

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 7, 2008

TO: Office of Commission Clerk (Cole)

FROM: Division of Economic Regulation (Brady, Marsh, Redemann)
Office of the General Counsel (Klancke)

RE: Docket No. 080183-WU – Joint application for approval of transfer of Tamiami Village Water Company, Inc.'s water system and Certificate No. 388-W in Lee County to Ni Florida, LLC.

AGENDA: 08/19/08 – Regular Agenda – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Edgar

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\ECR\WP\080183.RCM.DOC

Case Background

Tamiami Village Water Company, Inc. (Tamiami, utility, or seller) is a Class C water utility serving approximately 718 residential and 27 general service customers. The utility facilities consist of water distribution lines which deliver water purchased from Lee County pursuant to a bulk service agreement. Wastewater services are provided by North Fort Myers Utility, Inc. The utility is located in the South Florida Water Management District where, due to drought related conditions, irrigation water use is restricted to twice a week. The utility's 2007 annual report shows total operating revenues of \$208,744 and net operating loss of \$4,900.

The utility was granted Certificate No. 388-W in 1983.¹ The utility has also had two prior transfers² and an amendment.³

On March 14, 2008, Tamiami entered into an Asset Purchase Agreement with Ni Florida, LLC (Ni Florida or buyer) to acquire the water facilities. On March 31, 2008, Tamiami and Ni Florida filed a joint application for transfer of Tamiami's water facilities and certificate to Ni Florida. No deficiencies were found in the application. The closing on the sale of the utility is scheduled to occur after the Commission approves the transfer.

One objection to the application was timely filed on behalf of Board of the Tamiami Master Association (TMA), which is a general service customer of the utility. On May 27, 2008, Ni Florida met with the TMA to address its concerns. Although the objection filed by TMA was subsequently withdrawn on May 30, 2008, its concerns with regard to the transfer remain outstanding.

Rate base was last established in 1995 pursuant to the transfer in Order No. PSC-95-1441-FOF-WU. Since rate base was last established was over a decade ago, an audit is being conducted to establish rate base at the time of transfer and a subsequent recommendation will be filed upon the completion of the audit. The water facilities were purchased for more than net book value. However, the buyer is not requesting an acquisition adjustment at this time.

This recommendation addresses the transfer of the water facilities and Certificate No. 388-W from Tamiami to Ni Florida. The Commission has jurisdiction to consider this matter pursuant to Section 367.071, Florida Statutes (F.S.).

¹ Order No. 11734, issued March 18, 1983, in Docket No. 820183-WS (MC), In Re: Application of Tamiami Utility Company for an original certificate to operate a water and sewer utility in Lee County, Florida.

² Order No. 21421, issued June 20, 1989, in Docket No. 890127-WS, In Re: Joint application for transfer of Certificates Nos. 388-W and 332-S from Tamiami Utility Company in Lee County to Tamiami Village Utility, Inc.; Order No. PSC-95-1441-FOF-WU, issued November 28, 1995, in Docket No. 950015-WU, In Re: Application for transfer of Certificate No. 388-W in Lee County from Tamiami Village Utility, Inc.; and for a limited proceeding to increase rates to recover increased operation and maintenance expenses as a result of pending transfer by Tamiami Village Water Company, Inc.

³ Order No. 22449, issued January 23, 1990, in Docket No. 891148-WS, In Re: Application of Tamiami Village Utility, Inc. for amendment of Certificates 388-W and 332-S in Lee County.

Discussion of Issues

Issue 1: Should the Commission approve the transfer of facilities and Certificate No. 388-W from Tamiami Village Water Company, Inc. to Ni Florida, LLC?

