in the case.

Pursuant to Section 367.171(7), Florida Statutes, we have exclusive jurisdiction over "all utility systems whose service transverses county boundaries," whether or not the counties are jurisdictional. The term "system" is defined in Section 367.021(11), Florida Statutes, as "facilities and land used or useful in providing service, and, upon a finding by the [C]ommission, may include a combination of functionally related facilities and land."

In Board of County Com'rs of St. Johns County v. Beard, 601 So. 2d 590 (Fla. 1st DCA 1992), the First District Court of Appeal addressed the interpretation of Sections 367.021(11) and 367.171(7), Florida Statutes. The court affirmed Order No. 24335, issued April 8, 1991, in Docket No. 910078-WS, by which the Commission found that facilities owned by Jacksonville Suburban Utilities Corporation (now known as UWF) in Duval, Nassau and St.

Johns counties constitute a single system whose service transverses county boundaries. The court noted the functional interrelatedness of the facilities, both operational and administrative, and that physical connection was not necessary to support the finding. *Id.* at 593. The court stated that:

[t]hus, the evidence supports the PSC's finding that JSUC's facilities constitute "a combination of functionally related facilities and land"; in a word, a "system". Because the service provided by this system crosses county boundaries, it is clear that the PSC has exclusive jurisdiction over JSUC pursuant to subsection 367.171(7).

Id.

In Hernando County v. FPSC, 685 So. 2d 46 (Fla. 1st DCA 1996), the court reversed a Commission order determining that the Commission has jurisdiction over existing facilities and land of Southern States Utilities, Inc., in Florida. The court concluded that "the relevant inquiry when determining the existence of jurisdiction under section 367.171(7) is the actual inter-relationship of two or more facilities providing utility services in a particular geographic area comparable to the 'service area' defined in section 367.021(10), over which the PSC ordinarily has jurisdiction." *Id.* at 52. The court further concluded that "the requirements of this statute can only be satisfied by evidence that the facilities forming the asserted 'system' exist in contiguous counties across which the service travels." *Id.* Further, the court noted that "to satisfy the prerequisites of section 367.171(7), the PSC must find that 'the systems were operationally integrated, or functionally related, in . . . utility service delivery [rather] than fiscal management.'" *Id.* at 51 (quoting St. Johns County v. Southern States Utilities, 686 So. 2d 1307, 1310 (Fla. 1st DCA), review denied *mem.*, 663 So. 2d 631 (Fla. 1995)).<sup>1</sup> We note that the

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<sup>1</sup>Subsequent to the Beard decision, but prior to Hernando County v. FPSC, UWF acquired three additional water and wastewater facilities; San Pablo and Atlantic in Duval County, and Ponte Vedra in St. Johns County. In the utility's recent rate case, by Order No. PSC-97-0168-FOF-WS, issued May 30, 1997, in Docket No. 960451-WS, we accepted stipulations indicating that the evidence in that proceeding showed that UWF's facilities and land were functionally related and formed a single system whose service transversed county boundaries, and that we had exclusive jurisdiction over UWF's facilities in all three counties.

court found Beard to be both factually and legally distinguishable. Id.

The jurisdictional question presented in this case is whether the acquisition by UWF of the Sunray-St. Johns facilities would result in those facilities being functionally related to UWF's other facilities such that they would become a portion of UWF's single system whose service transverses county boundaries. If so, pursuant to Section 367.171(7), Florida Statutes, we have jurisdiction to process the utility's application. For the following reasons, we find this to be the case, under both the Beard and Hernando County v. FPSC opinions.

UWF addressed this issue in its application and by way of a statement filed on April 15, 1997, in response to a request by our staff for further clarification. We find that UWF is providing water and wastewater service in three adjoining counties, including twenty water and seven wastewater facilities in Duval County, eight water and three wastewater facilities in St. Johns County, and one water and two wastewater facilities in Nassau County. Both Nassau and St. Johns Counties are contiguous to Duval County. The utility operates the various facilities as a single system whose service transverses all three county boundaries. Decisions are made for the entire system serving the three counties.

Specifically, UWF manages all of its facilities from its office in Duval County, which is centrally located to all of its service areas. It takes approximately the same amount of time to drive from the office to the most remote service area in each of the three counties. The central office personnel in Duval County provide the same utility services throughout the service areas in the three counties, including engineering, operation, maintenance, testing, customer service, accounting, purchasing, planning, budgeting, personnel and other administrative functions. The utility employs a monitoring system in all of its facilities known as the Supervisory Control and Data Acquisition (SCADA) system. Under the SCADA system, all facilities are monitored by on-site personnel for sixteen hours per day, and by the use of alarm and pager systems for the other eight hours each day. Moreover, UWF is in the process of preparing a utility master plan which will address the need for, and timing of, construction projects to improve or increase the capacity of all of the utility's facilities in all locations.

According to the utility, the acquisition of the Sunray facilities in St. Johns County will not change its method of operation. Because UWF is currently operating Sunray's facilities under an Operation and Management Agreement, this facility is essentially treated as though it were another facility in UWF's

single utility system. In addition, once Sunray is acquired, UWF plans to improve the facilities. Such improvements include an anticipated physical interconnection with UWF's St. John's North facilities, which are in close proximity. UWF also plans to make the Sunray facilities part of the SCADA monitoring system discussed above, and to make other ongoing system enhancements, such as planned improvements in the water treatment processes to comply with lead and copper rules.

Based on the foregoing, we find that once the Sunray facilities are acquired by UWF, they will be functionally related to the other facilities owned by UWF in St. Johns, Nassau, and Duval Counties, and that they will thus become a portion of UWF's single utility system, within the meaning of Chapter 367.021(11), Florida Statutes. Therefore, we find that the utility's application is within our jurisdiction, pursuant to Section 367.171(7), Florida Statutes.

