

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: March 23, 2006

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

FROM: Division of Economic Regulation (Merta, Rendell)
Office of the General Counsel (Jaeger)

RE: Docket No. 010087-WS – Application for approval of reuse plan in Lake County by Sun Communities Finance, LLC d/b/a Water Oak Utility.

AGENDA: 04/04/06 – Regular Agenda – Proposed Agency Action - Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Deason

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

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

Case Background

Sun Communities Finance LLC d/b/a Water Oak Utility (Water Oak or utility) is a Class B water and wastewater utility serving approximately 958 customers in Lake County. According to its 2004 Annual Report, the utility had gross revenue of \$331,738 and operating expenses of \$335,438. This resulted in a net operating loss of \$3,700.

On December 22, 2005, Water Oak filed a Motion to Modify Order and Close Docket. The Commission has jurisdiction pursuant to Sections 367.081 and 367.0817, Florida Statutes.

Discussion of Issues

Issue 1: Should the Commission approve Sun Communities Finance LLC d/b/a Water Oak Utility's Motion to Modify Order and Close Docket?

Recommendation: Yes, the Commission should approve Sun Communities Finance LLC d/b/a Water Oak Utility's Motion to Modify Order and Close Docket. (Merta)

Staff Analysis: Pursuant to Order No. PSC-00-1165-PAA-WS, issued June 27, 2000, in Docket No. 990243-WS, In re: Application for limited proceeding increase and restructuring of water rates by Sun Communities Finance Limited Partnership in Lake County, and overearnings investigation, the Commission ordered Water Oak, among other things, to file a reuse project plan within six months of the final order and to defer 23.07% of monthly wastewater revenues to be applied to the cost of its future reuse system. In addition, the Commission ordered the deferred earnings and accrued interest be booked to contributions in aid of construction (CIAC) once the reuse project plan was approved.

An Application for Approval of Reuse Project Plan and Increase for Wastewater Rates was filed by the utility on June 19, 2001. In July, 2001, the utility requested a discontinuance of all action on the reuse plan because of a potential sale of the utility to the City of Lady Lake. However, in December, 2001, the utility notified the Commission that the sale would not take place. An audit of the utility's books and records was conducted and an audit report was filed on October 1, 2002.

By Order No. PSC-03-0416-PAA-WS, issued March 26, 2003, in Docket No. 010087-WS, In re: Application for approval of reuse plan in Lake County by Sun Communities Finance LLC d/b/a Water Oak Utility, the Commission found that there were no overearnings for the wastewater system for the period January 1, 2001, to March 2003, and that it appeared the underearnings would continue. Therefore, the Commission no longer required the utility to escrow 23.07% of wastewater revenues for the reuse project and approved the utility's request to release all monies held in escrow with the exception of \$6,000 of overearnings plus associated interest in 2000. The Commission also ordered that Docket No. 010087-WS remain open pending completion of the reuse docket.

After numerous delays in receiving construction permits, soliciting bids, and another potential sale of the system to the City of Lady Lake which failed, in a February 9, 2005 letter, the utility stated that its analysis for updating the reuse project plan resulted in estimates of costs substantially higher than those that had been originally estimated for the project. As a result, management now questions the cost effectiveness of the reuse project. If it was determined that Water Oak must implement reuse, the utility would need to update its cost information and refile its reuse project plan and proposed increase in rates and charges.