Recommendation: Yes, the transfer of facilities and Certificate No. 388-W is in the public interest and should be approved effective as of the date of the Commission's vote. A description of the territory being transferred is appended to this recommendation as Attachment A. The subsequent order will serve as the utility's water certificate and should be retained by the utility. Tamiami is responsible for payment of 2008 RAFs from January 1, 2008, to the date of the closing. Ni Florida is responsible for payment of 2008 RAFs from the date of closing through December 31, 2008, and RAFs for all future years. Ni Florida is also responsible for filing the utility's annual report for 2008 and all future years. Pursuant to Rule 25-9.044(1), Florida Administrative Code (F.A.C.), the rates and charges approved for the utility should be continued until authorized to change by the Commission in a subsequent proceeding. The buyer should be required to file documentation confirming the closing of the purchase within 15 days of the closing and an updated territory map within 6 months from the date of the closing. The docket should remain open until rate base is established by the Commission at a subsequent agenda conference. (Brady, Redemann, Marsh, Klancke)

Staff Analysis: On March 31, 2008, a joint application was filed by the applicants for approval of the transfer of the facilities and Certificate No. 388-W from Tamiami to Ni Florida. The application is complete and in compliance with the governing statute, Section 367.071, F.S., and other pertinent statutes and rules concerning an application for transfer. The closing on the sale of the facilities is scheduled to occur after the Commission approves the transfer. A description of the territory is appended to this recommendation as Attachment A.

The application contains proof of compliance with the noticing provisions set forth in Rule 25-30.030, F.A.C. As discussed above, one objection to the application was timely filed on behalf of TMA, but the objection was subsequently withdrawn on May 30, 2008. In the objection, concerns were expressed regarding the line breaks in the service area and insufficient boil water notices. On a going-forward basis, concerns were also expressed as to Ni Florida's ability to respond to emergencies and to communicate with customers on a timely basis. In later correspondence, additional concerns were raised regarding potential future rate increases resulting from investments in the existing water system that Ni Florida indicated that it is investigating, and whether Ni Florida might request an acquisition adjustment in the future. At its May 27, 2008, meeting with TMA, Ni Florida indicated it would not be requesting an acquisition adjustment at a later date, but was unwilling to put the statement in writing. And, while rate structures were discussed, Ni Florida indicated that it was not prepared to discuss possible rate increases outside of a rate proceeding. Finally, while Ni Florida indicated that there were no recorded violations at this time, it did confirm that they were looking into mandated service requirements relating to compliance issues, the costs of which could be borne by customers. As noted, the objection on behalf of TMA was subsequently withdrawn; however, a representative for the TMA has requested that she be able to participate at the August 19, 2008, agenda conference to discuss the continuing concerns of TMA constituents.

The application contains a copy of the Asset Purchase Agreement, which includes the purchase price, terms of payment, and a list of the assets purchased. The utility assets were purchased by Ni Florida for \$745,000. Ni Florida's sole member, Ni America Capital Management, LLC (Ni Management), is financing the purchase of the utility through the use of equity financing. The interest on customer deposits will be a liability assumed by Ni Florida and accounted for as a reduction in the purchase price. There are no guaranteed revenue contracts, developer agreements, or customer advances to be disposed of in relation to the transfer. All existing debt of Tamiami will be retired under the Asset Purchase Agreement. Further, the application confirms that Ni Florida obtained copies of the federal income tax returns of Tamiami for calendar years 2005 and 2006.

While the utility is not requesting an acquisition adjustment at this time, staff is conducting an audit to establish rate base at the time of the transfer and, upon completion, a recommendation on rate base will be brought to a subsequent agenda conference. It should be noted that the utility's rate base was \$57,795 when last established in 1995 pursuant to Order No. PSC-95-1441-FOF-WU. According to the utility's latest annual report, its net utility plant in service was \$79,517, as of December 31, 2007.

Rule 25-30.037(2)(q), F.A.C., requires proof that the utility owns or has provided for the continued use of the land upon which the utility facilities are located. In lieu thereof, the applicants have provided a copy of the agreement between Tamiami and Lee County dated October 1, 2002, for bulk water service, which indicates that the benefits of the agreement inure to successors and assignees.