#### AMENDMENT OF CERTIFICATES

On August 21, 1996, Sunray and UWF's parent organization, United Waterworks Inc. (United Waterworks), entered into an Agreement of Purchase and Sale concerning the intended purchase by United Waterworks of the water and wastewater facilities owned and operated by Sunray in St. Johns County. That agreement also provided for subsequent transfer of the utility system to UWF as a contribution to the utility's capital account. This capital contribution treatment accords with the accounting procedures used in UWF's most recent rate proceeding to identify UWF's cost of capital for rate making purposes.

In 1996, Sunray provided water and wastewater service in St. Johns County pursuant to operating certificates issued by the County rather than by this Commission. Therefore, on February 18, 1997, United Waterworks, Sunray, and UWF filed a joint application with the County's Water and Sewer Authority for authority to transfer Sunray's certificates in St. Johns County to UWF. On April 2, 1997, the Authority met and approved the requested transfer. That approval was affirmed by the Board of County Commissioners of St. Johns County on April 22, 1997. In this proceeding, UWF proposes to amend its Certificates Nos. 136-W and 179-S to include Sunray's service area in St. Johns County.

The application is in compliance with Section 367.045, Florida Statutes, and other pertinent statutes and administrative rules. The application contains a check in the amount of \$2,000, which is the correct filing fee pursuant to Rule 25-30.020, Florida Administrative Code. The filing fee includes \$1,000 to process the amendment request and \$1,000 to process the limited proceeding

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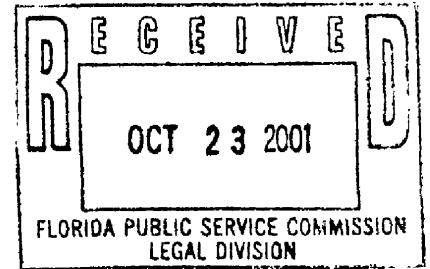
**October 23, 2001**

ROBERT M C ROSE  
OF COUNSEL

**Rosanne Gervasi, Esquire**  
**Legal Division**  
**Florida Public Service Commission**  
**2540 Shumard Oak Boulevard**  
**Tallahassee, Florida 32399-0873**

**Re: United Water\Nassau County**

**Dear Rosanne:**



I am in receipt of a copy of Walton Hill's letter to you concerning the applicability of the recent Resolution of the Nassau County Board of County Commissioners (No. 2001-128) wherein that County rescinded PSC jurisdiction over the investor-owned water and wastewater utilities located in the County. I have already advised the County, through its attorney, that the Resolution is inapplicable to United Water Florida. Our firm has also issued an opinion to United Water in this regard, a copy of which is attached for your ready reference.

Mr. Hill's letter to you referenced Order No. 97-0929 in Docket 97-0210-WS. For your further ready reference, I am also attaching a complete copy of that Order.

With that information in mind, I simply wish to herein support the proposition that the Florida Public Service Commission retains jurisdiction over the United Water system located in Nassau County and that this matter was settled by the First District Court of Appeal in 1992 in the matter of Board of County Commissioners of St. Johns County v. Beard. The Beard decision actually involved United Water, and the issue was whether or not one of United's Systems in St. Johns County (which had also rescinded Florida Public Service Commission jurisdiction) was but part of one single system whose service transverses County boundaries, thus rendering it subject to Public Service Commission jurisdiction.

The Florida Wastewater Regulatory law, as found at Chapter 367, Florida Statutes, provides that the Public Service Commission shall have exclusive jurisdiction over each utility with respect to its authority, service and rates and that Chapter 367 shall "supersede all other laws on the same subject, and subsequent inconsistent laws



Rosanne Gervasi, Esq.

October 23, 2001

Page 2

shall supersede this Chapter only to the extent that they do so by express reference.” (367.011(4), Florida Statutes) It is a proposition too plain to be contested that the County may not, by ordinance, supersede a General Act of the Legislature. While it is true that pursuant to Section 367.171 the County may rescind that jurisdiction, it may not do so when Section 367.171(7) applies. That Section states:

(7) Notwithstanding anything in this Section to the contrary, the Commission shall have exclusive jurisdiction over all utility systems whose services transverses county boundaries, whether the counties involved are jurisdictional or non-jurisdictional. . . .

The Beard decision confirmed a prior Order of the Public Service Commission which found that it had jurisdiction over the entire unified United Water system because all of the facilities were operated from offices in Duval County, even though they existed in three counties. Further, supporting its findings are the facts that Duval, Nassau and St. Johns Counties are contiguous, and all UWR facilities are managed from a central office and shared the same manager, officers, engineers, accountants, maintenance personnel, customer service representatives and testing laboratories. Further, all purchasing, budgeting, planning and staffing functions were performed on a system-wide basis. The Beard court specifically rejected St. Johns County’s position that “functional relationship” required an actual physical connection between utility facilities, noting that “if physical interconnection is required, there is little need for a finding by the Commission that the facilities are functionally related.” In other words, the focus was on whether the facilities were “interrelated administratively and operationally” which they were. Thus, the Beard court found that as the service provided by the system crosses County boundaries, they were subject to the jurisdiction of the Public Service Commission.

The County would probably cite you to a decision involving Hernando County and the Public Service Commission, rendered in 1996, but that decision is inapplicable here, as I will demonstrate. That decision involved Southern States Utilities, now known as Florida Water, which then had 127 systems around the State, many of which were not contiguous.

I would like to quote liberally from Order No. 97-0929 (attached) issued in August of 1997, after the Hernando County decision, involving the application of United Water Florida for amendment of its certificates. That Order was entitled, among other things, an “Order on Jurisdiction” and involved United Water’s purchase of Sunray Utilities in St. Johns County. That Order found that United systems in Duval, St. Johns, and Nassau were functionally related and comprised but a single

Rosanne Gervasi, Esq.  
October 23, 2001  
Page 3

utility system whose service transverses county boundaries. In that Order, the Commission carefully examined the fact that pursuant to Section 367.071(7), Florida Statutes, it has exclusive jurisdiction over “all utility systems whose service transverses county boundaries” whether or not the counties are jurisdictional. The term “system” is defined in Section 367.021(11), Florida Statutes as “facilities and land used or useful in providing service, and, upon a finding by the Commission, may include a combination of functionally related facilities and land.” The Commission carefully examined the Beard case, which I have already discussed with you and which found that the former Jacksonville Suburban Utilities Corporation (now United Water Florida) in Duval, Nassau and St. Johns Counties constituted but a single system whose services transverse county boundaries. The Order further examined Hernando County v. PSC, which found that the existence of Public Service Commission jurisdiction involved the inter-relationship of two or more facilities providing utility service in a particular geographic area comparable to a “service area.” That Order confirmed United Water Florida to be subject to the jurisdiction of the Public Service Commission both under the Beard and Hernando County cases because the United Water Florida systems in St. Johns, Duval and Nassau Counties were but “a single system whose service transverses all three county boundaries.” And thus they were subject to the jurisdiction of the Public Service Commission as they were a “single utility system” within the meaning of Chapter 367.021(11), Florida Statutes.

