BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Joint application for approval of transfer of Certificates Nos. 359-W and 290-S and utility facilities from South Broward Utility, Inc. to Clay Utility Company in Broward County.

DOCKET NO. 960695-WS ORDER NO. PSC-97-0579-FOF-WS ISSUED: May 20, 1997

The following Commissioners participated in the disposition of this matter:

JULIA L. JOHNSON, Chairman SUSAN F. CLARK J. TERRY DEASON JOE GARCIA DIANE K. KIESLING

ORDER DECLINING TO INITIATE SHOW CAUSE PROCEEDINGS AND APPROVING TRANSFER AND

NOTICE OF PROPOSED AGENCY ACTION
ORDER ESTABLISHING RATE BASE FOR PURPOSES OF THE TRANSFER
AND DECIDING NOT TO INCLUDE A POSITIVE ACQUISITION
ADJUSTMENT IN THE CALCULATION OF RATE BASE

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the establishment of rate base for purposes of the transfer, and our decision not to include a positive acquisition adjustment in the calculation of rate base, are preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

BACKGROUND

South Broward Utility, Inc. (SBU or utility) is a Class A utility which provides service to approximately 2,446 water and 2,023 wastewater customers in Broward County. The utility's 1995 income statement shows combined annual revenues of \$1,836,000 and

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a combined operating income of \$527,000. We granted SBU Certificates Nos. 359-W and 290-S by Order No. 9806, issued February 18, 1981, in Docket 790946-WS. SBU is currently one hundred percent owned and operated by the Hugh F. Culverhouse Trust (Culverhouse Trust).

Clay Utility Company (Clay) was a Class A water and wastewater utility in Clay County. On December 29, 1993, Clay's water and wastewater facilities were sold to Clay County through a condemnation proceeding. We acknowledged the transfer and canceled Clay's certificates by Order No. PSC-94-0198-FOF-WS, issued February 17, 1994, in Docket No. 940051-WS. However, Clay's corporate structure still exists and is also one hundred percent owned by the Culverhouse Trust.

In 1996, unrelated tax issues involving the two separate corporate structures caused the Culverhouse Trust to undertake the sale of the utility from SBU's corporate structure to Clay's corporate structure. A joint application by SBU and Clay to transfer the utility facilities was filed on June 3, 1996. The actual transfer of the utility to Clay occurred on August 21, 1996.

On July 3, 1996, the City of Sunrise (city) filed a timely objection to the joint application for transfer. On August 5, 1996, SBU and Clay filed a motion to dismiss or strike the city's objection. On August 12, 1996, the city filed a response to the joint motion to dismiss or strike. On December 30, 1996, the city filed a notice of withdrawal of its objection. On January 7, 1997, SBU and Clay, in turn, filed a joint notice of withdrawal of their motion to dismiss or strike the city's objection.

SHOW CAUSE

As discussed earlier, SBU and Clay completed the closing on the purchase and sale of SBU's assets to Clay on August 21, 1996. Pursuant to Section 367.071(1), Florida Statutes, a utility may not sell, assign, or transfer its certificates or facilities without obtaining prior Commission approval. Section 367.161(1), Florida Statutes, authorizes us to assess a penalty of not more than \$5,000 for each offense, if a utility is found to have knowingly refused to comply with, or to have willfully violated, any provision of Chapter 367, Florida Statutes.

We find that the utility's action is "willful" in the sense intended by Section 367.161, Florida Statutes. In Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL, titled In Re: Investigation Into The Proper Application of Rule 25-14.003, F.A.C., Relating To Tax Savings Refund For 1988 and 1989 For GTE Florida, Inc., this Commission, having found that the utility had not intended to violate the rule, nevertheless found it appropriate to order it to show cause why it should not be fined, stating that "[i]n our view, 'willful' implies an intent to do an act, and this is distinct from an intent to violate a statute or rule." Id. at 6.

According to a statement provided by the utility, the need for the sales transaction to occur in August 1996 was driven by tax considerations. SBU was a Subchapter S corporation owned by Hugh F. Culverhouse. This corporate structure automatically converted to a Subchapter C corporation after two years from the death of Mr. Culverhouse in August of 1994. If the conversion occurred prior to the sale of the utility assets, the Culverhouse Trust would have faced substantial negative tax consequences. Therefore, it was deemed necessary to complete the transfer from SBU to Clay, a regular Subchapter C corporation, prior to August 25, 1996.

