

State of Florida



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: August 26, 2004

TO: Director, Division of the Commission Clerk & Administrative Services (Bayó)

FROM: Division of Economic Regulation (Johnson, Kaproth, Walden)
Office of the General Counsel (Brown)

RE: Docket No. 030991-WU – Application for transfer of all water facilities of Suwannee Valley Estates in Columbia County to Consolidated Water Works, Inc. (holder of Certificate No. 393-W), for cancellation of Certificate No. 421-W, and for amendment of Certificate No. 393-W.
County: Columbia

AGENDA: 09/07/04 – Regular Agenda – Proposed Agency Action Issues 2 and 3 – Interested Persons May Participate

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\ECR\WP\030991WS.RCM.DOC

Case Background

Suwannee Valley Estates (Suwannee Valley) is a Class C water utility located in Columbia County serving approximately 16 water customers. Suwannee Valley was issued Water Certificate No. 421-W pursuant to Order No. 12762, issued December 9, 1983, in Docket No. 820346-W, In Re: Application of Suwannee Valley Estates for a Certificate to Operate a Water Utility Pursuant to Section 367.171, Florida Statutes. The utility's service area is in the Suwannee River Water Management District; however, it is not in a water use caution area. Wastewater service is provide by septic tanks. The utility's 2003 annual report reflects operating revenues of \$2,326 and an operating loss of (\$3,568).

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On October 20, 2003, Consolidated Water Works, Inc. (CWW or Buyer) filed an application for transfer of the utility's facilities and certificate from Suwannee Valley to CWW. According to the application, on October 9, 2003, CWW entered into an agreement to purchase the utility and the land upon which the facilities were located for a purchase price of \$15,000. The application was found to be deficient. The deficiencies were corrected on May 10, 2004.

This recommendation addresses the transfer of the water facilities from Suwannee Valley to CWW, cancellation of certificate 421-W and the amendment of certificate No. 393-W held by CWW. The Commission has jurisdiction to consider this matter pursuant to the provisions of Section 367.071 Florida Statutes, and Rule 25-30.037, Florida Administrative Code.

Discussion of Issues

Issue 1: Should the Commission approve the transfer of the water facilities from Suwannee Valley Estates to CWW, the cancellation of Certificate No. 421-W and the amendment of Certificate No. 393-W?

Recommendation: Yes, the transfer of the water facilities from Suwannee Valley to CWW should be approved. Suwannee Valley's Certificate No. 421-W should be canceled and CWW's Certificate No. 393-W should be amended to include the territory of Suwannee Valley. The transfer should be effective the day of the Commission vote. In addition, CWW should be ordered to submit a warranty deed within 60 days of the date the order resulting from action taken at this agenda conference becomes final, reflecting that ownership of the land upon which the Suwannee Valley facilities are located has been properly conveyed to CWW. CWW is responsible for remitting the 2004 and all future regulatory assessment fees (RAFs) and annual reports. A description of the territory to be transferred is appended to this recommendation as Attachment A. (Johnson, Walden, Kaproth)

Staff Analysis: On May 10, 2004, CWW completed all of the filing requirements for its application for transfer of Certificate No. 421-W from Suwannee Valley to CWW. The application is in compliance with the governing statute, Section 367.071, Florida Statutes, and other pertinent statutes and rules concerning an application for transfer.

Commission Approval. Section 367.071, Florida Statutes, requires that no utility shall sell, assign, or transfer its certificate of authorization, facilities or any portion thereof, or majority organizational control, without prior approval of the Commission unless such sale, assignment, or transfer is made contingent upon Commission approval. The contract is contingent upon the Commission's approval. The closing is scheduled to take place thirty days after the Commission approves the transfer.

Noticing. 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 utility to be transferred. No objections to the notice of application have been received and the time for filing such has expired.

Sales Contract and Financing. The application contains documentation to comply with Rule 25-30.037(2)(g), (h), (i), and (k), Florida Administrative Code, regarding terms of the sale and financing of the purchase, including a copy of the purchase agreement. The purchase price for the utility and land is \$15,000. The buyer obtained a five year loan to purchase Suwannee Valley. The customer deposits were transferred to the buyer.