It is a simple proposition of law and unless the facts have changed, or the law has changed, lower courts and administrative agencies are bound by the precedential statements of higher courts. The legal principle is that trial courts and the administrative agencies may be at liberty to disagree with the binding precedent of the district courts of appeal having jurisdiction over them, and they are also at liberty to state the reasons for their disagreements in their orders or judgments for consideration by the higher courts, but they are nevertheless bound by such precedent and must follow it, unless the Supreme Court of the State of Florida says otherwise. Please see State Farm Mutual Automobile Insurance Company v. Adair, 722 So. 2d 958 (Fla. App. 3 Dist. 1998), Ornda Health Corp. v. Berghof, 722 So. 2d 961 (Fla. App. 3rd Dist. 1998), Carr v. Carr, 569 So. 2d 903 (Fla. App. 4<sup>th</sup> Dist. 1990) and Cusick v. City of Neptune Beach, 765 So. 2d 175 (Fla. App. 1<sup>st</sup> Dist. 2000).

Rosanne, all of this may become academic before the end of the year anyway, as the JEA f/k/a Jacksonville Electric Authority intends to purchase the assets of United Water Florida. However, before being able to legally acquire JEA assets out of Duval County, it needs the consent of Nassau and St. Johns Counties. The Nassau County Attorney advised me yesterday that he believes that an agreement granting that consent will be negotiated and executed in the next two or three weeks.

Rosanne Gervasi, Esq.  
October 23, 2001  
Page 4

I wanted to bring these authorities to your attention freshly after your receipt of Walton Hill's letter, and thank you for taking the time to review them. Should you have any questions or comments concerning the above, please do not hesitate to contact me.

Sincerely,

ROSE, SUNDBSTROM & BENTLEY, LLP

A handwritten signature in black ink, appearing to read "W. Sundstrom", written over the printed name below.

William E. Sundstrom, P.A.  
For the Firm

WES:jmt

Attachments

cc: Walton Hill (with attachments)  
John Marino (with attachments)

United\Gervasi letter of October 23

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October 5, 2001

Via Telecopy and Mail

ROBERT M. C. ROSE  
OF COUNSEL

United Water Resources  
c/o Mr. John Marino  
227 Birchstone Lane  
East Dorsett, VT 05253

RE: United Water Florida\JEA

Dear John:

I have reviewed the letter to you dated October 4, 2001 from Marianne Marshall, Chair of the Nassau County Board of County Commissioners. With all due respect to Ms. Marshall's analysis in her letter, we believe that she is wrong. It is our opinion that the Florida Public Service Commission ("PSC") retains jurisdiction over the United Water systems located in Nassau County, notwithstanding Nassau County's recent assumption of jurisdiction over investor-owned utilities. Our analysis follows.

At first reading, the opinions cited in Ms. Marshall's letter appear to be at odds with each other. Those opinions are Board of County Commissioners of St. Johns County v. Beard, 601 So. 2d 590 (Fla. 1<sup>st</sup> DCA 1992) and Hernando County v. Florida Public Service Commission, 685 So. 2d 48 (Fla. 1<sup>st</sup> DCA 1996). However, upon closer reading and understanding of the facts in both opinions, as compared with the facts relating to United Water's system, it seems apparent that the controlling case is St. Johns County and not Hernando County.

First, the facts in St. Johns County involved utility systems in Duval, Nassau and St. Johns counties. This is identical to United Water's situation. Second, Duval Nassau and St. Johns counties are contiguous, which is identical to United Water's situation. Third, all of the facilities in St. Johns County were managed from a central office located in Duval County and shared the same manager, officers, engineers, accountants, maintenance personnel, customer service representatives and testing laboratories. This is identical to United Water's situation. Fourth, the utility in St. Johns County performed purchasing, budgeting, planning and staffing functions on a system-wide basis, which is identical to United Water's situation. In St. Johns

Mr. John Marino  
October 5, 2001  
Page 2

County the court specifically rejected the county's position that functional relationship requires an actual physical connection between the utility's facilities, instead noting "[i]f physical interconnection [is] required there [is] little need for a 'finding by the commission' that the facilities [are] functionally related." In other words, the focus is on whether the "facilities are interrelated administratively and operationally." 601 So.2d at 593. The court in St. Johns County concluded by noting, "[b]ecause the service provided by this system crosses county boundaries, it is clear that the PSC has exclusive jurisdiction over [the utility] pursuant to subsection 367.171(7)." Id. at 593 (Emphasis supplied).

In contrast, although the opinion in Hernando County focuses on service crossing county lines as opposed to a system, it appears the factual foundation for the court's ruling had more to do with the fact that "Southern States Utilities owns water and wastewater facilities in numerous counties throughout Florida[,] many of which were not contiguous. 685 So. 2d at 50 (Emphasis supplied). In fact, in one instance the court noted that Southern States Utilities owned 127 systems in Florida.

In conclusion, unless the First District Court of Appeal is prepared to reverse its decision in St. Johns County or otherwise indicate that the opinion in that case is not binding precedent, it is our opinion that the holding in that case is the controlling law, given our understanding of the facts in United Water's situation.