However, regardless of when the sale of the assets actually occurred, the Agreement of Purchase and Sale between SBU and Clay has provisions throughout the contract for the sale to be contingent upon obtaining "Acceptable Orders of the Commission." So, even though the sale was closed prior to our approval it is still dependent upon receiving such approval.

In consideration of the foregoing, we do not find that the utility's violation of Section 367.071, Florida Statutes, rises to the level of warranting that a show cause order be issued. Therefore, SBU shall not be ordered to show cause why it should not be fined for failing to obtain our approval prior to transferring its assets to Clay.

APPLICATION FOR TRANSFER OF CERTIFICATES

The application is in compliance with the governing statute, Section 367.071, Florida Statutes and other pertinent statutes and rules concerning an application for transfer. The application contains a check in the amount of \$5,250 which is the correct filing fee pursuant to Rule 25-30.020, Florida Administrative Code. Warranty deeds were provided as evidence that the utility owns the land upon which its facilities are located, as required by Rule 25-

30.037(2)(q), Florida Administrative Code. A description of the water territory served by the utility is appended to this Order as Attachment A and a description of the utility's wastewater territory is appended as Attachment B.

The application also contains proof of compliance with the noticing provisions set forth in Rule 25-30.030, Florida Administrative Code. As discussed earlier, on July 3, 1996, the City of Sunrise filed a timely objection to the transfer which it voluntarily withdrew on December 30, 1996. No other objections to the transfer were received, and the time for filing such objection has expired.

As evidence of Clay's technical ability, the applicant states that Clay owned and operated water and wastewater systems in Clay County for over twenty years under Certificates Nos. 163-W and 113-S. The certificates were originally issued pursuant to Order No. 5978 in December of 1973 and remained in effect until the utility's facilities were transferred to Clay County in December of 1993. Clay intends to retain the plant supervisor and operators currently operating SBU and does not otherwise contemplate any change in direct control or operation of the utility. No changes to SBU's existing rates and policies have been proposed in the tariff filing. Clay further states that it intends to fulfill the commitments, obligations, and representation of SBU with regard to all utility matters. All regulatory assessments fees have been paid and there are no outstanding penalties, fees or fines owed by the utility.

In addition, the application includes a statement from the buyer that the systems being acquired appear to be in satisfactory condition as required by Rule 25-30.037(2)(p), Florida Administrative Code. We have confirmed with the Florida Department of Environmental Protection and the Broward County Health Department that the utility's water and wastewater systems are currently in compliance with all applicable standards set by those agencies.

The application contains a copy of the Agreement of Purchase and Sale between SBU and Clay and a statement describing the financing of the purchase, as required by Rules 25-30.037(2)(g) and (I), Florida Administrative Code,. The agreed upon purchase price was \$9,500,000. Clay intends to finance the purchase from its cash reserves and other liquid assets. To the extent any additional funding is necessary, Clay intends to obtain the additional funds

from its sole owner, the Culverhouse Trust. The application contained a copy of the Culverhouse Trust's balance sheet as of May 30, 1996 and its Income Statement for January 1, 1996 through May 30, 1996, which indicate assets in excess of \$200,000,000, of which approximately \$83,000,000 are in relatively liquid equities and stock.

As discussed earlier, SBU's Subchapter S corporate status automatically converted to a Subchapter C corporation after two years from the death of Mr. Culverhouse in August of 1994. By selling the utility facilities prior to the conversion, the Culverhouse Trust would avoid substantial negative tax consequences. Tax law also necessitated the reinvestment of the proceeds from the condemnation of Clay's utility facilities in a like-kind property. This reinvestment needed to occur within three years from the sale in December of 1993 to Clay County. By reinvesting the proceeds of Clay's condemnation into acquisition of SBU's utility facilities and by doing so prior to August 25, 1996, the Culverhouse Trust accomplished both tax objectives and met both tax imposed deadlines.

Based on foregoing, we find that the transfer of Certificates Nos. 359-W and 290-S from South Broward Utility, Inc., to Clay Utility Company is in the public interest. Therefore we find it appropriate to acknowledge SBU's and Clay's joint notice of withdrawal of their motion to dismiss or strike the city's objection, acknowledge the city's withdrawal of its objection, and approve the transfer of SBU to Clay.

To minimize any customer confusion or inconvenience, the joint applicants have requested that the utility's name remain unchanged. Instead, Clay intends to change its corporate name to reflect the utility's certificated name. Therefore, we find that the name of the utility shall remain as currently certificated.

RATE BASE

We conducted an audit of the utility's books to establish rate base at the time of transfer. We utilized July 31, 1996 as the date of transfer. The audit revealed no adjustments necessary to the utility's book values for its water or wastewater systems.

