

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 150012-WU

APPLICATION FOR TRANSFER OF
CERTIFICATE 390-W FROM
COUNTY-WIDE UTILITY CO., INC.
TO SOUTHWEST OCALA UTILITY,
INC. IN MARION COUNTY.

_____ /

PROCEEDINGS: COMMISSION CONFERENCE AGENDA
ITEM NO. 7

COMMISSIONERS
PARTICIPATING: CHAIRMAN JULIE I. BROWN
COMMISSIONER LISA POLAK EDGAR
COMMISSIONER ART GRAHAM
COMMISSIONER RONALD A. BRISÉ
COMMISSIONER JIMMY PATRONIS

DATE: Tuesday, October 11, 2016

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: LINDA BOLES, CRR, RPR
Official FPSC Reporter
(850) 413-6734

P R O C E E D I N G S

1
2 **CHAIRMAN BROWN:** Moving along to our last
3 item, Item 7.

4 **MS. WATTS:** Commissioners, Melinda Watts for
5 Commission staff.

6 **CHAIRMAN BROWN:** Just one second, please.

7 **MS. WATTS:** Sure.

8 **CHAIRMAN BROWN:** As everyone is getting seated
9 here.

10 Thank you. You may proceed.

11 **MS. WATTS:** Okay. Item 7 is staff's
12 recommendation on the application for transfer of
13 Certificate No. 390-W from County-Wide Utility Company,
14 Inc., to Southwest Ocala Utility, Inc., in Marion
15 County.

16 There have been no customer comments filed in
17 this docket either supporting or opposing the transfer.
18 Staff recommends that the Commission should grant the
19 transfer.

20 Commissioners, OPC is here, and Mr. Marty
21 Deterding and Mr. Dirk Leeward are here on behalf of the
22 utility and wish to address the Commission. And staff
23 is available to answer questions.

24 **CHAIRMAN BROWN:** Thank you.

25 Is Public Counsel also going to address the

1 Commission? I know they were originally scheduled on
2 here. Is Public -- would they like to --

3 **MS. WATTS:** They've not indicated that they
4 wanted to speak, but are available, if necessary.

5 **CHAIRMAN BROWN:** Thank you. All right.

6 Mr. Deterding. Deterding; right?

7 **MR. DETERDING:** That's correct.

8 **CHAIRMAN BROWN:** Thank you.

9 **MR. DETERDING:** Commissioners, Madam Chairman,
10 at the risk of upsetting you, I do have a couple of
11 minor things that I want to show you.

12 **CHAIRMAN BROWN:** Handouts?

13 **MR. DETERDING:** I -- they are -- they might
14 look a little voluminous. They're -- one's ten pages
15 and one's one page. But I really want to show them to
16 you just to illustrate something that I'm going to speak
17 to.

18 **CHAIRMAN BROWN:** Mr. Deterding, we have staff
19 here to help disseminate information.

20 **MR. DETERDING:** Great. Yeah. Let me get my
21 one copy.

22 **CHAIRMAN BROWN:** And a reminder to all those
23 folks in here that are here for the prehearing
24 conference, it will be starting -- as soon as we
25 conclude the agenda, it will be starting five minutes

1 after, thereafter. So just a heads-up.

2 Okay. Thank you, Mr. Deterding. You may
3 proceed.

4 **MR. DETERDING:** Yes. Thank you, Madam Chair.
5 I'm F. Marshall Deterding of the law firm of Sundstrom &
6 Mindlin here on behalf of Southwest Ocala Utility, Inc.
7 This case involves the ownership of the assets of the
8 former County-Wide Utility Company to Southwest Ocala.

9 With me is Dirk Leeward, who is the new owner
10 of the utility. We're here primarily to take exception
11 to the Commission staff recommendation as to Issue
12 No. 3 relative to the question of an acquisition
13 adjustment and what falls out of their position on that
14 issue.

15 In order to give the Commission some
16 perspective, I believe it's necessary that I provide you
17 with a little background concerning the history of this
18 utility company. County-Wide was certificated by the
19 Commission in 1984 by James Leeward, Dirk Leeward's
20 father. The Leeward family has operated this utility
21 company since that time, the stock being 100 percent
22 owned by James Leeward.

23 In approximately 2005, when its water source
24 of supply and treatment facilities were a little over 30
25 years old, fully depreciated, and in need of substantial

1 repair and rehabilitation, the utility reviewed its
2 alternative for a source of water and concluded it was
3 in -- its best long-term solution was to interconnect
4 with the City of Ocala and purchase bulk water. The
5 utility filed that application for rate relief at
6 approximately that time, and in 2007 the Commission
7 issued a final order in that case in which it completely
8 removed the cost of interconnection based upon the
9 staff's position ultimately adopted by the Commission
10 that the utility should have continued to use its
11 35-year source of supply and treatment facilities rather
12 than interconnect with the city. This resulted in
13 approximately a \$750,000 reduction in the rate base of
14 the utility, which was specifically removed from rate
15 base by the Commission, leaving the utility with a net
16 book value of \$28,000 in its water system.

17 The utility had already borrowed money,
18 constructed the interconnect, and retired its source of
19 supply and treatment facilities by the time the
20 Commission reached this conclusion and, as such, has
21 continued to operate the utility company utilizing the
22 bulk service main in its day-to-day operation since that
23 time. Because James Leeward had guaranteed the note, he
24 continued to fund the utility to pay the mortgage note.
25 Soon after we had the recession and there was not even

1 the availability of CIAC hookup fees to help repay the
2 debt.

3 The utility's prior owner, James Leeward, was
4 a pilot his entire life. As a result of a tragic racing
5 accident in 2011, James Leeward was killed. Several
6 others were injured and killed in this accident. Many
7 claims were asserted against Mr. Leeward's estate and
8 all of his assets, including the utility stock, which he
9 was, at his death, 100 percent owner of.

10 In hopes of saving his family business, Dirk
11 Leeward, who had been the president of the utility for
12 two decades, decided to do what he could to save the
13 utility from bankruptcy and from receivership,
14 recognizing that the stock itself, though it would be
15 inherited by the family, would be of little value, given
16 the claims of creditors. Mr. Leeward made an
17 arrangement with the bank holding the mortgage to
18 acquire the mortgage note on all of the utility and
19 non-utility assets in his and his wife's own name. Then
20 in order to obtain control of the utility assets, given
21 that the utility entity, County-Wide, could not meet its
22 debt service obligations with its existing revenues,
23 Mr. Leeward chose to -- Dirk Leeward chose to foreclose
24 on the utility. And as a result, a circuit court order
25 was issued finding that Dirk Leeward's mortgage was

1 valued at approximately \$1,007,000, including costs.