The application contained a statement that, after a reasonable investigation, the utility system appears to be in satisfactory condition and in compliance with all applicable standards set by the Florida Department of Environmental Protection (DEP). Staff has confirmed with Lee County that the utility's water system is currently in environmental compliance with respect to DEP's standards.

Although Rule 25-30.037, F.A.C., for transfers of certificates, does not require that the applicant submit territory maps, it appears that the utility may be serving outside its authorized territory. Therefore, staff recommends that the buyer be required to submit an updated territory map within six months of the closing date. If the utility is serving outside its authorized territory, this will be addressed at a subsequent agenda conference. The maps should have the utility's authorized territory description plotted along the territory boundaries with the location of each connection identified.

The application states that all RAFs have been paid and there are no refunds or fines outstanding. Staff has verified that the utility is current on annual reports and RAFs through 2007. The seller will be responsible for the payment of the 2008 RAFs from January 1, 2008, to the date of closing. The seller has agreed to make payment to the Commission at the time of the closing. The buyer is responsible for all RAFs from the date of closing through December 31, 2008, and RAFs for future years. In addition, the buyer is responsible for filing the 2008 annual report and future annual reports.

The application also contains a statement, pursuant to Rule 25-30.037(2)(j), F.A.C., describing how the transfer is in the public interest. According to the statement, the transfer is in the public interest because the current owners of the Tamiami system no longer wish to remain in the utility business. The statement further indicates that Ni Management and Ni Florida have seasoned experience in management and operations in the water and wastewater industry. As such, the customers of the utility will be served by a fiscally sound company that has the capability to finance capital additions. According to the applicant, Ni Management and its subsidiaries' sole focus is to provide high quality water and wastewater services at reasonable prices within the states in which the Ni entities operate.

With regard to the buyer's technical ability, the two principal management members of Ni Management and Ni Florida intend to oversee day to day activities. One of the managing members was the Chief Operating Officer of the Southwest Water Company from 2004 until his departure in June 2006. The other managing member started AquaSource in 1996 and served as its Chief Financial Officer. After AquaSource, the member formed API Investments, a merger and acquisition firm that focused primarily on transactions in the water utility industry. Ni Florida recently acquired Hudson Utilities, Inc.'s wastewater system in Pasco County.⁴ Ni Florida also has a pending application in Docket No. 080428-WS for the transfer of the Heather Hills Estates' water and wastewater systems and certificates in Polk County.

With regard to the buyer's financial ability, the application contains a statement by Ni Management of its intent to provide the necessary financial resources for Ni Florida to maintain the Tamiami system in accordance with applicable regulatory statutes and rules so as to ensure the health and safety of its customers. Staff has reviewed the financial statements of Ni Management and there appears to be sufficient funds to acquire and maintain the utility's systems. Staff has also discussed with Ni Florida concerns about the utility's ability to finance purchases of water and wastewater systems in Florida. In response, Ni Florida indicated that it has access to sufficient financial resources to continue those acquisitions.

The application also contains a statement by Ni Florida of its intent to fulfill the commitments, obligations, and representations of the sellers with regard to utility matters. Staff has discussed the responsibilities of a regulated utility with a managing member of Ni Florida. The member indicated that Ni Florida is using the National Association of Regulatory Utility Commissioners Uniform System of Accounts and that Ni Florida understands that it may not change its rates or serve outside the utility's authorized territory without obtaining prior Commission approval.

Tamiami's current water rates and charges became effective on August 31, 1992.⁵ The rates have been subsequently modified as a result of indexes and pass-through rate adjustments. Rule 25-9.044(1), F.A.C., provides that in the case of change of ownership or control of a utility, the rates, classification, and regulations of the former owner must continue unless authorized to

⁴ Order No. PSC-08-0226-FOF-SU, issued April 7, 2008, in Docket No. 070740-SU, In Re: Joint application for approval of transfer of Hudson Utilities, Inc.'s wastewater system and Certificate No. 104-S, in Pasco County, to Ni Florida, LLC.