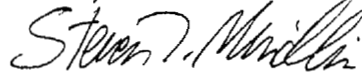
Further, even assuming Nassau County's regulatory jurisdiction over United Water's system in that county, the use of such authority as a means to force United Water to sell its system to the county, or its designee, exposes Nassau County to money damages and other remedies under a variety of legal theories, including, but not limited to, tortious interference with business relationships, inverse condemnation and forced exaction.

If I can be of further assistance or you need further explanation, please feel free to contact me.

Mr. John Marino  
October 5, 2001  
Page 3

Sincerely,

ROSE, SUNDSTROM & BENTLEY, LLP



For William E. Sundstrom, P.A.  
For the Firm

WES:jmt

cc: Bob Gerber  
Gayle Petrie  
Kevin Mulshine  
John R. Jenkins

United\Marino.105 - 2

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# BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application by United Water Florida Inc. for amendment of Certificates Nos. 236-W and 179-S and for limited proceeding to adjust rates in St. Johns County. DOCKET NO. 970210-WS ORDER NO. PSC-97-0929-FOF-WS ISSUED: August 4, 1997

**The following Commissioners participated in the disposition of this matter:**

JULIA L. JOHNSON, Chairman J. TERRY DEASON SUSAN F. CLARK DIANE K. KIESLING JOE GARCIA

NOTICE OF PROPOSED AGENCY ACTION ORDER ON JURISDICTION, ESTABLISHING RATE BASE, AND APPROVING RATES AND CHARGES

AND

FINAL ORDER AMENDING CERTIFICATES NOS. 236-W AND 179-S

- TO INCLUDE ADDITIONAL TERRITORY

---

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the actions discussed herein regarding the Commission's jurisdiction over United Water Florida Inc.'s (UWF or utility) facilities in St. John's County (County), establishing rate base, and approving rates and charges, are preliminary in nature and 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

ORDER NO. PSC-97-0929-FOF-WS DOCKET NO. 970210-WS PAGE 2

On February 19, 1997, UWF, a Florida corporation formerly known as Jacksonville Suburban Utilities Corporation, filed an application for amendment of its operating certificates to include additional

territory in St. Johns County. The amendment request concerns customers formerly served by Sunray Utilities - St. Johns, Inc. (Sunray), a wholly-owned subsidiary of Rayonier, Inc. In 1995, Sunray served two customers; a commercial customer with a two-inch meter, and the Cimarrone Property Owners Association (Cimarrone), which is served through an eight-inch master meter.

UWF provides water and wastewater service in three neighboring counties in northeast Florida; Duval, St. Johns, and Nassau. The Commission has previously found that UWF's facilities are functionally related and comprise a single utility system whose service transverses county boundaries. UWF has asked us to reaffirm our jurisdiction over UWF's operating facilities in St. Johns County for the purpose of this proceeding.

In this proceeding, UWF also filed a request for a limited proceeding to establish rate base balances for the acquired facilities. In addition, with two exceptions, UWF has requested authority to implement its own rates and charges in the Sunray area. The exceptions concern retention of Sunray's plant capacity and guaranteed revenue charges.

A customer meeting was conducted on June 12, 1997. Two customers attended, both of whom were mostly interested in Sunray's commercial rates. No residents of the Cimarrone community attended.

## JURISDICTION

In its application, UWF asked that we affirm our jurisdiction over UWF and the Sunray facilities in St. Johns County, and that we exercise such jurisdiction. Because this Commission does not have jurisdiction over water and wastewater utilities in St. Johns County, we find it necessary to determine whether UWF's application is subject to our jurisdiction before addressing the specific issues in the case.

Pursuant to Section 367.171(7), *Florida Statutes*, we have exclusive jurisdiction over "all utility systems whose service transverses county boundaries, whether or not the counties are jurisdictional. The term "system" is defined in Section 367.021(11), *Florida Statutes*, as "facilities and land used or useful in providing service, and, upon a finding by the [C]ommission, may include a combination of functionally related facilities and land."

ORDER NO. PSC-97-0929-FOF-WS DOCKET NO. 970210-WS PAGE 3 In Board of County Com'rs of St. Johns County v. Beard, 601 So. 2d 590 (Fla. 1st DCA 1992), the First District Court of Appeal addressed the interpretation of Sections 367.021(11) and 367.171(7), *Florida Statutes*. The court affirmed Order No. 24335, issued April 8, 1991, in Docket No. 910078-WS, by which the Commission found that facilities owned by Jacksonville Suburban Utilities Corporation (now known as UWF) in Duval, Nassau and St. Johns counties constitute a single system whose service transverses county boundaries. The court noted the functional interrelatedness of the facilities, both operational and administrative, and that physical connection was not necessary to support the finding. Id. at 593. The court stated that:

[t]hus, the evidence supports the PSC's finding that JSUC's facilities constitute "a combination of functionally related facilities and land"; in a word, a "system". Because the service provided by this system crosses county boundaries, it is clear that the PSC has exclusive jurisdiction over JSUC pursuant to subsection 367.171(7).

Id.

In Hernando County v. FPSC, 685 So. 2d 48 (Fla. 1st DCA 1996), the court reversed a Commission order determining that the Commission has jurisdiction over existing facilities and land of Southern States Utilities, Inc., in Florida. The court concluded that the relevant inquiry when determining the existence of jurisdiction under section 367.171(7) is the actual inter-relationship of two or more facilities providing utility services in a particular geographic area comparable to the service area defined in section 367.021(10), over which the PSC ordinarily has jurisdiction. Id. at 52. The court further concluded that the requirements of this statute can only be satisfied by evidence that the facilities



forming the asserted system exist in contiguous counties across which the service travels. *Id.* Further, the court noted that to satisfy the prerequisites of section 367.171(7), the PSC must find that the systems were operationally integrated, or functionally related, in . . . utility service delivery [rather] than fiscal management. *Id.* at 51 (quoting *Citrus County v. Southern States Utilities*, 656 So. 2d 1307, 1310 (Fla. ORDER NO. PSC-97-0929-FOF-WS DOCKET NO. 970210-WS PAGE 4 1st DCA), review denied mem., 663 So. 2d 631 (Fla. 1995)).<sup>1</sup> We note that the court found Beard to be both factually and legally distinguishable. *Id.*

The jurisdictional question presented in this case is whether the acquisition by UWF of the Sunray-St. Johns facilities would result in those facilities being functionally related to UWF's other facilities such that they would become a portion of UWF's single system whose service transverses county boundaries. If so, pursuant to Section 367.171(7), *Florida Statutes*, we have jurisdiction to process the utility's application. For the following reasons, we find this to be the case, under both the Beard and Hernando County v. FPSC opinions.