2 If you'll look at the several-page document
3 that was provided to you, this is the summary final
4 judgment of foreclosure from the circuit court. And if
5 you look at page 2, right in the middle of the page it
6 shows this 1,007,000 determination by the court as to
7 the value that was owed to Mr. Leeward as the mortgage
8 holder by the utility.

9 The entire amount of this debt was found to
10 be -- found to be owed to Dirk Leeward by the court, had
11 to be surrendered in order to obtain the utility assets
12 in foreclosure. It is our contention and clearly in
13 conformance with the provisions of the Rule
14 25-30.0371 dealing with acquisition adjustments that
15 this is a value that should be assigned to Mr. Leeward's
16 acquisition of the utility. It's clear from the circuit
17 court order issued setting the value of the assets
18 surrendered by Dirk Leeward in obtaining the utility
19 assets that this is the purchase price of both the
20 utility and non-utility assets that were acquired.

21 We have provided the court order to the staff
22 and have now provided it to the Commission. This order
23 alone should be sufficient to resolve the issue against
24 supplying an acquisition adjustment. A court of
25 competent jurisdiction has found the debt owed to Dirk

1 Leeward, and it was surrendered in its entirety in order
2 to obtain the assets. If you will look at the
3 single-page document, you will see at the top a
4 calculation of the net book value at the time that
5 Mr. Leeward foreclosed. It is the 72,720 figure.

6 The next section shows the amount of the water
7 main that was disallowed by this Commission and,
8 therefore, a non-utility asset, and its net book value
9 of \$684,000 at the time of foreclosure.

10 And then finally, the wastewater system, which
11 is a wastewater line, which is not a regulated asset
12 either because we don't have a regulated utility, sewer
13 utility, this is a water-only utility, of \$292,000 in
14 net book value at the time.

15 As you can see at the bottom in the summary,
16 therefore, the assets acquired are pretty close, within
17 3 percent of -- the net book value of those assets, it's
18 pretty close to the amount that the court determined was
19 the amount given up for those assets. Not enough to
20 trigger the acquisition adjustment.

21 The Commission rule on acquisition adjustments
22 specifically refers to a, quote, difference between the
23 purchase price of the utility system assets to an
24 acquiring utility and the notebook value of utility
25 assets. The Commission staff, in its recommendation,

1 notes that it has requested information on the amount
2 that Mr. Leeward paid to acquire the mortgage and note
3 on the utility assets from the bank. Since the utility
4 is not at liberty to disclose those facts as a result of
5 a confidentiality agreement imposed upon it by the bank
6 as part of the transfer of the note and mortgage, the
7 utility has been unable to provide that information to
8 the staff. However, we believe it is wholly irrelevant
9 of the result of the facts as I've outlined above.

10 Absent this information, the staff has
11 proposed to use the amount bid by Dirk Leeward at the
12 foreclosure sale as the purchase price in applying an
13 acquisition adjustment, this despite the fact that
14 Mr. Leeward could have bid the entire amount of the debt
15 owed of \$1,007,000, but chose to bid the minimum because
16 he was the sole bidder in order to pay -- avoid paying
17 more in doc stamps than was necessary.

18 In any case, under the staff's logic, if
19 Mr. Dirk Leeward had bid the entire amount of the debt
20 owed to him, there would be no argument for an
21 acquisition adjustment. The amount bid is not the
22 purchase price paid. The full consideration given in
23 exchange for the utility assets is the \$1,007,000 of
24 debt surrendered in order to obtain title to both the
25 utility and non-utility assets.

1 I do not believe there's ever been a case like
2 this before the Commission, and the staff is proposing
3 to expand the meaning of an acquisition adjustment far
4 beyond what has ever been done before. Certainly there
5 has never been a case where the Commission has looked
6 behind what was determined to be the value of the asset
7 given up, which is the debt, in order to attempt to
8 apply an acquisition adjustment.

9 Had Mr. Leeward or his family simply inherited
10 the stock of the utility at no cost to themselves as
11 inheritance, there would have been no suggestion that it
12 was appropriate to consider an acquisition adjustment,
13 and Dirk Leeward would have acquired the utility with
14 its net book value of 88,000 plus the disallowed water
15 main and the unregulated sewer main and a debt of over a
16 million dollars. Had the bank foreclosed on the utility
17 company for the amount of the loan just as Dirk Leeward
18 did, there would have been no suggestion of an
19 acquisition adjustment even if they too had been the
20 required -- the minimum required to avoid doc stamps.

21 It should be kept in mind that the assets
22 acquired by Mr. Leeward through the foreclosure involve
23 more than just a regulated utility asset. At the time
24 of foreclosure, the net book value of the utility was,
25 as noted here, approximately \$72,000. In addition to

1 this asset, by foreclosing the mortgage, he acquired the
2 water main that had been specifically disallowed by the
3 Commission nine years ago and a sewer main that is
4 simply a bulk line and a nonregulated asset that is not
5 currently part of a jurisdictional sewer utility.

6 This demonstrates that 91 percent of the
7 assets acquired at foreclosure were non-utility assets
8 at the time of foreclosure, and now the Commission staff
9 is proposing to apply an acquisition adjustment rule
10 that relates to utility assets to all of those assets,
11 90 percent -- over 90 percent of which were non-utility.

12 And as a result of their being non-utility
13 assets and not part of a regulated utility, they are, by
14 definition, something of higher risk than a utility
15 asset because a utility asset is, by statute and the
16 constitution, guaranteed a recovery to the owner of that
17 asset and they're providing service to the public.
18 These two assets, one of which had been specifically
19 disallowed and the other which has never been considered
20 in a rate proceeding, don't have any basis at present
21 for recovery of those costs.

22 The Commission has -- the Commission staff
23 has --

24 **CHAIRMAN BROWN:** Mr. Deterding, can you please
25 succinctly wrap up your comments?