Based on the foregoing, we find that rate base for SBU, for transfer purposes as of July 31, 1996, is \$1,663,540 for the water system and \$2,764,309 for the wastewater system. Rate base summary

schedules are appended to this Order as Attachments C and D. These rate base calculations are used purely to establish the net book value of the facilities being transferred and do not include the normal ratemaking adjustments of working capital calculations and used and useful adjustments.

ACOUISITION ADJUSTMENT

An acquisition adjustment results when the purchase price of the utility differs from the rate base for transfer purposes. The acquisition adjustment resulting from the transfer of SBU's utility facilities to Clay would be calculated as follows:

Purchase Price: \$9,500,000

Commission Calculated Rate Base: 4,427,849

Positive Acquisition Adjustment: \$5,072,151

In the absence of extraordinary circumstances, it has been our practice that a subsequent purchase of a utility system at a premium or discount shall not affect the rate base calculation. The circumstances in this case do not appear to be extraordinary. The applicant has not requested an acquisition adjustment. Therefore, we find that a positive acquisition adjustment shall not be included in the calculation of rate base.

RATES AND CHARGES

The utility's current approved rates were established by Order No. 22844, issued on April 23, 1990, in Docket No. 890360-WS. The rates were last changed on September 6, 1996, pursuant to a 1996 price increase and pass through.

Rule 25-9.044(1), Florida Administrative Code, provides that:

In case of change of ownership or control of a utility which places the operation under a different or new utility, or when its name is changed, the company which will thereafter operate the utility business must adopt and

use the rates, classification and regulations of the former operating company (unless authorized to change by the Commission)[.]

Clay is not requesting any modification to the utility's existing rates at this time. Accordingly, the utility shall continue to charge SBU's existing tariff rates and charges until authorized to change by this Commission in a subsequent proceeding. Also, since there is no change in ownership of the utility nor in the utility's name, the existing tariff shall remain in effect.

Upon expiration of the protest period, if there are no timely protests filed by a substantially affected person to the proposed agency action issues, no further action will be required, and the docket shall be closed.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that a show cause proceeding shall not be initiated against South Broward Utility, Inc. for violation of Section 367.071(1), Florida Statutes. It is further

ORDERED that the transfer of Certificates Nos. 359-W and 290-S in Broward County from South Broward Utility, Inc. to Clay Utility Company, is hereby approved. It is further

ORDERED that the City of Sunrise's withdrawal of its objection to South Broward Utility, Inc.'s and Clay Utility Company's joint application for transfer is hereby acknowledged. It is further

ORDERED that South Broward Utility, Inc.'s and Clay Utility Company's joint notice of withdrawal of their motion to dismiss or Strike the City of Sunrise's objection is hereby acknowledged. It is further

ORDERED that after the transfer, the utility's name shall remain South Broward Utility, Inc. It is further

ORDERED that each of the findings made in the body of this Order is hereby approved in every respect. It is further

ORDERED that all matters contained in the schedules attached hereto are by reference incorporated herein. It is further

ORDERED that rate base, which for transfer purposes reflects the net book value of the system, is \$1,663,540 for the water system and \$2,764,309 for the wastewater system. It is further

ORDERED that South Broward Utility, Inc. shall continue charging the rates and charges in the tariff until authorized to change by this Commission. The existing tariff shall remain in effect. It is further

ORDERED that the provisions of this Order regarding the establishment of rate base for purposes of the transfer, and our decision not to include a positive acquisition adjustment in the calculation of rate base, are issued as proposed agency action and shall become final and effective unless an appropriate petition, in the form provided by Rule 25-22.036, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings or Judicial Review" attached hereto. It is further

ORDERED that in the event this Order becomes final, this Docket shall be closed.

By ORDER of the Florida Public Service Commission, this 20th day of May, 1997.

BLANCA S. BAYÓ, Disector

Division of Records and Reporting

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

As identified in the body of this order, the establishment of rate base for purposes of the transfer, and our decision not to include a positive acquisition adjustment in the calculation of rate base are preliminary in nature and will not become effective except as provided by Rule 25-22.029, Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, at 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on June 10, 1997. If such a petition is filed, mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing. In the absence of such a petition, this order shall become effective on the date subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If the relevant portion of this order becomes final and effective on the date described above, any party adversely affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days of the effective date of this

order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

Any party adversely affected by the Commission's final action in this matter may request: (1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

ATTACHMENT A

SOUTH BROWARD UTILITY, INC.