UWF addressed this issue in its application and by way of a statement filed on April 15, 1997, in response to a request by our staff for further clarification. We find that UWF is providing water and wastewater service in three adjoining counties, including twenty water and seven wastewater facilities in Duval County, eight water and three wastewater facilities in St. Johns County, and one water and two wastewater facilities in Nassau County. Both Nassau and St. Johns Counties are contiguous to Duval County. The utility operates the various facilities as a single system whose service transverses all three county boundaries. Decisions are made for the entire system serving the three counties.

Specifically, UWF manages all of its facilities from its office in Duval County, which is centrally located to all of its service areas. It takes approximately the same amount of time to drive from the office to the most remote service area in each of the three counties. The central office personnel in Duval County provide the same utility services throughout the service areas in the three counties, including engineering, operation, maintenance, testing, customer service, accounting, purchasing, planning, budgeting, personnel and other administrative functions. The utility employs a monitoring system in all of its facilities known as the Supervisory Control and Data Acquisition (SCADA) system. Under the SCADA system, all facilities are monitored by on-site personnel for sixteen hours per day, and by the use of alarm and pager systems for the other eight hours each day. Moreover, UWF is in the

<sup>1</sup>Subsequent to the Beard decision, but prior to Hernando County v. FPSC, UWF acquired three additional water and wastewater facilities; San Pablo and Atlantic in Duval County, and Ponte Vedra in St. Johns County. In the utility's recent rate case, by Order No. PSC-97-0168-FOF-WS, issued May 30, 1997, in Docket No. 960451-WS, we accepted stipulations indicating that the evidence in that proceeding showed that UWF's facilities and land were functionally related and formed a single system whose service transversed county boundaries, and that we had exclusive jurisdiction over UWF's facilities in all three counties. ORDER NO. PSC-97-0929-FOF-WS DOCKET NO. 970210-WS PAGE 5 process of preparing a utility master plan which will address the need for, and timing of, construction projects to improve or increase the capacity of all of the utility's facilities in all locations.

According to the utility, the acquisition of the Sunray facilities in St. Johns County will not change its method of operation. Because UWF is currently operating Sunray's facilities under an Operation and Management Agreement, this facility is essentially treated as though it were another facility in UWF's single utility system. In addition, once Sunray is acquired, UWF plans to improve the facilities. Such improvements include an anticipated physical interconnection with UWF's St. John's North facilities, which are in close proximity. UWF also plans to make the Sunray facilities part of the SCADA monitoring system discussed above, and to make other ongoing system enhancements, such as planned improvements in the water treatment processes to comply with lead and copper rules.

Based on the foregoing, we find that once the Sunray facilities are acquired by UWF, they will be functionally related to the other facilities owned by UWF in St. Johns, Nassau, and Duval Counties, and that they will thus become a portion of UWF's single utility system, within the meaning of Chapter 367.021(11), *Florida Statutes*. Therefore, we find that the utility's application is within our jurisdiction, pursuant to Section 367.171(7), *Florida Statutes*.

## AMENDMENT OF CERTIFICATES

On August 21, 1996, Sunray and UWF's parent organization, United Waterworks Inc. (United Waterworks), entered into an Agreement of Purchase and Sale concerning the intended purchase by United Waterworks of the water and wastewater facilities owned and operated by Sunray in St. Johns County. That agreement also provided for subsequent transfer of the utility system to UWF as a contribution to the utility's capital account. This capital contribution treatment accords with the accounting procedures used in UWF's most recent rate proceeding to identify UWF's cost of capital for rate making purposes.

In 1996, Sunray provided water and wastewater service in St. Johns County pursuant to operating certificates issued by the County rather than by this Commission. Therefore, on February 18, 1997, United Waterworks, Sunray, and UWF filed a joint application with the County's Water and Sewer Authority for authority to transfer Sunray's certificates in St. Johns County to UWF. On April 2, 1997, the Authority met and approved the requested transfer. That approval was affirmed by the Board of County Commissioners of St. Johns County on April 22, 1997. In this proceeding, UWF proposes to amend its Certificates Nos. 236-W and 179-S to include Sunray's service area in St. Johns County.

ORDER NO. PSC-97-0929-FOF-WS DOCKET NO. 970210-WS PAGE 6 The application is in compliance with Section 367.045, *Florida Statutes*, and other pertinent statutes and administrative rules. The application contains a check in the amount of \$2,000, which is the correct filing fee pursuant to Rule 25-30.020, *Florida Administrative Code*. The filing fee includes \$1,000 to process the amendment request and \$1,000 to process the limited proceeding portion of this case. In addition, UWF has provided proof that Sunray owns the land upon which its treatment facilities are located, pursuant to Rule 25-30.036(3)(d), *Florida Administrative Code*. A description of the territory requested by UWF is appended to this Order as Attachment A, and is incorporated herein by reference.

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 acquired. No objections to the notice of application have been received and the time for filing such has expired.

The application contains a copy of the purchase contract, which disclosed the purchase price, terms for payment, and a list of the purchased assets and the assumed liabilities. We find that UWF has the financial and technical abilities needed to provide water and wastewater service for the Sunray service area. UWF and its affiliates have operated utility systems for over one hundred years, providing service to more than two million individuals in thirteen states. UWF has provided service in Northeast Florida for more than twenty-five years, and possesses the financial, managerial, and technical capabilities needed to assure satisfactory service for this system. UWF has shown that its superior financial condition will enable it to attract sufficient capital to meet existing and future construction requirements. Further, Sunray's parent company agreed to sell all of its utility assets to UWF because it was no longer interested in providing utility service. UWF serves a large service area with many customers, which should reduce the frequency and necessity for rate increases due to inherent economies of scale.