1 **MR. DETERDING:** Yeah. I've only got about a
2 page and a half left.

3 **CHAIRMAN BROWN:** Okay.

4 **MR. DETERDING:** Well, it's large print, so.

5 (Laughter.)

6 The Commission staff has not -- staff has
7 still not recognized that it's appropriate to include in
8 rate base the cost of the water main. However, because
9 of their proposal for an acquisition adjustment in this
10 case, they are virtually eliminating the great majority
11 of the cost -- of those costs at some future date by
12 proposing an acquisition adjustment should the
13 Commission at some future date recognize the cost of the
14 utility's only source of supply, and that is they are
15 proposing an acquisition adjustment that affects those
16 assets even though they are not part of this proceeding.
17 It stands to reason that their position would be that
18 we've already decided that that transaction resulted in
19 an acquisition adjustment. The same impact awaits the
20 sewer main for the same reasons.

21 In conclusion, it's our position that the
22 application of the Commission's acquisition adjustment
23 rule to these circumstances is wholly unprecedented and
24 that the Commission has never looked behind a court
25 order establishing a value of assets surrendered in

1 exchange for utility assets as the staff is proposing
2 here.

3 Secondly, the application of the acquisition
4 adjustment rule is inappropriate since the great
5 majority of the assets were non-regulated utility assets
6 at the time of the foreclosure.

7 Third, it makes no sense to apply an
8 acquisition adjustment simply to provide a windfall to
9 the customers as a result of the tragic death and
10 surrounding circumstances of the utility's owner and his
11 son's attempt to continue to operate the utility after
12 the tragedy. It serves no useful purpose other than
13 confiscation of the utility property. Therefore, we ask
14 that you recognize these facts and the inapplicability
15 of the acquisition adjustment rule under these unique
16 circumstances and recognize the full amount of the
17 Court's finding as the value relinquished in exchange
18 for the utility assets and the non-utility assets and
19 recognize the full net book value of the utility assets
20 on a going-forward basis.

21 The Commission staff's proposal devastates the
22 utility's rate base and its ability to operate this
23 small family-run utility in a reasonable manner going
24 forward, and provides a windfall to the utility's
25 customers for no good regulatory purpose. The utility

1 is not seeking anything in this proceeding except to
2 maintain its rate base as though the tragic death of the
3 previous utility owner had not occurred.

4 **CHAIRMAN BROWN:** Thank you.

5 **MR. DETERDING:** Thank you.

6 **CHAIRMAN BROWN:** Public Counsel, would you
7 like to address us or just respond to any questions?

8 **MS. ROTH:** Good afternoon, Madam Chair and
9 Commissioners. Danielle Roth for the Office of Public
10 Counsel. OPC supports staff's recommendation.

11 **CHAIRMAN BROWN:** Okay. Staff, any additional
12 comments before we bring it back to the Commission
13 board?

14 **MS. NORRIS:** Certainly. Yes, certainly.
15 We -- as Mr. Deterding has laid out, there's many
16 different scenarios and many different factors and
17 certainly many that we sympathize with in this situation
18 not making it a typical transfer. Still -- and maybe --
19 and I know there were many points laid out, and
20 certainly if I don't address them, please come back
21 around to it.

22 But I think in starting off, the scope of the
23 acquisition adjustment rule, staff is not intending to
24 deviate at all for that or opening up the acquisition
25 adjustment itself and the application of it. Certainly

1 I think here what we're having is maybe perhaps a
2 difference in opinion of interpreting what the actual
3 purchase price was. So I just want to kind of really
4 try to lay that out as really the narrow area that I
5 feel like there's a difference in that interpretation.

6 Staff maintains that although the summary
7 judgment, which was for a little over a million dollars,
8 reflects the full debt of the utility, which Mr. Leeward
9 was in possession of that debt, it doesn't reflect the
10 true consideration paid by Mr. Leeward to acquire that
11 debt, which subsequently allowed him to control the
12 foreclosure process by which he was able to acquire the
13 utility's assets.

14 Additionally, to consider the summary judgment
15 as the purchase price would not be fair to consumers or
16 customers in the subsequent rate case as it would
17 inflate the net book value -- or the net book value and
18 the actual investment Mr. Leeward paid to acquire the
19 assets. At that point, it would be reflective in rates
20 based on if we put the whole 1 million without an
21 acquisition adjustment.

22 **CHAIRMAN BROWN:** Thank you. No additional
23 comments unless the Commission board has some questions.

24 Commissioners, what I really wanted to do with
25 this -- the owner here has owned this -- has been in

1 operation for three years. The transfer has been going
2 before us -- they filed for it in 2015. We deferred it
3 in 2016. There are no critical dates. The staff
4 recommendation is not an actual accurate purchase price,
5 nor is what is proposed by the utility an actual fair
6 representation of the value of the assets. I have been
7 an attorney for a title insurance company. I've dealt
8 with these confidentiality agreements. There is some
9 flexibility on getting that purchase price. I don't
10 think either the recommendation by staff is accurate nor
11 what the utility is proposing is accurate.

12 Our job is to do the best that we can do with
13 the information that we have. As -- and this -- we're
14 just not there yet. And I understand the challenge that
15 staff has had in trying to come up creatively with a
16 very discounted purchase price, but that is -- that does
17 give a windfall to the customers, and it will be very
18 hard for the utility to ever even come in for a rate
19 request for rate relief. So in the converse side, if we
20 go with the judgment, it's giving a windfall to the
21 customers.

22 I'd like to defer this item and give staff
23 some time to meet with the utility and the attorney and
24 come up with the actual purchase price. Otherwise, I
25 think we're setting a precedent that we may not want to

1 go down. And so that's the direction that I'd like to
2 go in.

3 **MS. JANJIC:** I would just like to make a
4 comment or maybe ask a question. We have worked with
5 the utility in trying to get that amount, and we have
6 not been successful. Are they able to provide it? I
7 would just like to ask them at this time.

8 **CHAIRMAN BROWN:** Mr. Deterding?

9 **MR. DETERDING:** Well, we have not gone to the
10 bank. We have an agreement that we've shown the staff
11 that specifically says we -- that all those -- the
12 amount paid is confidential and not to be divulged to
13 anyone.

14 **CHAIRMAN BROWN:** You do realize that the
15 Commission has confidential protective orders.