⁵ Order No. PSC-92-0807-FOF-WS, issued on August 31, 1992, in Docket No. 910560-WS, In Re: Application for approval of rate increase in Lee County by Tamiami Village Utility, Inc.

change by the Commission. The new owner has not requested a change, therefore, the existing rates and charges shown on Attachment B should continue in effect.

Conclusion

Based on the above, staff recommends that the transfer of facilities and Certificate No. 388-W from Tamiami Village Water Company to Ni Florida, LLC, is in the public interest and should be approved effective as of the date of the Commission's vote. A description of the territory being transferred is appended to this recommendation as Attachment A. The subsequent order will serve as the utility's water certificate and should be retained by the utility. Tamiami is responsible for the payment of 2008 RAFs from January 1, 2008, to the date of the closing. Ni Florida is responsible for payment of RAFs from the date of closing through December 31, 2008, and RAFs for all future years. Ni Florida is also responsible for filing the utility's annual report for 2008 and all future years. Pursuant to Rule 25-9.044(1), F.A.C., the rates and charges approved for the utility should be continued until authorized to change by the Commission in a subsequent proceeding. The buyer should be required to file documentation confirming the closing of the purchase within 15 days of the closing and an updated territory map within 6 months from the date of the closing. The docket should remain open until rate base is established by the Commission at a subsequent agenda conference.

Docket No. 080183-WU

Date: August 7, 2008

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, staff receives and verifies an updated territory map, and rate base is established by the Commission at a subsequent agenda. (Klancke)

Staff Analysis: This docket should remain open until staff receives proof of the executed purchase agreement confirming the closing, staff receives and verifies an updated territory map, and rate base is established by the Commission at a subsequent agenda.

Ni Florida, LLC
Water Service Territory
Lee County

Township 43 South, Range 24 East
Section 27

The following described lands located in portions of Section 27, Township 43 South, Range 24 East, Lee County, Florida:

Tract or Parcel of land in the South Half (S 1/2) of the Northwest Quarter (NW 1/4) and in the North Half (N 1/2) of the Southwest Quarter (SW 1/4) of Section 27, Township 43 South, Range 24 East, Lee County, Florida and in Leesure Village, a Mobile Home Park as recorded in Condominium Plat Book 3, pages 60 through 76 of the Lee County, Florida Public Records which is described as follows: From the Southwest corner of said North Half (N 1/2) of the Southwest Quarters (SW 1/4); thence North 89 degrees 48 minutes 29 seconds East along the South line of said fraction for 25.0 feet; thence North 0 degrees 19 minutes 10 seconds West parallel with the West line of said Section for 1937.92 feet to the Point of Beginning; thence continue North 0 degrees 19 minutes 10 seconds West for 378.77 feet; thence North 89 degrees 33 minutes 50 seconds East for 575.62 feet; thence South 0 degrees 18 minutes 50 seconds East for 169.78 feet; thence South 0 degrees 26 minutes 10 seconds East for 209.19 feet; thence South 89 degrees 33 minutes 50 seconds West for 576.03 feet to the Point of Beginning.

Subject to easements, restrictions and reservations of record.

A tract or parcel of land in the Southeast 1/4 of the Southwest 1/4 of Section 27, Township 43 South, Range 24 East, Lee County Florida, which is described as follows:

From the Southwest corner of said fraction of Section; thence N.0°19'10"W. along the West line of said Section for 25.0 feet; thence S. 89°53'40" E. along the North right of way (25.0 feet from center line) of Littleton Road and parallel with the South line of said Section for 1877.70 feet to an intersection with a Southerly prolongation of a line parallel with and 290.00 feet (as measured on a perpendicular) from the Westerly line (S.05°56'20"W.) of the Tamiami Trail (U.S. 41, State Road No. 45) and the Point of Beginning.

