

State of Florida



Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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

DATE: February 17, 2005

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

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

RE: Docket No. 041294-WS – Transfer of water and wastewater service areas from Lake Suzy Utilities, Inc. d/b/a Aqua Utilities Florida, Inc. to DeSoto County, and cancellation of Certificate Nos. 599-W and 514-S in Charlotte and DeSoto Counties.

AGENDA: 03/01/05 – Regular Agenda – Interested Persons May Participate

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\ECR\WP\041294.RCM.DOC

Case Background

Lake Suzy Utilities, Inc. (Lake Suzy or utility) is a Class B water and wastewater utility providing service to 495 water customers and 221 wastewater customers in DeSoto and Charlotte Counties. Although DeSoto County has jurisdiction over the privately owned water and wastewater utilities in that County, the Lake Suzy water system was found to be subject to Commission jurisdiction pursuant to Section 367.171(7), Florida Statutes, because it provides water service which transverses the DeSoto and Charlotte County boundary.¹ In addition, the Commission found that Lake Suzy's provision of water service across county boundaries invokes Commission jurisdiction over the entire water and wastewater system, even though wastewater

¹ The Commission granted Lake Suzy Utilities, Inc. its Certificate Nos. 599-W and 514-S in Order No. PSC-00-0575-PAA-WS, issued March 22, 2000, in Docket No. 970657-WS, In Re: Application for certificates to operate a water and wastewater utility in Charlotte and DeSoto Counties by Lake Suzy Utilities, Inc.

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service does not transverse county boundaries, because the Lake Suzy water and wastewater system is one system as defined in Section 367.021(11), Florida Statutes.²

On September 30, 2004, DeSoto County and Lake Suzy entered into a master utility conveyance agreement to transfer the Lake Suzy water facilities to DeSoto County and, in exchange, to transfer the County wastewater facilities to Lake Suzy. On November 9, 2004, an application was filed requesting a transfer of the water facilities from Lake Suzy to Desoto County and for the cancellation of Certificate Nos. 599-W and 514-S. The Commission has jurisdiction pursuant to Section 367.071, Florida Statutes.

² Pursuant to Section 367.021(11), Florida Statutes a “system” is defined 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.

Discussion of Issues

Issue 1: Should the transfer of the water facilities from Lake Suzy Utilities, Inc. to DeSoto County and cancellation of Certificate Nos. 599-W and 514-S in Charlotte and DeSoto Counties be approved?

Recommendation: Yes. The transfer of the water facilities from Lake Suzy Utilities, Inc. to DeSoto County should be approved as a matter of right, pursuant to Section 367.071(4)(a), Florida Statutes. Certificate Nos. 599-W and 514-S should be cancelled administratively upon receipt of the executed master utility conveyance agreement confirming the date of closing, which is anticipated to be March 31, 2000, and receipt of regulatory assessment fees (RAF) forms and payment as set forth in staff's recommendation. (Johnson, Kaproth)

Staff Analysis: On November 9, 2004, Lake Suzy filed an application for the transfer of its water facilities to Desoto County and cancellation of Certificate Nos. 599-W and 514-S pursuant to Section 367.071(4)(a), Florida Statutes and Rule 25-30.037(4), Florida Administrative Code. Pursuant to Section 367.071(4)(a), Florida Statutes, the transfer of facilities to a governmental authority shall be approved as a matter of right. As such, no notice of the transfer is required and no filing fees apply.

According to the application, Desoto County approved an agreement to transfer the Lake Suzy water facilities to DeSoto County and, in exchange, to transfer the County wastewater facilities to Lake Suzy on September 28, 2004. As a result of the agreement, the Lake Suzy water and wastewater systems will no longer be subject to the Commission's jurisdiction because the County will own the water system and Lake Suzy will no longer have a water or wastewater system that transverses the County boundary. Lake Suzy will provide wastewater service in DeSoto County only. According to the application, DeSoto County will be responsible for providing water service.

The application contains a statement that Desoto County obtained Lake Suzy's most recent income and expense statement, balance sheet, statement of rate base, and contributions-in-aid-of-construction. Also included in the application was a statement that all customer deposits together with accumulated interest thereon that has not previously been refunded pursuant to Florida Administrative Code will be assigned at the closing to DeSoto County.

Lake Suzy filed its 2003 annual report and paid its regulatory assessment fees for the period January 1, 2004 through June 30, 2004. The utility has no outstanding penalties, interest or fines. The utility paid estimated RAFs of \$13,963.65 for July 1, 2004 through December 31, 2004. In addition, the utility paid estimated RAFs of \$5,445 for January 2005 and February 2005. Within 30 days of the closing of this transaction, the utility will send actual RAF forms for July 1, 2004 through December 31, 2004, and January 1, 2005 through the date of the closing with an additional payment or requesting a refund, as appropriate. Lake Suzy is responsible for filing the 2004 annual report on or before March 31, 2005. Since Desoto County is exempt from the Commission's jurisdiction, the 2005 annual report does not need to be filed. The utility has no open dockets pending before the Commission.

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Based on the above, staff recommends that the transfer of the water facilities from Lake Suzy to DeSoto County should be approved as a matter of right, pursuant to Section 367.071(4)(a), Florida Statutes. Certificate Nos. 599-W and 514-S should be cancelled administratively upon receipt of the executed master conveyance agreement confirming the date of closing, which is anticipated to be March 31, 2005 and receipt of the required filed documents.

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Issue 2: Should this docket be closed

Recommendation: No, this docket should remain open until staff receives proof of the executed purchase agreement confirming the closing, and receipt of actual RAFs forms and RAF payment for July 1, 2004, through December 31, 2004, and January 1, 2005, through the date of closing. The docket should be closed administratively upon receipt of the executed purchase agreement and the other documents addressed in staff's recommendation. (Brubaker)

Staff Analysis: This docket should remain open until staff receives proof of the executed purchase agreement confirming the closing, and receipt of actual RAFs forms and RAF payment for July 1, 2004, through December 31, 2004, and January 1, 2005, through the date of closing. The docket should be closed administratively upon receipt of the executed purchase agreement and the other documents addressed in staff's recommendation.