16 **MR. DETERDING:** No, I understand that we could
17 get protection from information that we provide, but
18 that doesn't change the fact that we have no right to
19 disclose it. We have an obligation not to disclose it.

20 In addition, Commissioner, as I've said, we
21 believe that the amount paid for the debt is not the
22 issue. If the -- if Mr. Leeward had maintained the debt
23 and maintained a note and mortgage owed by the utility
24 and this utility had remained a regulated utility, this
25 Commission would not have said your debt has to be

1 discounted. That is the amount of the debt owed by the
2 utility to Mr. Leeward.

3 **CHAIRMAN BROWN:** Thank you. Staff, what I'm
4 struggling with here is that the purchase price is not a
5 fair reflection of the value or the purchase of the
6 assets, nor is the judgment a fair amount -- evaluation
7 of the assets. So really the recommendation is using
8 the best information that the utility provided, but it's
9 not accurate. And you're just trying to, for lack of a
10 better word, make a recommendation so that we can
11 effectuate the transfer. Well, this transfer, he's --
12 the utility owner is already operating for the past
13 three years. I just feel very uncomfortable voting on
14 this item.

15 **MS. JANJIC:** And we understand your
16 frustration because we have tried. We've worked with
17 them. We're trying to get the information. This is the
18 best information that we have. So if we cannot get that
19 information, we're going to be sitting here at the next
20 agenda at this exact same position that we are sitting
21 right now.

22 **CHAIRMAN BROWN:** Well, I'm going to go ahead
23 and defer it. And I'm going to advise the utility, and
24 I wanted to get an opportunity to speak with you and
25 hear your thoughts, but I want to give you direction

1 here that for the next time that this is presented to
2 us, to get the most accurate information, and the
3 judgment is not that. So there are other options the
4 staff has provided. We could potentially do a show
5 cause to get that information. But either way, I want
6 to give you that guidance. And with that, we are
7 concluded with this Agenda Conference.

8 We will -- the prehearing conference for the
9 clauses will begin -- five minutes -- in five minutes in
10 this room. Thank you.

11 (Agenda item concluded.)

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1 STATE OF FLORIDA)
2 COUNTY OF LEON) : CERTIFICATE OF REPORTER

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4 I, LINDA BOLES, CRR, RPR, Official Commission
5 Reporter, do hereby certify that the foregoing
6 proceeding was heard at the time and place herein
7 stated.

8 IT IS FURTHER CERTIFIED that I
9 stenographically reported the said proceedings; that the
10 same has been transcribed under my direct supervision;
11 and that this transcript constitutes a true
12 transcription of my notes of said proceedings.

13 I FURTHER CERTIFY that I am not a relative,
14 employee, attorney or counsel of any of the parties, nor
15 am I a relative or employee of any of the parties'
16 attorney or counsel connected with the action, nor am I
17 financially interested in the action.

18 DATED THIS 18th day of October, 2016.

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25

LINDA BOLES

LINDA BOLES, CRR, RPR
FPSC Official Hearings Reporter
(850) 413-6734

IN THE CIRCUIT COURT, FIFTH JUDICIAL CIRCUIT,
IN AND FOR MARION COUNTY, FLORIDA

DIRK J. LEEWARD and
DONNA G. LEEWARD,

Case No. 12-4792-CA-N

Plaintiffs,

v.

COUNTY-WIDE UTILITY CO. INC.,
a Florida Corporation; BAHIA OAKS, INC.,
a Florida Corporation; CITY OF OCALA,
a Florida municipal corporation,

Defendants.

FILED
CIVIL DIVISION
2013 MAR -4 P 4:16
DAVID R. ELLSPERMANN
CLERK CIRCUIT COURT
MARION COUNTY, FL

**SUMMARY FINAL JUDGMENT OF FORECLOSURE
AND FOR ATTORNEY'S FEES AND COSTS**

THIS ACTION having come before the Court upon the Plaintiffs' Motion for Summary Final Judgment of Foreclosure and for Attorney's Fees and Costs.

It is ADJUDGED that:

1. Proper service of process was perfected upon the Defendants herein.
2. There are no material issues of law or fact in this matter and Plaintiffs are entitled to a Summary Final Judgment of Foreclosure and for Attorney's Fees and Costs as to the Complaint filed herein as a matter of law.
3. Plaintiffs, DIRK J. LEEWARD and DONNA G. LEEWARD, whose address is 8492 Leeward Air Ranch Circle, Ocala, FL 34472, are due on the obligations sued hereunder.

Parties/Staff Handout
Internal Affairs/Agenda
on 10 / 11 / 16
Item No. 7

20

Principal		\$927,046.48
Interest to date of this judgment		\$67,738.46
Late fees		\$4,457.47
Title search expense		\$0.00
Taxes		\$0.00
Attorneys' fees		
Finding as to reasonable number of hours:		
Finding as to reasonable hourly rate:	15.55	
	\$350.00	
Attorneys' fees total		\$5,442.50
Court costs, now taxed		\$2,062.00
Appraisal Fee		\$0.00
Subtotal		\$1,001,987.66
LESS: Escrow balance		0.00
LESS: Other		0.00
TOTAL		\$1,006,746.91

that shall bear interest at the statutorily prescribed rate after the date hereof.

4. Plaintiffs hold a lien for the total sum superior to all claims or estates of the Defendants, COUNTY-WIDE UTILITY CO. INC.; BAHIA OAKS, INC.; and CITY OF OCALA, (other than as provided for in Paragraph 8) on the following described property in Marion County, Florida: **SEE COMPOSITE EXHIBIT 'A'**.
5. If the total sum with interest at the rate described in paragraph 3 above and all costs of this action accruing subsequent to this judgment are not paid, the Clerk of this Court shall sell the property at public sale to the highest bidder for cash, except as prescribed in paragraph 6, on April 8th, 2013, at 11:00 a.m., Eastern Standard Time (EST), at www.marionrealforeclose.com in accordance with Chapter 45, *Florida Statutes*.
6. Plaintiffs shall advance all subsequent costs of this action and shall be reimbursed for them by the Clerk if Plaintiffs are not the purchaser of the property for sale, provided, however, that the purchaser of the property for sale shall be responsible for the documentary stamps

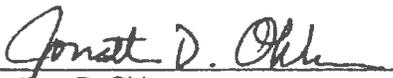
payable on the Certificate of Title. If Plaintiffs are the purchaser, the Clerk shall credit Plaintiffs' bid with the total sum with interest and costs accruing subsequent to this judgment, or such part of it as is necessary to pay the bid in full.