The Department of Environmental Protection (DEP) has advised that this system is not subject to any outstanding notices of violation or consent orders. Moreover, UWF reported that Sunray's system is in satisfactory condition and is in compliance with all DEP operating standards.

Based on the foregoing, we find it to be in the public interest to grant UWF's application for amendment of Certificates Nos. 236-W and 179-S to include the former Sunray service areas in St. Johns County.

## RATE BASE

UWF requested that we establish rate base values for the acquired systems to match their net book values at the closing date. At December 31, 1995, the reported net book values were \$865,720 and \$1,216,229 for the water and wastewater systems, ORDER NO. PSC-97-0929-FOF-WS DOCKET NO. 970210-WS PAGE 7 respectively. Our staff conducted an audit of the books and records of the utility

for the period ending December 31, 1996, and updated the net plant balance through that date to reflect more current information.

The seller and buyer agreed that the purchase price for the acquired systems would exactly match the net book balance at the closing date, subject to verification as to compliance with any prescribed accounting principles. Thus, because UWF's purchase price will exactly match the net book value, there will be no acquisition adjustment in this case.<sup>2</sup>

Sunray's rate base has not been established by the County or by the Commission in any previous order. Instead, Sunray's initial rates were determined using anticipated plant balances rather than audited records. Thus, the rate base determination in this case required examination of Sunray's accounting records since its inception. The staff audit disclosed that the recorded values on Sunray's books were supported by appropriate accounting records. Two adjustments were proposed, including: 1) reclassification of a \$7,500 expenditure from the water system to the wastewater system; and 2) inclusion of \$2,772 to represent general plant which was omitted from Sunray's reported plant balances, less associated depreciation.

Our approved rate base balances are shown on Attachment B, and our adjustments are shown on Attachment C. These attachments are appended to this Order and are incorporated herein by reference. Based on the adjustments as shown on Attachment C, we find it appropriate to approve rate base balances of \$784,380 for the water system and \$1,355,089 for the wastewater system, as of December 31, 1996. These rate base calculations are used solely to establish the net book value of the property being acquired and do not include the normal rate making adjustments for working capital or used and useful adjustments.

## RATES AND CHARGES

By way of a limited proceeding filed pursuant to Section 367.0822, *Florida Statutes*, UWF has requested that Sunray's rates be changed to conform with the rates that UWF uses for its single operating system, with two exceptions. As noted above, those exceptions concern retention of Sunray's plant capacity and guaranteed revenue charges.

<sup>2</sup>An acquisition adjustment results when the purchase price differs from the original cost calculation. However, it has been Commission policy that in the absence of extraordinary circumstances, a subsequent purchase of a utility system at a premium or discount shall not affect the rate base calculation. ORDER NO. PSC-97-0929-FOF-WS DOCKET NO. 970210-WS PAGE 8 UWF's approved rates and charges were effective May 19, 1997, by Order No. PSC-97-0618-FOF-WS, issued May 30, 1997, in Docket No. 960451-WS.<sup>3</sup>

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

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 (unless authorized to change by the Commission).

Retention of system specific plant capacity and guaranteed revenue charges has been approved for other systems acquired by UWF. (See, e.g., Order No. PSC-93-0201-FOF-WS, issued February 9, 1993, in Docket No. 920877-WS.) Upon review, we find that Sunray's present plant capacity and guaranteed revenue charges appear to be reasonable. Moreover, by Order No. 25501, issued December 17, 1991, in Docket No. 870539-WS, the Commission fully examined the fairness of these charges. Accordingly, we find it appropriate to approve UWF's request to retain Sunray's plant capacity and guaranteed revenue charges.

Adoption of UWF's existing rates for an acquired system has been approved in other limited proceeding filings. In Docket No. 930204-WS, which involved UWF's purchase of the Ponte Vedra system in St.

Johns County, implementation of UWF's rates was approved by Order No. PSC-93-1480-FOF-WS, issued October 11, 1993. Likewise, in Docket No. 890759-WS, by Order No. 22794, implementation of UWF's rates was approved for the Ponce De Leon system in St. Johns County. Adoption of UWF's rates was likewise allowed in Docket No. 891110-WS, by Order No. 23111, concerning UWF's purchase of the St. Johns North Utility Corporation. UWF contends that application of its rates for the acquired system will result in uniform, non-preferential rates for all UWF customers, which will produce cost savings due to a reduction in accounting, data processing, and administrative expenses. UWF further states that reduced expenses will benefit current and future customers.

A related rate structure issue is whether UWF's land and facilities are functionally related, within the meaning of Section 367.021(11), *Florida Statutes*. Florida law ... allows uniform rates only for a utility system that is composed of facilities and land functionally related in the providing of water and wastewater service to the public. *Citrus County v. Southern States Utilities*, 656 So. 2d 1307, 1309 (Fla. 1st DCA 1995). As discussed above, we<sup>3</sup>On June 16, 1997, UWF filed a motion for reconsideration of certain portions of that Order, which motion is currently pending. ORDER NO. PSC-97-0929-FOF-WS DOCKET NO. 970210-WS PAGE 9 find that upon the acquisition of the Sunray facilities, UWF's facilities and land will continue to constitute a single system.

Based on the foregoing, we find it appropriate to approve UWF's request to implement its uniform rates, while retaining Sunray's plant capacity and guaranteed revenue charges. The adoption of UWF's rates should benefit all residential customers once the master-meter is removed. Some increase in general service rates is forecasted. A comparison of UWF and Sunray's rates is appended to this Order as Attachment D, which is incorporated herein by reference.