TERRITORY DESCRIPTION

WATER CERTIFICATE NO. 359-W

TOWNSHIP 50 SOUTH, RANGE 40 EAST, BROWARD COUNTY, FLORIDA

Section 21

All of the SE 1/4 of Section 21-50-40.

Section 26

All of that part of the West 1/2 of Section 26-50-40 lying North of the South R/W line of the South New River Canal; except the following described parcel of land;

Beginning at the NE corner of said West 1/2 of Section 26; thence Southerly along the East line of said West ½ a distance of 620 feet; thence Westerly, parallel with the North line of said West 1/2 a distance of 670 feet; thence Northerly parallel with said East line of the West 1/2 a distance of 620 feet to the intersection with said North line of the West 1/2 of Section 26; thence Easterly along said North line a distance of 670 feet to the Point of Beginning.

All of that part of the East 1/2 of Section 26-50-40 lying North of the South R/W line of the South New River Canal; except the following described parcel of land;

Beginning at a point on the East line of said Section 26 which is 603 feet South of the NE corner of said Section 26; thence Westerly along a line which is 603 feet South of and parallel with the North line of said Section 26 a distance of 2,641 feet more or less to the West line of said NE 1/4; thence Northerly along said West line a distance of 603 feet more or less to the NW corner of said NE 1/4 of Section 26; thence Easterly along said North line of Section 26 a distance of 2,641 feet more or

less to said NE corner of said Section 26; thence Southerly along said East line of Section 26 a distance of 603 feet more of less the <u>Point of Beginning</u>.

Section 27

All of that part of the SW 1/4 of Section 27-50-40 lying North of the South R/W line of the South New River Canal, except the North 1/2 of the North 1/2 of the NW 1/4 of said SW 1/4 of said Section 27, and also except the following described parcel of land;

Beginning at the NE corner of said SW 1/4 of Section 27; thence Southerly along the East line of said SW 1/4 of Section 27 a distance of 375 feet more or less; thence Westerly along a line 375 feet South of and parallel with the North line of said SW 1/4 a distance of 385 feet more or less; thence Northerly along a line 385 feet West of and parallel with the said East line of the SW 1/4 of Section 27 a distance of 375 feet more or less to the intersection with the said North line of the SW 1/4 of Section 27; thence Easterly along said North line a distance of 385 feet more or less to the Point of Beginning.

All of that part of the East 1/2 of Section 27-50-40 lying North of the South R/W line of the South New River Canal, except the North 1/2 of the North 1/2 of the NW 1/4 of the NE 1/4 of said Section 27.

All of the South 1/2 lying South of the South New River Canal R/W in Section 27-50-40.

Section 28

All of that part of Section 28-50-40 lying North of the South R/W line of the South New River Canal.

All of the South 1/2 lying South of the South New River Canal R/W in Section 28-50-40.

Section 29

All of the East 1/2 of the SE 1/4 lying South of the South New River Canal R/W in Section 29-50-40.

Section 32

All of the East 1/2 of the E 1/2 of Section 32-50-40.

Section 33

All of Section 33-50-40.

Section 34

All of Section 34-50-40.

TOWNSHIP 51 SOUTH, RANGE 40 EAST, BROWARD COUNTY, FLORIDA

Section 3

The North 1/2 and the North 330 feet of the South 1/2 of Section 3-51-40.

Section 4

All of Section 4-51-40, less the South 1/2 of the North 1/2 of the NW 1/4 of the SW 1/4, and also less the East 180 feet of the West 982 feet of the North 1/2 of the North 1/2 of the NW 1/4 of the SW 1/4 of Section 4-51-40.

Section 5

The East 1/2 of Section 5-51-40.

ATTACHMENT B

SOUTH BROWARD UTILITY, INC.

TERRITORY DESCRIPTION

WASTEWATER CERTIFICATE NO. 290-S

TOWNSHIP 50 SOUTH, RANGE 40 EAST, BROWARD COUNTY, FLORIDA

Section 21

All of the SE 1/4 of Section 21-50-40.

Section 26

All of that part of the West ½ of Section 26-50-40 lying North of the South R/W line of the South New River Canal; except the following described parcel of land;

Beginning at the NE corner of said West 1/2 of Section 26; thence Southerly along the East line of said West 1/2 a distance of 620 feet; thence Westerly, parallel with the North line of said West 1/2 a distance of 670 feet; thence Northerly parallel with said East line of the West 1/2 distance of 620 feet to the intersection with said North line of the West 1/2 of Section 26; thence Easterly along said North line a distance of 670 feet to the Point of Beginning.