7. On filing the Certificate of Title, the Clerk shall distribute the proceeds of the sale, so far as they are sufficient, by paying: first, all of Plaintiffs' costs; second, documentary stamps affixed to the certificate; third, Plaintiffs' attorneys' fees; fourth, the total sum due to Plaintiffs, less the items paid, plus interest at the rate prescribed in paragraph 3 from this date to the date of the sale; and by retaining any remaining amount pending the further order of this Court.
8. On filing the Certificate of Sale, Defendants, COUNTY-WIDE UTILITY CO. INC., CITY OF OCALA and BAHIA OAKS, INC., and all other parties claiming through them since the filing of the Notice of Lis Pendens, shall be foreclosed of all estate or claim in the property except as to rights of the CITY OF OCALA pursuant to the Bulk Water and Waste Water Agreement dated September 5, 2003, as amended on August 2, 2004. Upon the filing of the Certificate of Title, the person named on the Certificate of Title shall be let into possession of the property. If Defendant, COUNTY-WIDE UTILITY CO., INC., remains in possession of the property, the Clerk shall without further order of the Court issue forthwith a Writ of Possession upon request of the person named on the Certificate of Title.
9. Jurisdiction of this action is retained to enter further orders that are proper including, without limitation, a deficiency judgment.
- 10.

IF THIS PROPERTY IS SOLD AT PUBLIC AUCTION, THERE MAY BE ADDITIONAL MONEY FROM THE SALE AFTER PAYMENT OF PERSONS WHO ARE ENTITLED TO BE PAID FROM THE SALE PROCEEDS PURSUANT TO THIS FINAL JUDGMENT.

IF YOU ARE A SUBORDINATE LIENHOLDER CLAIMING A RIGHT TO FUNDS REMAINING AFTER THE SALE, YOU MUST FILE A CLAIM WITH THE CLERK NO LATER THAN 60 DAYS AFTER THE SALE. IF YOU FAIL TO FILE A CLAIM, YOU WILL NOT BE ENTITLED TO ANY REMAINING FUNDS.

ORDERED in Chambers in Ocala, Marion County, Florida this 4 day of March,
2013.


Jonathan D. Ohlman
Circuit Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have furnished a true and accurate copy of the foregoing
SUMMARY FINAL JUDGMENT OF FORECLOSURE AND FOR ATTORNEYS' FEES AND COSTS
by U.S. Mail, postage prepaid, this 5th day of March 2013, to the following:

Bryce W. Ackerman
125 NE First Avenue, Suite 1
Ocala, FL 34470

Attorney for Plaintiff

W. James Gooding
15313 SE 36 Avenue
Ocala, FL 34471

Attorneys for Defendant,
City of Ocala

Lawrence C. Callaway, III
333 NW 3 Avenue
Ocala, FL 34475

Attorney for Defendants,
County-Wide Utility Co., Inc.
and Bahia Oaks, Inc.

By: 
Deputy Clerk/Judicial Assistant

EXHIBIT "A"

1. Debtor's Name and Address:

COUNTY-WIDE UTILITY CO., INC., A FLORIDA CORPORATION
P.O. Box 1476, Ocala, FL 34478

2. This Security Agreement or Financing Statement covers the following types and items of property:

- (A) All of Debtor's right, title, and interest in and to that certain Bulk Water and Wastewater Agreement by and between the Debtor and the City of Ocala dated September 5, 2003, as amended by Amendment to Bulk Water and Wastewater Agreement dated August 24, 2004, (the "Bulk Water and Wastewater Agreement"), including, but not limited to, all rights of Debtor in and to sums due thereunder from the City of Ocala or from any Customer as that term is defined in said Bulk Water and Wastewater Agreement.
- (B) All accounts and accounts receivable of Debtor including, but not limited to, payments due or to come due from the provision of potable water or wastewater disposal to third parties, or otherwise generated by Buyer's Wastewater System or Buyer's Water System, as those terms are defined in the Bulk Water and Wastewater Agreement, including but not limited to all amounts due or to come due from Customers, as that term is defined in the Bulk Water and Wastewater Agreement. The terms "accounts" and "accounts receivable" are intended to have their broadest possible interpretation. (the "Accounts")
- (C) All rights of Debtor arising from or related to the following (hereinafter the "Easements"):
- (i) Limited Assignment of Developer Rights dated May 4, 2005, from Bahia Oaks, Inc., a Florida Corporation to County-Wide Utility Co., Inc., a Florida Corporation recorded in OR Book 4025 at Page 1292, Public Records of Marion County, Florida.
 - (ii) Easements, license or other rights arising under Grant of Utility Easement dated February 12, 2004, from Ruth Dalton to County-Wide Utility Co., Inc., a Florida Corporation recorded in OR Book 3641 at Page 0626, Public Records of Marion County, Florida, pertaining to the real property described in Exhibit A-1.
 - (iii) Easements, license or other rights arising under Grant of Utility Easement dated February 12, 2004, from Doris E. Vedder to County-Wide Utility Co., Inc., a Florida Corporation recorded in OR Book 3641 at Page 0628, Public Records of Marion County, Florida, pertaining to the real property described in Exhibit A-2.
 - (iv) Easements, license or other rights arising under Grant of Utility Easement dated February 12, 2004, from Glenn B. Laney to County-Wide Utility Co., Inc., a Florida Corporation recorded in OR Book 3641 at Page 0624, Public Records of Marion County, Florida, pertaining to the real property described in Exhibit A-3.
 - (v) Easements, license or other rights arising under Grant of Utility Easement dated January 20, 2005, from Antonia Lecuona to County-Wide Utility Co., Inc., a Florida Corporation recorded in OR Book 3934 at Page 531, Public Records of Marion County, Florida, pertaining to the real property described in Exhibit A-4.
 - (vi) Grant of Utility Easement dated March 28, 2005, from James K. Leeward to County-Wide Utility Co., Inc., a Florida Corporation recorded in OR Book 3999 at Page 264, Public Records of Marion County, Florida, as corrected by Corrective Grant of Utility

Easement recorded in OR Book ____ at Page ____, Public Records of Marion County, Florida, pertaining to the real property described in Exhibit "A-5".