For informational purposes, we note that residents had already voiced their interest in UWF's acquisition of this system and the proposed rates in appearances before the St. Johns County Utility Authority, where they expressed their preference for individual metering of their community. As discussed previously, Sunray has been serving two customer groups: a general service customer who receives service through a two-inch meter, and the Cimarrone community, which receives service through an eight-inch master-meter. Residents of the Cimarrone community have approached Sunray and UWF, proposing that UWF eliminate the eight-inch meter and commence individual metering of residential customers. Residents of the Cimarrone community also appeared before the St. Johns County Utility Authority to express their preference for individual metering in their community and dissatisfaction with the cost of utility service that results from master-metering. Representatives of UWF also appeared before that agency and indicated that it was their intention to convert the master-meter to an individual metering system, provided that UWF obtains the necessary regulatory approvals. Speaking on behalf of the Cimarrone community, the St. Johns County Utility Authority asked that we carefully consider the proposed removal of the master-meter and consequent individual billing of residential users.

Removal of the master-meter and implementation of residential rates for Cimarrone residents will be delayed until certain preliminary steps are taken. These include inspection of Cimarrone's distribution and collection facilities before acceptance of those facilities as donated properties, receipt of good and proper titles and easements for the donated facilities, and assurance that appropriate connection charges and permits have been obtained. Thus, it appears that implementation of residential rates for Cimarrone will not occur until these preliminary measures are completed.

If there are no timely protests to the proposed agency action provisions of this Order, no further action will be required and the docket shall be closed.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Commission has jurisdiction over United Water Florida Inc.'s facilities and land in St. Johns County, including the acquisition of Sunray Utilities - St. Johns, Inc. It is further

ORDERED that Certificates Nos. 236-W and 179-S, held by United Water Florida Inc., 1400 Millcoe Road, Jacksonville, Florida 32225, are hereby amended to include the territory described in Attachment

A of this Order, which is incorporated herein by reference. It is further

ORDERED that each of the findings made in the body of this Order is hereby approved in every respect. It is further

ORDERED that all matters contained in Attachments A - D of this Order are incorporated herein by reference. It is further

ORDERED that rate base, which for acquisition purposes reflects the net book value, is \$784,380 for the water facility and \$1,355,089 for the wastewater facility. It is further

ORDERED that United Water Florida Inc. shall charge the former customers of Sunray Utilities - St. Johns, Inc., the rates and charges as set forth in the body of this Order until authorized to change by this Commission in a subsequent proceeding. It is further

ORDERED that the rates and charges approved herein shall be effective for service rendered or connections made on or after the stamped approval date on the tariff sheets. It is further

ORDERED that the provisions of this Order issued as proposed agency action shall become final and effective unless an appropriate petition, in the form provided by Rule 25-22.036, *Florida Administrative Code*, is received by the Director, Bureau of Records and Hearing Services., 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the Notice of Further Proceedings or Judicial Review 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 August, 1997.

/s/ Blanca S. Bayó  
BLANCA S. BAYÓ, Director

Bureau of Records and Hearing Services.

ORDER NO. PSC-97-0929-FOF-WS DOCKET NO. 970210-WS PAGE 11 *This is a facsimile copy. A signed copy of the order may be obtained by calling 1-904-413-6770.*

( S E A L )

RGC

ORDER NO. PSC-97-0929-FOF-WS DOCKET NO. 970210-WS PAGE 12 NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), *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 regarding the Commission's jurisdiction over United Water Florida Inc.'s facilities in St. John's County, establishing rate base, and approving rates and charges, 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 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on August 25, 1997. If such a petition is filed, mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing. 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, Bureau of Records and Hearing Services, 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 ORDER NO. PSC-97-0929-FOF-WS DOCKET NO. 970210-WS PAGE 13 with the Director, Bureau of Records and Hearing Services, 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, Bureau of Records and Hearing Services, 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.

ORDER NO. PSC-97-0929-FOF-WS DOCKET NO. 970210-WS PAGE 14 ATTACHMENT A

UNITED FLORIDA WATER INC.

**SUNRAY UTILITIES - ST. JOHNS COUNTY, INC.**  
**TERRITORY DESCRIPTION**

IN St. JOHNS COUNTY, FLORIDA, THE FOLLOWING LANDS IN TOWNSHIP 5 SOUTH, RANGE 27 EAST:

All of Section 1, LESS AND EXCEPT, the North 1/2 of the NE 1/4 of said section.

ALL OF SECTION 2, LESS AND EXCEPT Northeast 1/4; further LESS AND EXCEPT the Southeast 1/4; and further LESS AND EXCEPT the Easterly 1/2 of the Northwest 1/4 of said section.

ALL OF SECTION 3.

ALL OF SECTION 4, LESS AND EXCEPT the Northerly 1/2 of said section; further LESS AND EXCEPT the Northerly 1/2 of the Southeast 1/4; and further LESS AND EXCEPT the Northerly 1/2 of the Southwest 1/4 of said section.

IN SECTION 5, ALL OF THE Southeasterly most 1/4 of the Southeast 1/4 of this fractional section.

ALL OF SECTIONS 9, 10, 11, 12, 13, 14, and 15.

ALL OF THE South 1/2 of the Northeast 1/4, together with the South 1/2 of the Southeast 1/4, of SECTION 16.

ALL OF SECTIONS 17 AND 21.

ALL OF SECTION 22, LESS AND EXCEPT the South 1/2 of the Northeast 1/4; further LESS AND EXCEPT so much of the Southeast 1/4 as may lie Southerly of the Right of Way of State Road 210.

ALL OF SECTION 23, LESS AND EXCEPT so much of the Southwest 1/4 that may lie Southerly of State Road 210; further LESS AND EXCEPT the Southwest 1/4 of the Southeast 1/4.

ALL OF SECTION 24.

ALL OF SECTION 25, LESS AND EXCEPT the Southeast 1/4 of the Southeast 1/4 of the Southeast 1/4.

ALL OF SECTIONS 26, 27 AND 28.

ALL OF THAT CERTAIN TRACT OR PARCEL OF LAND LYING IN THE Northerlymost 1/4 of SECTION 32; together with the Southeast 1/4 of the Northeast 1/4, of said Section 32.

