

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: November 18, 2004

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

FROM: Office of the General Counsel (Jaeger)
Division of Economic Regulation (Merchant, Daniel, Fletcher, Redemann)

RE: Docket No. 992015-WU – Application for limited proceeding to recover costs of water system improvements in Marion County by Sunshine Utilities of Central Florida, Inc.

AGENDA: 11/30/04 – Regular Agenda – Interested Persons May Participate

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\ECR\WP\992015.RCM.DOC

Case Background

Sunshine Utilities of Central Florida, Inc. (Sunshine or utility) is a Class B utility that has been providing service in Marion County for more than 25 years, owning and operating more than 20 separate small water systems. With annual operating revenues of \$906,648, and a net income of \$52,806, the utility currently serves approximately 3,500 water customers. Wastewater service is provided by septic tanks.

On December 21, 1999, Sunshine filed an application for a limited proceeding pursuant to Section 367.0822, Florida Statutes, to increase water rates and charges for all of its customers in Marion County. The requested rate increase was intended to be used to initiate a water facilities plan in which the utility would interconnect and consolidate five of the 21 separate systems owned by Sunshine. These five systems are Lake Weir, Lakeview Hills, Oklawaha, Belleview Oaks, and Hilltop. The utility proposed to construct a centralized water treatment plant, pumping, and storage facility to serve the five systems specified in the utility's comprehensive plan. Sunshine proposed this plan to resolve contamination problems faced by some customers and by a few non-customers near its service area. Further, the plan was

designed to meet growth demands in the area of the interconnection. The utility initially proposed an increase of 22.72% to all of its customers across the board.

After several meetings with staff in 1999 and 2000, it became apparent to the utility that staff had serious concerns about the original proposal because it would provide limited benefits to only five of the utility's 21 systems. Moreover, for even these systems, staff thought that the improvements did little to improve the quality of water or the service provided to those customers and provided no benefits to the other 16 systems. In its original filing, Sunshine requested that the rate increase be passed on to all of its customers, not only to the customers of the five systems involved. In light of staff's comments, Sunshine asked for and was allowed time to revise its proposal.

On September 8, 2000, Sunshine submitted an Amended Application (First Amended Application) in which it presented two alternatives. Under its first alternative, Sunshine submitted essentially the original proposal as discussed above. The utility still proposed a 22.19% rate increase for all of its customers. Under Alternative No. 2, Sunshine proposed a project of a more limited scope that would address only the contamination problems in Little Lake Weir and Lakeview Hills systems as well as the sulfur concerns in the Oklawaha area and the Hilltop system. This alternative resulted in a requested overall 18.2% increase to all customers.

On June 7, 2001, Sunshine filed another amendment (Second Amended Application) to its application. In its Second Amended Application, Sunshine proposed to consolidate the original five systems and included a facilities plan for all proposed system improvements and a used and useful calculation that showed that not all of the new facilities would be 100% used and useful.

According to the utility, the consolidation was to eliminate the existing contamination problems and would improve the level of service that Sunshine could provide to its water customers. The consolidation was to be funded by a combination of grants and low interest loans. The plan included a proposed 15.73% rate increase for all of Sunshine's customers.

At the customer meeting held in Ocala on September 13, 2001, four customers spoke, and three spoke against this project. The only customer who spoke that resided in one of the five systems stated that he did not agree with this project.

At the November 6, 2001, Agenda Conference, the Commission determined that it needed additional information before taking any action on this limited proceeding. As a result, the Commission deferred a decision on staff's October 25, 2004, recommendation, and directed staff to further investigate the utility's application and to file another recommendation to allow consideration of other options for allocation of costs, alternative funding, the need for possible certificate amendments, and rate case expense.