Proof of Ownership. Rule 25-30.037(2)(q), Florida Administrative Code, requires proof that the utility owns or has provided for the continued use of the land upon which the utility facilities are located. The application included an unexecuted sample of the warranty deed to be recorded after closing on the sale. The applicant has requested that they be allowed to provide proof that the utility owns the land upon which its facilities are located after the closing. According to the applicant, upon the issuance of the Commission's order approving the transfer

application, the ownership of all utility land will be transferred to CWW. CWW should be required to provide a warranty deed or proof that the utility owns or has continued use of the land upon which its facilities are located within 60 days of the order becoming final.

Public Interest. The application also contains a statement, pursuant to Rule 25-30.037(2)(j), Florida Administrative Code, regarding how the transfer is in the public interest. According to the application, the transfer is in the public interest because the buyer has the expertise and finances to operate the utility to better serve the customers. CWW is a corporation owned by a father and son, which consists of several small utility systems. It should be noted that CWW has a history of providing poor management and questionable service which was documented in Order No. PSC-01-1988-PAA-WU, issued October 8, 2001, in Docket No. 001682-WU, In Re: Application for staff-assisted rate case in Columbia County by Consolidated Water Works, Inc. However, the current owners of Suwannee Valley no longer want to be in the utility business and the plant has deteriorated under their management. CWW does not have any outstanding consent orders from Florida Department of Environmental Protection (FDEP) and has complied with the directives of the Commission. It appears at this time that CWW is making an effort to maintain and improve the utility systems that it owns. Therefore, staff believes that CWW can increase the quality of customer service and efficiencies of the utility through economies of scale.

CWW has shown sufficient technical and financial ability to operate the system. With regard to the financial ability of CWW, the application included the financial statements of one of the owners of CWW, which indicates sufficient net worth. While most of the assets are in real estate, the statement also reflect liquid assets, as well as the ability to attract financing. According to the application, the utility's investment capital will be provided by Mr. Jeffrey Espenship. We find these assets are sufficient to ensure continued financial stability. With regard to technical ability, we recognize that CWW has been a certificated utility since 1983. In addition, CWW's owner, Mr. Jack Espenship, has been in the water utility business since 1972, and he has shown improvement in maintaining the CWW systems. Therefore, we find that the requisite technical ability has been demonstrated. Additionally, the application contains a statement that the buyer will fulfill the commitments, obligations, and representations of the sellers with regard to utility matters.

The application states that the buyer has performed a reasonable investigation of the Suwannee Valley system as required by Rule 25-30.037(2)(p), Florida Administrative Code. The buyer included a statement that the system appears to be in satisfactory condition and in compliance with all applicable standards set by the FDEP. Staff has contacted the FDEP and verified that there are no outstanding notices of violation.

The water treatment plant is composed of one 4-inch well. Liquid chlorination is used as the primary form of treatment. The average daily flow for the calendar year 2003 was approximately 10,247 gallons per day (gpd). Given the age of the system, the new owners of Suwannee Valley have initiated replacement of approximately 16 residential meters, back flow valves, meter boxes, curb stops, locks, and electrical repairs after completing a preliminary investigation of the subdivision. The cost for these repairs is estimated to be \$5,804.

Annual Reports & Regulatory Assessment Fees. Rule 25-30.037(2)(r), Florida Administrative Code, requires that the application contain a statement regarding the disposition of any outstanding RAFs, fines, or refunds owed. The application states that all RAFs, fines, and refunds have been paid by the applicant. We have verified that the RAFs and annual reports have been filed through December 31, 2003 and that there are no outstanding penalties, refunds or interest as of December 31, 2003 for RAFs or Annual Reports. CWW will be responsible for remitting the 2004 and all future RAFs and annual reports.

Based on the above, staff recommends that the transfer of the Suwannee Valley facilities to CWW is in the public interest and should be approved. Suwannee Valley's Certificate No. 421-W should be canceled and CWW's Certificate No. 393-W amended to include the additional territory. In addition, CWW should be ordered to submit a warranty deed within 60 days of the issuance date of the order resulting from action taken at this agenda conference, reflecting that ownership of the land upon which the Suwannee Valley facilities are located has been properly conveyed to CWW. The transfer should be effective the day of the Commission vote. A description of the territory being transferred is appended to this recommendation as Attachment A.

Issue 2: What is the rate base of Suwannee Valley at the time of transfer?