(Cont'd: Township 5 South, Range 27 East)

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ALL OF SECTION 33, LESS AND EXCEPT the Easterly 1/2 of the Southeast 1/4 of the Northwest 1/4; further LESS AND EXCEPT the Easterly 1/2 of the Northeast 1/4 of the Southwest 1/4; further LESS AND EXCEPT the Southwest 1/4 of the Northeast 1/4 of the Southwest 1/4 of the Southwest 1/4; further LESS AND EXCEPT the South 1/2 of the Northwest 1/4 of the Southwest 1/4; further LESS AND EXCEPT the Southwest 1/4 of the Southwest 1/4; further LESS AND EXCEPT the Southeast 1/4 of the Southeast 1/4, of said section.

ALL OF SECTION 34, LESS AND EXCEPT the Southwest 1/4 of the Southwest 1/4 of said section.

ALL OF SECTION 35.

ALL OF SECTION 36, LESS AND EXCEPT THE EASTERLY 1/2 OF THE SOUTHWEST 1/4 OF SAID SECTION.

ALL OF SECTION 41.

IN ST. JOHNS COUNTY, FLORIDA, THE FOLLOWING LANDS IN TOWNSHIP 5 SOUTH, RANGE 28 EAST:

ALL OF SECTIONS 4, 5, and 6 lying South of Race Track Road.

ALL OF SECTION 7, LESS AND EXCEPT the Southwest 1/4 of the Southeast 1/4 of said section.

ALL OF SECTIONS 8, 9, 16, AND 17.

ALL OF SECTION 18, LESS AND EXCEPT the Northeast 1/4 of the Southeast 1/4; further LESS AND EXCEPT to much of the Northeast 1/4 of the Northeast 1/4 of the Northeast 1/4 as may lie Northerly of the right of way of Russell Sampson Road (a 60' right of way in Section 18).

ALL OF SECTIONS 19, 20, 21, 28, 29, 30, 31, 32, 40, 41 AND 46.

ORDER NO. PSC-97-0929-FOF-WS DOCKET NO. 970210-WS PAGE 16  
**ATTACHMENT B**

**SUNRAY - ST. JOHNS, INC.  
 SCHEDULE OF WATER RATE BASE  
 AS OF DECEMBER 31, 1996**

<u>Description</u>	<u>Balance per Utility</u>	<u>Commission Adjustments</u>	<u>Balance per Commission</u>
Utility Plant in Service	\$1,109,044	\$ (6,114)	\$1,102,930
Accumulated Depreciation	\$ (255,199)	\$ (831)	\$ (256,030)
CIAC	\$ ( 76,360)	\$ 0	\$ ( 76,360)
Accumulated Amortization	<u>\$ 13,840</u>	<u>\$ 0</u>	<u>\$ 13,840</u>
Totals	\$ 791,325	\$ (6,945)	\$ 784,380

**SUNRAY - ST. JOHNS, INC.  
 SCHEDULE OF WASTEWATER RATE BASE  
 AS OF DECEMBER 31, 1996**

<u>Description</u>	<u>Balance per Utility</u>	<u>Commission Adjustments</u>	<u>Balance per Commission</u>
Utility Plant in Service	\$1,891,679	\$ 8,886	\$1,900,565
Accumulated Depreciation	\$ (321,858)	\$ (831)	\$ (322,689)
CIAC	\$ (236,382)	\$ 0	\$ (236,382)
Accumulated Amortization	<u>\$ 13,595</u>	<u>\$ 0</u>	<u>\$ 13,595</u>
Totals	\$1,347,034	\$ (6,945)	\$1,355,089

**ATTACHMENT C**

ORDER NO. PSC-97-0929-FOF-WS DOCKET NO. 970210-WS PAGE 17

<u>EXPLANATION OF ADJUSTMENTS</u>	<u>WATER</u>	<u>WASTEWATER</u>
<u>PLANT IN SERVICE</u>		
a) Reclassify plant account	\$ (7,500)	\$7,500
b) General Plant - breathing apparatus	\$ 750	\$ 750
c) General Plant - ADT Security	<u>\$ 636</u>	<u>\$ 636</u>
	\$ (6,114)	\$8,886
<u>ACCUMULATED DEPRECIATION</u>		
a) Adjustments to reserve accounts due to adjustments to plant	\$ (831)	\$ (831)

ORDER NO. PSC-97-0929-FOF-WS DOCKET NO. 970210-WS PAGE 18 **ATTACHMENT D**  
**COMPARISON OF RATES**

<u>Water: Residential - Quarterly</u>	<u>Sunray</u>	<u>UWF</u>
5/8" meter - BFC	\$	\$ 17.38



Gallonge Charge - per 1,000 gallons	45.51		
	\$	\$	1.35
	1.64		
<b><u>Wastewater: Residential - Quarterly</u></b>			
5/8" meter - BFC	\$	\$	33.98
	52.98		
Gallonge Charge - per 1,000 gallons	\$	\$	3.34
	2.18		
<b><u>Residential - Combined Quarterly</u></b>			
Total Bill @ 18K		\$	\$
	167.25		135.78
Total Bill @ 27K		\$	\$
	201.63		177.99
<b><u>Water: General Service - Monthly</u></b>			
2" meter - BFC		\$	\$
	121.38		82.89
8" meter - BFC			\$1,326.20
	\$1,213.81		
Gallonge Charge	\$	\$	
	1.64		1.35
<b><u>Wastewater: General Service - Monthly</u></b>			
2" meter - BFC		\$	\$
	141.29		132.55
8" meter - BFC			\$2,210.65
	\$1,412.93		
Gallonge Charge	\$	\$	
	2.61		4.01
<b><u>Sunray - Retained Charges</u></b>		<b><u>Water</u></b>	<b><u>Wastewater</u></b>
Plant Capacity Charge		\$	\$
	410.00		250.00
Guaranteed Revenues		\$	\$
	14.08		18.19

Note - UWF will not collect Sunray s authorized Allowance for Funds Prudently Invested (AFPI) Charges. Sunray s approved charges were \$1,290.60 for water and \$1,460.62 for wastewater. ORDER NO. PSC-97-0929-FOF-WS DOCKET NO. 970210-WS PAGE 19

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