- (vii) Grant of Utility Easement dated May 31, 2005, from James K. Leeward to County-Wide Utility Co., Inc., a Florida Corporation, recorded at OR Book 4057 at Page 1650, Public Records of Marion County, Florida, pertaining to the real property described in Exhibit "A-6".
- (viii) Grant of Utility Easement dated May 31, 2005, from Bahia Oaks, Inc., a Florida Corporation to County-Wide Utility Co., Inc., a Florida Corporation, recorded at OR Book 4057 at Page 1652, Public Records of Marion County, Florida, pertaining to the real property described in Exhibit "A-7".
- (ix) Grant of Utility Easement dated June 17, 2005 from Blackbird Investments, LLC, a Florida limited liability company, to County-Wide Utility Co., Inc., a Florida Corporation, recorded at OR Book _____ at Page _____, Public Records of Marion County, Florida, pertaining to the real property described in Exhibit "A-8".
- (x) Any and all other easements held by, or in favor of, County-Wide Utility Co., Inc., a Florida Corporation, and any real property owned by County-Wide Utility Co., Inc., a Florida Corporation, whether now existing or hereafter acquired, in Marion County, Florida.

(All real property described in any of the foregoing the "Land".)

- (D) All fixtures or personal property of Debtor including but not limited to all pipes, conduit, drains, inlets, lift stations, pumps, grates, mechanical systems, wiring, or other equipment, improvements, or personal property, however described, incorporated in, or constituting a portion of Buyer's Wastewater System or Buyer's Water System, as those terms are defined in the Bulk Water and Wastewater Agreement, including all extensions and expansions thereof, and replacements thereto (the "Improvements"), including, but not limited to, all of Debtor's interest in all fixtures, equipment and tangible personal property of any nature whatsoever now or hereafter (i) attached or affixed to the Land or the Improvements, or both, regardless of whether physically affixed thereto or severed or capable of severance herefrom or (ii) regardless of where situated, used, usable, or intended to be used in connection with any present or future use or operation of or upon the Land (the "Tangible Property").
- (E) All licenses, permits, or other governmental approvals or authorizations to operate Buyer's Wastewater System and/or Buyer's Water System as those terms are defined in the Bulk Water and Wastewater Agreement including, but not limited to, the following:
 - (i) Florida Public Service Commission Certificate 390-W2.
 - (ii) Florida Department of Environmental Protection I.D. No. 642013.
 - (iii) Southwest Florida Water Management District Water Use Permit No. 203239.01.
 - (iv) Marion County Right-of-Way Permit No. 2005050656.
 - (v) Florida Department of Environmental Protection Sewer Construction Permit.
 - (vi) Florida Department of Transportation Utility Crossing Permit

(the "Permits")

- (F) All of Debtor's rights in, away from, or related to the construction contract by and between Debtor and _____ dated the _____ day of June, 2005. (the "Construction Contract").
- (G) Income. All rents, issues, incomes, and profits in any manner arising from the Bulk Water and Wastewater Agreement, the Land, the Easements, the Improvements, the Accounts, the Permits or the Tangible Property, or any combination, including Debtor's interest in and to all leases, licenses, franchises, and concessions of, or relating to, all or any portion of Bulk Water and Wastewater Agreement, the Land, the Easements, the Improvements, the Accounts, the Permits or the Tangible Property, whether now existing or hereafter made, including all amendments, modifications, replacements, substitutions, extensions, renewals, or consolidations. The foregoing items are jointly and severally called the "Rents" in this instrument.
- (H) Proceeds. All proceeds of the conversion, voluntary or involuntary, of any of the property described in this paragraph into cash or other liquidated claims, or that are otherwise payable for injury to, or the taking or requisitioning of, any such property, including all insurance and condemnation proceeds.
- (I) Contract Rights. All of Debtor's right, title and interest in and to any and all contracts, written or oral, express or implied, now existing or hereafter entered into or arising, in any manner related to use, operation, sale, conversion, or other disposition of any interest in Bulk Water and Wastewater Agreement, the Land, the Easements, the Accounts, the Permits, the Improvements, the Tangible Property, or the Rents, or any combination, including any and all deposits, prepaid items, and payments due and to become due thereunder, and including construction contracts, service contracts, advertising contracts, purchase orders, and equipment leases. Without limiting the foregoing, all of Debtor's right, title, and interest in any operating, maintenance, or other agreement with Enviro-Masters Water & Waste Water Services, Inc.
- (J) Other Intangibles. All contract rights, accounts, instruments and general intangibles, as such terms from time to time are defined in the Florida Uniform Commercial Code, in any manner related to the use, operation, sale, conversion, or other disposition (voluntary or involuntary) of Bulk Water and Wastewater Agreement, the Land, the Easements, the Accounts, the Permits, the Improvements, the Tangible Property, or the Rents including all permits, licenses, insurance policies, rights of action and other chose in action.
- (K) Secondary Financing. All of Debtor's rights, power or privilege to further encumber any of the property described in this paragraph by debt.
- (L) Construction Documents. The foregoing types of property include specifically all of the following: all contracts, plans and documents that concern the design and construction of the Improvements, including plans and specifications, drawings and architectural and/or engineering contracts, and construction contracts, together with all amendments, revisions, modifications and supplements.
- (M) Other. Specifically included and not by way of limitation, the following is included in the definitions of Improvement, Contract Rights and Other Intangibles as set forth herein, to-wit:

[NONE]

As used in Paragraphs (A) through (M), the term "include", and all variations thereof, are for illustrative purposes only and are always without limitation.

Exhibit A-1

That part of:

Lot 39, Block 9, Bahia Oaks Unit No. Two, as recorded in Plat Book "L", Page 66, Public Records of Marion County, Florida, being in Section 9, Township 16 South, Range 21 East,

Described as follows:

Commence at the southwesterly corner of Lot 39, Block 9, Bahia Oaks Unit No. Two, as recorded in Plat Book "L", Page 66, Public Records of Marion County, Florida; thence N. 2° 17' 25" E. a distance of 26.00 feet along the westerly line of said Lot 39 to the POINT OF BEGINNING; thence S. 2° 17' 25" W. a distance of 26.00 feet along the westerly line of said Lot 39 to the southwesterly corner of said Lot 39; thence N. 74° 32' 37" E. a distance of 70.00 feet along the southerly line of said Lot 39; thence westerly approximately 67 feet to the POINT OF BEGINNING.