Thence N. 05°56'20"E. along said prolongation for 348.19 feet; thence S. 84°03'40"E. for 290.00 feet; thence S.05°56'20"W. along the Westerly right of way (100.00 feet from center line) of said Tamiami Trail for 208.00 feet to a point of curvature of a curve to the left (radius 5829.58 feet, Delta Angle 01°05'08"); thence Southwesterly along the arc of said curve for 110.46 feet; thence N.89°53'40"W. along said North right of way of Littleton Road for 292.55 feet to the Point of Beginning. Containing 2.220 acres more or less.

A tract or parcel of land in the Southeast 1/4 of the Southwest 1/4 of Section 27, Township 43 South, Range 24 East, Lee County, Florida, which is described as follows:

From the Southwest corner of said fraction of Section; thence N.0°19'10"W. along the West line of said Section for 25.0 feet; thence S. 89°53'40"E. along the North right of way (25.0 feet from center line) of Littleton Road and parallel with the South line of said Section for 1877.70 feet to an intersection with a Southerly prolongation of a line parallel with and 290.00 feet (as measured on a perpendicular) from the Westerly right of way (S.05°56'20"W.) of the Tamiami Trail (U.S. 41, State Road 45); thence N.05°56'20"E. along said prolongation for 348.19 feet to the Point of Beginning.

Thence continue N.05°56'20"E. along said prolongation for 371.45 feet; thence S.89°53'40"E. along the Southerly line of an 80.00 feet wide parcel II land as recorded in O.R.B. 1687, page 1106 for 291.50 feet; thence S.05°56'20"W. along said Westerly right of way (100.00 feet from the center line) of said Tamiami Trail for 401.00 feet; thence N.84°03'40"W. for 290.00 feet to the Point of Beginning. Containing 2.572 acres more or less.

FLORIDA PUBLIC SERVICE COMMISSION

Authorizes

**Ni Florida, LLC
pursuant to
Certificate Number 388-W**

to provide water service in Lee County in accordance with the provisions of Chapter 367, Florida Statutes, and the Rules, Regulations, and Orders of this Commission in the territory described by the Orders of this Commission. This authorization shall remain in force and effect until superseded, suspended, cancelled or revoked by Order of this Commission.

Order Number	Date Issued	Docket Number	Filing Type
11734	03/18/83	820183-WS	Original Certificate
21421	06/20/89	890127-WS	Transfer of Certificate
21421-A	08/09/89	890127-WS	Correction
22449	01/23/90	891148-WS	Amendment
PSC-95-1441-FOF-WU	11/28/95	950015-WU	Transfer
*	*	080183-WU	Transfer

*Order Numbers and dates to be provided at time of issuance.

WATER SERVICE RATES

**Residential Service (RS)
(Monthly)**

Base Facility Charge All Meter Sizes	\$ 13.61
Gallonge Charge Per 1,000 Gallons	\$ 3.36

**General Service (GS)
Excluding RV Park
(Monthly)**

Base Facility Charge Meter Size: 5/8" x 3/4"	\$ 11.13
1"	\$ 27.89
1 1/2"	\$ 55.76
2"	\$ 89.21
3"	\$ 195.18
4"	\$ 278.82
Gallonge Charge Per 1,000 Gallons	\$ 3.36

**General Service (GS-RV)
RV Park
(Monthly)**

Base Facility Charge 3" Meter	\$1,425.53
Gallonge Charge Per 1,000 Gallons	\$ 3.54

**Private Fire Protection Service
Incident Charge (FPW)**

Per Incident	\$ 120.45
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CUSTOMER DEPOSITS
Residential and General Service

Meter Size

5/8" x 3/4"	\$ 40.00
1"	\$ 50.00
1 1/2"	\$ 60.00

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