On December 22, 2005, the utility filed a Motion to Modify Order and Close Docket. The utility requested the Commission issue an order modifying the requirements of Order Nos. PSC-00-1165-PAA-WS and PSC-03-0418-PAA-WS to no longer require the filing of a reuse project plan by the utility and to close Docket Nos. 990243-WS and 010087-WS. In its Motion, the utility stated that it has kept staff informed of the delays in the implementation of the reuse

project plan and the reasons therefor and that it has booked to CIAC all of the overearnings agreed to by the Commission in Order No. PSC-03-0416-PAA-WS. The utility asserts that through further investigation and discussion among its lawyers, engineers and issuance of a new Water Use Permit from the St. Johns River Water Management District (SJRWMD), it has determined that the implementation of a reuse system is not imminent and that it has decided to delay implementation of such an expensive project until it is determined that the reuse project must be implemented immediately. The utility further stated that because the Commission determined in Order No. PSC-03-0416-PAA-WS that Water Oak was not in an overearnings position, and that no additional funds were being escrowed to apply toward the reuse project, there is no reason for the Commission to continue to require the utility to file a reuse project plan. Finally, the utility stated that it does not wish to implement a reuse project plan until required to do so by environmental regulatory authorities because of the substantial cost and rate impact on its customers. Therefore, Water Oak requests deferral until the implementation of that project is imminent before filing a reuse project plan at the Public Service Commission.

Staff reviewed the Water Oak and golf course consumptive use permits (CUP). It appears that issuance of the CUPs was based on the expectation that "Reclaimed water from the proposed reuse treatment plant upgrade will be supplied to the golf course (CUP No. 95654) for irrigation by the end of 2006." Based on our Memorandum of Understanding with the water management districts, staff telephoned SJRWMD to advise them of the assertion by the utility that reuse was not imminent. By letter dated January 18, 2006, staff requested clarification and information from Water Oak and from SJRWMD.

In response to staff's inquiry, the utility reiterated its position that there were no requirements under the existing permits or conservation plans for the wastewater treatment plant to provide reuse at any specific date. Water Oak believes that circumstances have changed since the utility originally proposed to move forward with reuse, such as substantial increases in the cost of implementation of reuse, as well as the success of other conservation measures. Therefore, it does not believe that reuse is appropriate at this time. The utility stated that it will work with the SJRWMD and DEP in future permitting to determine when, or if, reuse is appropriate for its system.

The SJRWMD stated that for Water Oak's CUP (No. 282), it did not rely on the representation that reuse would become available, therefore failure to implement the reuse would not cause the utility to be out of compliance with the current permit. With respect to the golf course permit (CUP No. 95654), the District did rely on the applicant's statement that reclaimed water would be available from Water Oaks Utility. The SJRWMD stated:

At this time, the District is limited in its ability to pursue enforcement against the utility based on the permit conditions and the content of the application for permit number 282. Upon permit renewal, or a request for a modification, the District will require that the reclaimed water supply be developed to meet lower quality demands in the area. We will encourage the utility to fulfill the obligations provided in support of application 95654 to strengthen their application for renewal of permit number 282 in 2010.

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The District fully expected the utility to provide reuse to the golf course during 2006, and it plans to require Water Oak to implement a reuse system at the time of renewal of the current permit in April, 2010.

Based on the above, it appears that the utility is in compliance with its current permit and that the SJRWMD has no cause for action against Water Oak for failure to implement a reuse system. It also appears that implementation of a reuse system is not imminent but may be required in the future. Therefore, staff recommends that the utility's Motion be granted and that the Commission issue an order modifying the requirements of Order Nos. PSC-00-1165-PAA-WS and PSC-03-0418-PAA-WS to no longer require the filing of a reuse project plan by the utility and to close Docket No. 010087-WS. Staff believes that a new docket could be opened if the SJRWMD requires the utility to implement a reuse system in the future.

The utility also requested that Docket No. 990243-WS be closed; however, staff notes that this docket was closed by Consummating Order No. PSC-00-1301-CO-WS, issued July 19, 2000.

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Issue 2: Should this docket be closed?

Recommendation: Yes. If no timely protest is filed by a substantially affected person within 21 days of the Proposed Agency Action Order, a Consummating Order should be issued and the docket closed. (Jaeger, Merta)

Staff Analysis: If no timely protest is filed by a substantially affected person within 21 days of the Proposed Agency Action Order, a Consummating Order should be issued and the docket closed.