Recommendation: The rate base could not be calculated at this time. Therefore rate base has been set at \$0 for transfer purposes as of December 30, 2002. The utility should be required to provide proof within 60 days of the order becoming final, that it has set up the books and records for all of CWW, including the Suwannee Valley system, using the National Association of Regulatory Utility Commissioners (NARUC) Uniform System of Accounts (USOA) and that the beginning plant balances for the Suwannee Valley system reflect the balances establish pursuant to this order. (Johnson)

Staff Analysis: Rate base for Suwannee Valley has never been established by the Commission. Suwannee Valley entered into a contract on October 9, 2003, to sell its water facilities to CWW. It is Commission practice to establish rate base as of the date of transfer. Staff conducted an audit of the books and records of the utility to determine rate base. The audit report contained several audit exceptions, but could not determine rate base from the information provided by the utility.

Audit Exception No. 1. This exception was the audit opinion that the utility was not maintaining its books pursuant to Rule 25-30.115(1), Florida Administrative Code, which requires all water and wastewater utilities to maintain their accounts and records in conformance with the NARUC Uniform System of Accounts. According to the sellers of Suwannee Valley, the original owners of the utility never released the books and records. Therefore, the sellers' failure to maintain the utility's books and records in accordance with 1996 NARUC USOA was perpetuated by the owners before they obtained ownership.

Staff has received a verbal commitment from CWW of its intention to bring the utility's books and records into compliance with the 1996 NARUC USOA. In addition, staff recommends that the utility should be required to provide proof, within 60 days of the Commission's order becoming final that it has set up the books and records for all of CWW, including the Suwannee Valley system, using the NARUC USOA and that the beginning plant balances for the Suwannee Valley system reflect the balances establish pursuant to this order.

Audit Exception No. 2. This exception was the audit opinion that without an official starting point, a per audit balance could not be established for land. As mentioned earlier, there is no general ledger and there is no land recorded in the annual report for Suwannee Valley. The company provided a deed that listed the well and the utility on the same lot. In addition, the deed indicates that the land and the utility is owned by Mr. Bud Espenship and Mr. Dave Mangrum. The application for transfer does not mention Mr. Dave Mangrum. Mr. Mangrum informed the staff auditor that he was not aware of the application for transfer or the sale of the utility. Subsequent to the audit report Mr. Mangrum signed over his interest in the land and the utility to Mr. Bud Espenship, the owner of Suwannee Valley.

Audit Exception No. 3. The utility collected deposits from its customers at the rate of two times the monthly flat charge of \$12. The utility has a total of sixteen customers and a deposit of \$24 from each customers which results in \$384 in customer deposits.

Rule 25-30.311(4)(a), Florida Administrative Code, requires each utility that requires deposits from its customers to pay a minimum interest on such deposits of 6 percent per annum. Subsequent to the purchase agreement, the deposits of \$384 were transferred to the purchaser of the utility. The new owner has stated that the customers deposits will be refunded with interest as required by Rule 25-30.311(4)(a), Florida Administrative Code.

Audit Exception No. 4. The utility could not provide original source documents for plant in service, due to the lack of books and records. The utility's tax return and the annual report to the Commission listed no plant.

Staff found five invoices for plant replacement items. The five plant items have a combined plant total of \$2,359. The corresponding accumulated depreciation is \$918 for a net plant balance of \$1,441. The rate base for this system could be set at \$1,441, based on the records that are available. However, that amount would not include the cost of land, lines and CIAC. Due to the lack of books and records and assistance from the applicants, staff could not determine the value of these items.

Staff notified the buyer that, in order to establish rate base in this proceeding, an original cost study needed to be prepared. The buyer filed a letter on May 10, 2004, stating that it would not be doing an original cost study, but it would file for a rate proceeding at a later date. According to the buyer, the plant is practically fully depreciated and it would not be prudent to incur the expense for a cost study. Therefore, without an original cost study and books and records, the buyer is expecting a rate base of zero. In addition the new owners have hired an accountant to handle its books and records and agreed to use the NARUC USOA.

RATE BASE

Based on the absence of books and records and the utility's decision not to prepare an original cost study, staff recommends that rate base be set at \$0 for the water system as of December 30, 2002.

Issue 3: Should an acquisition adjustment be included in the calculation of rate base?

