

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 27, 2008

TO: Office of Commission Clerk (Cole)

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

RE: Docket No. 060433-WU – Application for certificate to operate water utility in Lake County by South Umatilla Water.

AGENDA: 04/08/08 – Regular Agenda – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: McMurrian

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\GCL\WP\060433.RCM.DOC

Case Background

On June 5, 2006, South Umatilla Water (South Umatilla or utility) filed an application for an original water certificate in Lake County. The utility, which has been providing water service since 1948 and serves 122 connections, had not requested certification from the Commission earlier because it believed it was exempt from regulation because of its size. The Florida Department of Environmental Protection (DEP) brought the utility to the Commission's attention, and after consulting with staff the utility's owner filed the June 5, 2006, application.

The application was deficient in numerous ways. Staff was attempting to work with the utility to correct the deficiencies, but the utility failed to respond to several requests for information. Ultimately, South Umatilla stopped communicating with staff altogether.

During the time staff was attempting to correct the application deficiencies, DEP initiated proceedings in Lake County against South Umatilla for failure to comply with DEP's environmental requirements. DEP's action culminated in a Consent Final Judgment, issued September 24, 2007, in which South Umatilla agreed to transfer all the utility property and assets to Lake County by October 1, 2007. (Attachment A) Lake County took over ownership and operation of the water system on October 1, 2007, and South Umatilla deeded the utility land to Lake County on February 14, 2008.

This recommendation addresses the disposition of South Umatilla's outstanding certificate application. The Commission has jurisdiction over this matter pursuant to Sections 367.045, 367.071, and 367.022(2), Florida Statutes.

Discussion of Issues

Issue 1: Should the Commission dismiss South Umatilla Water's application for a certificate to operate a water facility in Lake County?

Recommendation: Yes. Since the utility facilities are now owned and operated by Lake County, South Umatilla's application is moot, and the Commission should dismiss it. (Brown, Clapp)

Staff Analysis: As explained in the case background above, Lake County took over ownership and operation of the South Umatilla system on October 1, 2007, pursuant to the Consent Final Judgment issued by the Fifth Judicial Circuit Court for Lake County. That event has rendered the application for a certificate from the Commission moot. Lake County now owns the utility, and pursuant to Section 367.022(2), Florida Statutes, utility systems owned, operated, managed, or controlled by governmental authorities are exempt from Commission jurisdiction. Therefore, staff recommends that the Commission should dismiss South Umatilla's certificate application.

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Issue 2: Should this docket be closed?

Recommendation: Yes. Since the utility facilities are now owned and operated by Lake County, South Umatilla's application is moot and the docket should be closed. (Brown, Clapp)

Staff Analysis: Since Lake County has taken over ownership and operation of the South Umatilla water system, the application for a certificate from the Commission is moot. Therefore, staff recommends that this docket should be closed.

Rock 060433

IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT,
IN AND FOR LAKE COUNTY, FLORIDA

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION,

Plaintiff,

vs.

Case No.: 07 CA 948

SOUTH UMATILLA WATER, INC.,

Defendant.

CONSENT FINAL JUDGMENT

The parties to this action, Plaintiff, State of Florida Department of Environmental Protection ("Department"), and Defendant, South Umatilla Water, Inc. ("South Umatilla"), agree and consent to the entry of this Consent Final Judgment ("Judgment"), and the Court, having reviewed the pleadings, and the record, and being otherwise duly informed, finds that:

1. This Court has jurisdiction over the subject matter and the parties hereto.
2. This Judgment shall constitute the complete settlement for the parties of all issues raised in this litigation.
3. The Department is the administrative agency of the State of Florida, created by Section 20.255, Florida Statutes, which is authorized to enforce the environmental laws of the State of Florida, including Chapter 403, Florida Statutes, and the rules promulgated thereunder in Title 62 Florida Administrative Code. The Department is headquartered at 3900 Commonwealth Boulevard, Tallahassee, Florida 32399-3000, and its Central District Office is located at 3319 Maguire Boulevard, Suite 232, Orlando, Florida, 32803.
4. South Umatilla is a corporation that owns and operates a public water system, PWS Id. No. 3351221, consisting of two drinking water treatment plants, and their associated

ATTACHMENT A

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pipng, which supplies drinking water to over 400 citizens of the State, located in Umatilla, Lake County, Florida ("water system").

5. South Umatilla has decided to abandon the water system effective October 1, 2007, and has agreed to transfer all property and assets regarding the water system over to Lake County, a political subdivision of the State of Florida, ("Lake County"), in accordance with Section 367.165, Florida Statutes.

6. Lake County has agreed to own and operate the water system effective October 1, 2007, and comply with the requirements set forth in Chapters 62-550, and 62-555, Florida Administrative Code.

7. All parties have agreed to bear their own costs and fees associated with this action and the Department shall hold South Umatilla, its officers, directors, and shareholders faultless from any liability regarding fees, penalties, or other assessments made by the Department regarding this action.

8. Based on these findings and the stipulation of the parties, it is, therefore,
ORDERED AND ADJUDGED:

9. By October 1, 2007, South Umatilla shall abandon the water system and transfer all assets of the water system to Lake County.

10. Lake County will own and operate the water system effective October 1, 2007, and comply with the requirements set forth in Chapters 62-550, and 62-555, Florida Administrative Code.

11. If South Umatilla fails to comply with any provision of this Judgment, the Department may seek any and all judicial remedies available and shall be entitled to the payment

of reasonable attorney's fees incurred by the Department to enforce any provision of this Judgment. Otherwise, each party shall bear its own cost, expenses, and attorney's fees.

12. Entry of this Judgment does not relieve South Umatilla of the need to comply with all applicable federal, state, or local laws, regulations, or ordinances.

13. No modifications of the terms of this Judgment shall be effective until reduced to writing, executed by the Department and South Umatilla, and approved by the Court.

14. The provisions of this Judgment shall apply to and be binding upon the Department, South Umatilla, and their agents, successors, and assigns.

15. The petitioning for relief under the federal bankruptcy code by South Umatilla shall not affect or be construed to affect South Umatilla's obligations under this Judgment.

16. The Court retains jurisdiction to enforce the terms of this Judgment by contempt or other appropriate sanctions and issue such other and further orders as may be appropriate until completion of all corrective actions contained herein.

DONE AND ORDERED in Tavares, Lake County, Florida this 24 day of September, 2007.




G. RICHARD SINGELTARY
CIRCUIT COURT JUDGE -

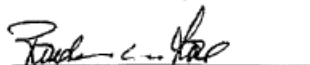
CONSENT TO ENTRY WITHOUT FURTHER NOTICE OR HEARING

The parties hereby agree and consent to the Court's entry of the proposed Consent Final Judgment without further litigation in complete satisfaction of all of the claims arising out of the Petition for Enforcement and Complaint in this case.

FOR PLAINTIFF, STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL
PROTECTION


VIVIAN F. GARFEIN
District Director
Central District Office
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Orlando, Florida, 32803


9/21/07
Date


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9.21.07
Date

cc. Ronda L. Moore
C. Michael Duncan

FOR DEFENDANT, SOUTH UMATILLA
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