Exhibit A-2

That part of:

Lot 2, Block 9, Bahia Oaks Unit No. Two, as recorded in Plat Book "L", Page 66, Public Records of Marion County, Florida, being in Section 9, Township 16 South, Range 21 East,

Described as follows:

BEGIN at the southwesterly corner of Lot 39, Block 9, Bahia Oaks Unit No. Two, as recorded in Plat Book "L", Page 66, Public Records of Marion County, Florida; thence N. 2° 17' 25" E. a distance of 33.03 feet along the easterly line of said Lot 2 to the northeasterly corner of said Lot 2; thence N. 87° 42' 34" W. a distance of 128.87 feet along the northerly line of said Lot 2 to the northwesterly corner of said Lot 2 intersecting the easterly right-of-way line of S.W. 60th Ave; thence southerly along and with the arc of a curve concave easterly, having a central angle of 4° 08' 50" and a radius of 5679.42 feet (said curve also being the westerly boundary of said Lot 2 and the easterly right-of-way line of S.W. 60th Ave.) a distance of 20.00 feet; thence departing said curve, S. 87° 42' 34" E. a distance of 50 feet; thence easterly approximately 80 feet to the POINT OF BEGINNING.

Exhibit A-3

That part of:

Lot 40, Block 9, Bahia Oaks Unit No. Two, as recorded in Plat Book "L", Page 66, Public Records of Marion County, Florida, being in Section 9, Township 16 South, Range 21 East,

Described as follows:

BEGIN at the northwesterly corner of Lot 40, Block 9, Bahia Oaks Unit No. Two, as recorded in Plat Book "L", Page 66, Public Records of Marion County, Florida; thence N. 74° 32' 37" E. a distance of 131.25 feet; thence S. 2° 17' 25" W. a distance of 43.00 feet along the easterly line of said Lot 40; thence westerly approximately 125 feet to the POINT OF BEGINNING.

The easterly 20 feet and the southerly 10 feet of a portion of Lot 17, Block 12, Bahia Oaks Unit No. Three, as recorded in Plat Book "L", Page 67, Public Records of Marion County, Florida, and other lands as more particularly described as follows:

Lot 17, Block 12 of BAHIA OAKS UNIT NO. THREE, as recorded in Plat Book L, Page 67, Public Records of Marion County, Florida; except that portion of said lot 17, Block 12, deeded to Marion County, Florida by Warranty Deed recorded in Official Records Book 1383, Page 937, Public Records of Marion County, Florida AND TOGETHER WITH portion of S.W. 63rd Street (formerly S.W. 61st Street), described in resolution to close and abandon road, No. 86-R-202, as recorded in Official Records Book 1388, Page 318, Public Records of Marion County, Florida; lying North of aforesaid Lot 17, Block 12 of BAHIA OAKS UNIT NO. THREE; West of S.W. 60th Avenue and South of the centerline of said S.W. 63rd Street and the Easterly projection thereof, being more fully described as follows: Commencing at the Southeast corner of aforesaid BAHIA OAKS UNIT NO. THREE, as recorded in Plat Book L, Page 67, Public Records of Marion County, Florida, said point being on the West right of way line of S.W. 60th Avenue (100 foot wide right of way); thence S. 40° 14' 30" W. along said West right of way line, and along the East boundary of aforesaid BAHIA OAKS UNIT NO. THREE, a distance of 150.00 feet to the point of beginning; thence continue S. 00° 16' 30" W. along said East boundary, and along aforesaid West right of way line, 120.00 feet to the Southeast corner of aforesaid Lot 17, thence S. 89° 47' 08" W. along the South boundary of said Lot 17, a distance of 139.59 feet to the Southwest corner of said Lot 17; thence N. 00° 12' 32" W. along the West boundary of said Lot 17, a distance of 55.00 feet to the South right of way line of S.W. 63rd Street (formerly S.W. 61st Street), and the Northwest corner of said Lot 17; thence N. 89° 47' 08" E. along said South right of way line 24.72 feet to the point of curvature of a curve concave Southwesterly, having a radius of 25.00 feet and a central angle of 48° 11' 23"; thence Southwesterly along said right of way curve an arc distance of 21.03 feet to a point of reverse of curvature of a curve concave Northerly, having a radius of 50.00 feet and a central angle of 118° 11' 23"; thence Southeasterly and Northeasterly along said right of way curve an arc distance of 121.59 feet, to a point on the easterly projection of the centerline of aforesaid S.W. 63rd Street; thence N. 89° 47' 08" E. along said Easterly projection 10.00 feet to the point of beginning.

Exhibit A-5

A 15' wide portion of Lot 28 as more particularly described below as 15' Utility Easement AND

the easterly twenty (20) feet of Lot 28, Block 20, Bahia Oaks Unit No. 4, as recorded in Plat Book L, Page 70, Public records of Marion County, Florida, lying north of the property described in the attached Exhibit "A" and contiguous to the right-of-way of SW 60th Avenue, AND

the easterly twenty (20) feet of Lots 17 through 27, inclusive, and the northerly twenty (20) feet of Lots 16 and 17, all in Block 20, Bahia Oaks Unit No. 4, as recorded in Plat Book L, Page 70, Public records of Marion County, Florida,

LESS AND EXCEPT

that ten (10) foot wide area deeded to Marion County, Florida as recorded in O.R. Book 3272, Page 0718:

15' UTILITY EASEMENT

COMMENCING AT THE WEST 1/4 CORNER OF SECTION 8, TOWNSHIP 16 SOUTH, RANGE 21 EAST, MARION COUNTY, FLORIDA, THENCE N.89°55'00"E. ALONG THE SOUTH BOUNDARY OF THE NORTH 1/2 OF SAID SECTION 8, A DISTANCE OF 3318.24 FEET TO THE SOUTHEAST CORNER OF THE SW 1/4 OF THE SW 1/4 OF THE NE 1/4 OF SAID SECTION 8; THENCE N.00°05'40"E. ALONG THE EAST BOUNDARY OF SAID SW 1/4 OF THE SW 1/4 OF THE NE 1/4, A DISTANCE OF 662.69 FEET TO A CONCRETE MONUMENT ON THE MONUMENTED SOUTH BOUNDARY OF BAHIA OAKS, UNIT NO. FIVE, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK L, PAGE 71 OF THE PUBLIC RECORDS OF MARION COUNTY, FLORIDA; THENCE N.89°53'38"E. ALONG SAID MONUMENTED SOUTH BOUNDARY 663.48 FEET TO A CONCRETE MONUMENT; THENCE CONTINUING ALONG SAID MONUMENTED SOUTH BOUNDARY AND ALONG THE SOUTH BOUNDARY OF BAHIA OAKS, UNIT NO. FOUR, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK L, PAGE 70 OF THE PUBLIC RECORDS OF MARION COUNTY, FLORIDA S.69°20'41"E. 554.47 FEET TO A NON-TANGENT INTERSECTION WITH THE WESTERLY RIGHT OF WAY LINE OF STATE ROAD NO. 200 (WIDTH VARIES) AS PER FLORIDA DEPARTMENT OF TRANSPORTATION RIGHT OF WAY MAP, SECTION 36110-2521, SAID POINT BEING ON A CURVE CONCAVE TO THE NORTHWEST AND HAVING A RADIUS OF 2283.31 FEET; THENCE NORTHEASTERLY ALONG AND WITH THE ARC OF SAID RIGHT OF WAY CURVE THROUGH A CENTRAL ANGLE OF 01°15'37", AN ARC DISTANCE OF 502.27 FEET AND SUBTENDED BY A CHORD BEARING AND DISTANCE OF N.42°10'49"E. 502.26 FEET TO THE POINT OF TANGENCY; THENCE ON A NON-TANGENT RIGHT OF WAY LINE S.48°27'00"E. 10.00 FEET; THENCE CONTINUE ALONG SAID RIGHT OF WAY LINE N.41°33'00"E. 417.36 FEET TO THE POINT OF BEGINNING; THENCE DEPARTING FROM SAID WESTERLY RIGHT OF WAY LINE N.48°27'00"W. 15.00 FEET; THENCE N.41°33'00"E. ALONG A LINE THAT IS 15.00 FEET WESTERLY OF AS MEASURED PERPENDICULAR TO SAID WESTERLY RIGHT OF WAY LINE 142.83 FEET; THENCE N.00°10'09"E. ALONG A LINE THAT IS 15.00 FEET WESTERLY OF AS MEASURED PERPENDICULAR TO THE WEST RIGHT OF WAY LINE, AS PER OFFICIAL RECORDS BOOK 3272, PAGE 718, PUBLIC RECORDS OF MARION COUNTY, FLORIDA, OF SW 60TH AVENUE (RIGHT OF WAY VARIES) 114.84 FEET; THENCE S.48°27'00"E. 19.99 FEET; THENCE S.00°10'09"W. ALONG SAID WEST RIGHT OF WAY LINE 104.33 FEET TO AN INTERSECTION WITH AFORESAID WESTERLY RIGHT OF WAY LINE OF STATE ROAD NO. 200; THENCE S.26°15'41"W. ALONG SAID WESTERLY RIGHT OF WAY LINE 7.42 FEET; THENCE CONTINUE ALONG SAID WESTERLY RIGHT OF WAY LINE S.41°33'00"W. 143.56 FEET TO THE POINT OF BEGINNING.

Exhibit A-6

The southerly 60 feet of Lots 11 and 22, Block 20, Bahia Oaks Unit No. Four, as recorded in Plat Book L, Page 70, Public Records of Marion County, Florida.

Exhibit A-7

The easterly 10 feet of Lots 41 through 46, Block 21, and the southeasterly 10 feet of Lots 47 through 49, Block 21, all in Bahia Oaks Unit No. Four, as recorded in Plat Book L, Page 70, Public Records of Marion County, Florida.

Exhibit A-8

The northwesterly 30 feet of Lots 3 and 4, Block 20, Bahia Oaks Unit No. Four, as recorded in Plat Book L, Page 70, Public Records of Marion County, Florida.

Regulated Water Utility Assets

	Balance per			Balance per Audit
	Balance at Foreclosure April, 2013	Annual Report 12/31/13	Audit Adjustments	
Utility Plant in Service	213,206	219,537	691,870	911,407
Land	2,815	2,815	-	2,815
Accumulated Depreciation	(89,032)	(93,858)	(132,952)	(226,810) *
Contributions in Aid of Construction	(87,008)	(87,008)	(10,839)	(97,847)
Accumulated Amortization of CIAC	38,992	40,982	42	41,024
NET BOOK VALUE	78,973	82,468	548,121	630,589
Net Book Value per Audit	630,589			
Less Water Transmission Main	(684,693)			
Plus Water Transmission Main Accumulated Depreciation	133,155			
Less 2013 post foreclosure investment	(6,331)			
Adjusted Net Book Value at Foreclosure	72,720	(Not including Water Transmission Main)		

* The auditor added back a portion of the disallowed water transmission main that was disallowed by the FPSC in Docket No. 050862-WU. While the main has been in service for several years, the utility does not believe it is appropriate to include \$133,155 of accumulated depreciation on that asset as the Commission has never recognized it as an appropriate part of rate base and therefore it is the position of the utility that no depreciation should accrue until such time as it is recognized as part of rate base.

Water Transmission Main

Original Cost as of foreclosure	805,007	See Table 2-1 of the May 20, 2015 Audit Report.
Less cost allowed	(15,927)	
Less project management fee disallowed	(104,387)	
Net	684,693	

Only the \$15,927 of this cost approved by the FPSC are included in the utility's the regulatory books. This asset will be transferred to Southwest Ocala Utility, Inc. if the FPSC approves the auditor's adjustment.

Wastewater System

Original Cost as of foreclosure 292,457

Non-utility property not yet placed in service, so there is no depreciation.

Summary

Regulated Water Utility Assets	72,720
Water Transmission Main	684,693
Wastewater System	292,457
Total Net Book Value	1,049,870
Foreclosure Amount	1,006,747
Attorneys' Fees	16,303
Total	1,023,050

3%

Parties/Staff Handout
Internal Affairs/Agenda
on 10/11/16
Item No. 7