Recommendation: No. Pursuant to Rule 25-30.0371(2), Florida Administrative Code, an acquisition adjustment should not be included in rate base. (Johnson, Brown)

Staff Analysis: An acquisition adjustment results when the purchase price differs from the rate base at the time of the acquisition. The acquisition adjustment resulting from the transfer of Suwannee Valley to CWW would be calculated as follows:

| | |
|------------------------------------|---------------------------|
| Purchase Price | \$15,000 |
| Less Staff Calculated Rate Base | \$ <u> 0</u> |
| Positive Acquisition Adjustment | \$15,000 <u> </u> |

Pursuant to Rule 25-30.0371(2) Florida Administrative Code, a positive acquisition adjustment shall not be included in rate base absent proof of extraordinary circumstances. The buyer has neither requested an acquisition adjustment nor identified any extraordinary circumstances. Therefore, staff recommends that a positive acquisition adjustment should not be included in the calculation of rate base for transfer purposes.

Issue 4: Should the rates and charges approved for Suwannee Valley be continued?

Recommendation: Yes, CWW should continue charging the rates and charges approved for Suwannee Valley until authorized to change by the Commission in a subsequent proceeding. The tariff reflecting the change in ownership should be effective for services provided or connections made on or after the stamped approval date on the tariff sheets. (Johnson)

Staff Analysis: Suwannee Valley's rates and charges were established by the Commission, pursuant to Order No. 12762, issued December 9, 1983, in Docket No. 820346-W, In Re: Application of Suwannee Valley Estates for a Certificate to Operate a Water Utility Pursuant to Section 367.171, Florida Statutes. The utility's approved rates and charges are as follows:

Monthly Water Service Rates

Residential

| | |
|---------------------|---------|
| Flat Rate per month | \$12.00 |
|---------------------|---------|

Miscellaneous Service Charges

| | |
|---|----------|
| Initial Connection Fee | \$ 15.00 |
| Normal Reconnection Fee | \$ 15.00 |
| Violation Reconnection Fee: | \$ 15.00 |
| Premises Visit Fee (in lieu of disconnection) | \$ 10.00 |

Service Availability Charges

| | |
|---------------------------|----------|
| Meter Installation Charge | \$200.00 |
|---------------------------|----------|

Rule 25-9.044(1), Florida Administrative Code, provides that in case of change of ownership or control of a utility that 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).

Based on the above, staff recommends that the utility continue operations under the existing tariff and apply the approved rates and charges until authorized to change by the Commission in a subsequent proceeding. As noted in Issue 2, CWW intends to file a rate

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proceeding at a later date. CWW has filed a revised tariff reflecting the transfer to CWW. If the Commission approves staff's recommendation, the tariff filing should be effective for services rendered or connections made on or after the stamped approval date.

Issue 5: Should this docket be closed?

Recommendation: No. This docket shall remain open pending receipt of evidence that CWW owns or has continued use of the land upon which its facilities are located, and pending receipt of proof that it has set up its books and records using the NARUC Uniform System of Accounts. Once the recorded deed and proof of appropriate accounting procedures have been received, and staff has verified that the submissions satisfy the requirements of Rule 25-30.037(2)(q), Florida Administrative Code, this docket may be closed administratively if no timely protest to the Commission's proposed agency action order has been filed by a substantially affected person, and a consummating order has been issued. (Brown)

Staff Analysis: This docket shall remain open pending receipt of evidence that CWW owns or has continued use of the land upon which its facilities are located, and pending receipt of proof that it has set up its books and records using the NARUC Uniform System of Accounts. Once the recorded deed and proof of appropriate accounting procedures have been received, and staff has verified that the submissions satisfy the requirements of Rule 25-30.037(2)(q), Florida Administrative Code, this docket may be closed administratively if no timely protest to the Commission's proposed agency action order has been filed by a substantially affected person, and a consummating order has been issued..

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ATTACHMENT A

SUWANNEE VALLEY ESTATES
COLUMBIA COUNTY
WATER TERRITORY DESCRIPTION
UTILITY SERVICE AREA

TOWNSHIP 2 SOUTH, RANGE 16 EAST

SECTION 22

That part of the SW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of said Section 22 lying West of the Eastern R-O-W of U. S. Highway 41 (also known as State Highway 100.)