In regards to the contamination problems and in an attempt to find other sources of funding for this project, staff met with the Marion County Solid Waste Department personnel, the utility, and a representative of the Office of Public Counsel (OPC). As a result of these meetings, the Marion County Solid Waste Department proposed that an additional thirty-eight

lots with contaminated wells be served by extending the proposed water system. This extension was to be funded by a combination of Department of Environmental Protection (DEP) grants and funds from Marion County. Discussions as to whether Marion County would participate in funding a portion of the main project were on-going as of April 2002.

By Proposed Agency Action Order No. PSC-02-0656-PAA-WU (PAA Order), issued May 14, 2002, the Commission approved, with modifications, Sunshine's limited proceeding application. However, on June 4, 2002, both Sunshine and OPC timely protested the PAA Order.

On September 19, 2002, OPC and Sunshine submitted a Joint Motion Seeking Commission Approval of Settlement Agreement and Continuation of Hearing. The Commission approved the Settlement Agreement in its entirety and issued Order No. PSC-02-1457-AS-WU (Order Approving Settlement Agreement) on October 22, 2002.

In the Settlement Agreement between Sunshine and OPC, the parties agreed that:

- (1) Sunshine would not proceed to construct the project until it received the Florida Department of Environmental Protection (FDEP) approval for complete financing of the project which financing structure would not materially deviate from the financing structure referenced in the PAA Order;
- (2) Sunshine would be entitled to an increase of 6.11% over its existing September 2002 service rates only after the project was complete and operational (this increase was the same increase as proposed in the original PAA Order);
- (3) There were certain assumptions about what would be a part of the project and that if funding exceeded the costs of constructing the project, then such extra funding would be considered contributions in aid of construction;
- (4) Post-protest rate case expense of \$20,000 would immediately begin to be amortized over four years and would be for surveillance purposes only;
- (5) Pre-protest rate case expense of \$74,929 would be included in the 6.11% rate increase and would be amortized over four years beginning with implementation of the rate increase, and rates would be reduced accordingly at the end of four years to reflect amortization of the rate case expense; and
- (6) There were other provisions that were only applicable within one year of the order approving the settlement, and the year has long-since passed.

No interim rates were set, and no funds were held subject to refund.

By letter dated August 31, 2004, staff counsel requested a written status report on the project. In its response dated September 27, 2004, Sunshine advised staff that it was not going to proceed with the project because the approved increase would not be sufficient to allow the utility to construct and maintain the proposed regional plant and allow any cash reserve for emergencies.

Docket No. 992015-WU
Date: November 18, 2004

This recommendation addresses the closing of this docket in light of the utility's pronouncement that it is not going to proceed with the project. The Commission has jurisdiction pursuant to Sections 367.082 and 367.0822, Florida Statutes.

DISCUSSION OF ISSUES

Issue 1: Should this docket be closed?

Recommendation: Yes. Because the utility has now advised the Commission that it will not proceed with the project for construction of a centralized water treatment plant, this docket should be closed. (Jaeger)

Staff Analysis: As stated above, in a proposed agency action proceeding, the Commission voted to approve with modifications Sunshine's limited proceeding application for a project to construct a centralized water treatment system for five of its systems. However, the Commission's PAA Order was protested by both Sunshine and OPC. Subsequent to the protest, OPC and Sunshine reached a settlement and submitted the Settlement Agreement to the Commission for approval. The Commission approved the Settlement Agreement in its entirety and issued its Order Approving Settlement Agreement accordingly.

Now, Sunshine has advised the Commission that it is not going to proceed with the project saying that the approved increase would not be sufficient to allow the utility to construct and maintain the proposed regional plant and allow any cash reserve for emergencies. In light of the utility's decision not to proceed, this docket can be closed because there are no further actions to be taken.

In reviewing Sunshine's September 27, 2004 letter, staff notes that Sunshine alleges that the "Commission prohibited the development of the Regional Water Plant." Staff believes that this statement is not true, and notes that the Commission merely approved in its entirety the Settlement Agreement that was entered into by the utility and OPC. Regardless of this fact, staff recommends that the docket be closed.