All of that part of the East 1/2 of Section 26-50-40 lying North of the South R/W line of the South New River Canal; except the following described parcel of land;

Beginning at a point on the East line of said Section 26 which is 603 feet South of the NE corner of said Section 26; thence Westerly along a line which is 603 feet South of and parallel with the North line of said Section 26 a distance of 2,641 feet more or less to the West line of said NE 1/4; thence Northerly along said West line a distance of 603 feet more or less to the NW corner of said NE 1/4 of Section 26; thence Easterly along said North line of Section 26 a distance of 2,641 feet more or

less to said NE corner of said Section 26; thence Southerly along said East line of Section 26 a distance of 603 feet more of less the Point of Beginning.

Section 27

All of that part of the SW 1/4 of Section 27-50-40 lying North of the South R/W line of the South New River Canal, except the North 1/2 of the North 1/2 of the NW 1/4 of said SW 1/4 of said Section 27, and also except the following described parcel of land;

Beginning at the NE corner of said SW 1/4 of Section 27; thence Southerly along the East line of said SW 1/4 of Section 27 a distance of 375 feet more or less; thence Westerly along a line 375 feet South of and parallel with the North line of said SW 1/4 a distance of 385 feet more or less; thence Northerly along a line 385 feet West of and parallel with the said East line of the SW 1/4 of Section 27 a distance of 375 feet more or less to the intersection with the said North line of the SW 1/4 of Section 27; thence Easterly along said North line a distance of 385 feet more or less to the Point of Beginning.

All of the East 1/2 of Section 27-50-40 lying North of the South R/W line of the South New River Canal, except the North 1/2 of the North 1/2 of the NW 1/4 of the NE 1/4 of said Section 27.

All of that part of the SE 1/4 lying South of the South New River Canal R/W in Section 27-50-40.

Section 28

All of that part of Section 28-50-40 lying North of the South R/W line of the South New River Canal.

All of the SE 1/4 lying South of the South New River Canal R/W; and all of the East 1/2 of the SW 1/4 lying South of the South New River Canal R/W; and the West 1/2 of the SW 1/4 lying South of the South New River Canal R/W, less the South 723.15 feet of the East 1/2 of the West 1/2 of the SW 1/4, and less the South 868.50 feet of the West 1/2 of the West 1/2 of the SW 1/4 of Section 28-50-40.

Section 29

All of the East 1/2 of the SE 1/4 lying South of the South New River Canal R/W, less the South 330 feet in Section 29-50-40.

Section 33

All of the East 1/2 of the East 1/2 of the West 1/2, and the South 1,650 feet of the West 1/2 of the West 1/2 of Section 33-50-40; and

TOWNSHIP 51 SOUTH, RANGE 40 EAST, BROWARD COUNTY, FLORIDA

Section 4

All of Section 4-51-40, less the South 1/2 of the North 1/2 of the NW 1/4 of the SW 1/4, and also less the East 180 feet of the West 982 feet of the North $\frac{1}{2}$ of the North 1/2 of the NW 1/4 of the SW 1/4 of Section 4-51-40.

Section 5

The East 1/2 of Section 5-51-40.

ATTACHMENT C

SOUTH BROWARD UTILITY, INC.

SCHEDULE OF WATER RATE BASE

As of July 31, 1996

DESCRIPTION	BALANCE PER UTILITY BOOKS	COMMISSION ADJUSTMENTS	BALANCE PER COMMISSION
Utility Plant in Service	\$ 7,434,509		\$ 7,434,509
Land	110,000		110,000
Accumulated Depreciation	(1,990,383)		(1,990,383)
Contributions-in- aid-of-construction	(4,609,117)	***	(4,609,117)
CIAC Amortization	718,531		718,531
TOTAL	\$ 1,663,540	\$	\$ 1,663,540

ATTACHMENT D

SOUTH BROWARD UTILITY, INC.

SCHEDULE OF WASTEWATER RATE BASE

As of July 31, 1996

DESCRIPTION	BALANCE PER UTILITY BOOKS	COMMISSION ADJUSTMENTS	BALANCE PER COMMISSION
Utility Plant in Service	\$ 8,236,625		\$ 8,236,625
Land	600,000		600,000
Accumulated Depreciation	(1,943,159)		(1,943,159)
Contributions-in- aid-of-construction	(5,153,838)	•	(5,153,838)
CIAC Amortization	753,555		753,555
TOTAL	\$ 2,764,309	\$	\$ 2,764,309