

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for transfer of Certificate No. 390-W from County-Wide Utility Co., Inc. to Southwest Ocala Utility, Inc. in Marion County.

DOCKET NO. 20150012-WU
ORDER NO. PSC-2017-0311-FOF-WU
ISSUED: August 7, 2017

The following Commissioners participated in the disposition of this matter:

JULIE I. BROWN, Chairman
ART GRAHAM
RONALD A. BRISÉ
DONALD J. POLMANN

ORDER APPROVING APPLICATION FOR TRANSFER OF UTILITY

BY THE COMMISSION:

Background

On January 2, 2015, County-Wide Utility Co., Inc. (County-Wide or Seller) filed an application for the transfer of Certificate No. 390-W to Southwest Ocala Utility, Inc. (SOU, Utility, or Buyer) in Marion County. County-Wide is a Class C utility that only provides water service. The service area is located in the St. Johns River Water Management District (SJRWMD), and is not in a water use caution area. According to County-Wide's 2014 Annual Report, the Utility serves 539 residential customers, three general service customers, and had total revenues of \$139,624.

Certificate No. 390-W was originally granted in 1983 under the name of Bahia Oaks, Inc. d/b/a County-Wide Utility Company, Inc.¹ In 1997, we extended County-Wide's territory to include Units Three, Four, and Five of the Bahia Oaks Subdivision.² Water rates for the Utility were last approved in 2007, pursuant to a staff assisted rate case docketed in 2005 (2005 SARC).³

On October 16, 2016, we were presented with a recommendation that the transfer be granted, with a proposed net book value and a negative acquisition adjustment. However,

¹Order No. 11868, issued April 21, 1983, in Docket No. 810369-WU, In re: Application of Bahia Oaks, Inc. d/b/a County-Wide Utility Company, Inc. for a certificate to operate a water utility in Marion County.

²Order No. PSC-97-0578-FOF-WU, issued May 20, 1997, in Docket No. 970085-WU, In re: Application for amendment of Certificate No. 390-W to extend service territory to include unit numbers 3, 4, and 5 of Bahia Oaks Subdivision in Marion County by Countywide Utility Company.

³Order No. PSC-07-0604-PAA-WU, issued July 30, 2007, in Docket No. 050862-WU, In re: Application for staff-assisted rate case in Marion County by County-Wide Utility Co., Inc.

Commission staff's recommendation was based on incomplete information due to the Utility's assertion that it could not provide the requested information related to purchase price as the information is protected by a confidentiality agreement with its bank. We rejected Commission staff's recommendation, deferred the item, and directed the Utility to provide the most accurate information to Commission staff. The Utility maintains that it still cannot provide the precise purchase price data without violating the confidentiality agreement. In lieu of supporting documentation for the purchase price, the Utility provided an affidavit attesting the amount paid was in excess of 80 percent of the net book value.

This Order addresses our decision on the July 13, 2017 Commission Conference, where we were presented with a revised recommendation regarding the transfer of County-Wide's water system under Certificate No. 390-W, the net book value of the water system at the time of transfer, and whether an acquisition adjustment should be approved. We have jurisdiction pursuant to Section 367.071, Florida Statutes (F.S.).

Decision

Transfer of Water System and Certificate No. 390-W

On January 2, 2015, County-Wide filed an application for approval of the transfer of its water system and Certificate No. 390-W to SOU. The application is in compliance with the governing Statute, Section 367.071, F.S., and administrative rules concerning applications for transfer of certificates.

Noticing, Territory, and Land Ownership

The application contains proof of compliance with the noticing provisions set forth in Section 367.071, F.S., and Rule 25-30.030, F.A.C. No objections to the transfer were filed with this Commission and the time for doing so has expired. The application contains a description of the Utility's water service territory, which is appended to this Order as Attachment A. As the Utility is a reseller of bulk water purchased from the City of Ocala, it has no water treatment facilities. Therefore, no proof of land ownership pursuant to Rule 25-30.037(2)(s), F.A.C., is required.

Purchase Agreement and Financing

Pursuant to Rules 25-30.037(2)(i) and (j), F.A.C., the application must contain a statement regarding financing and a copy of the Purchase Agreement, which includes the purchase price, terms of payment, and a list of the assets purchased. According to the application, Dirk and Donna Leeward own 100 percent of Brick City Management, LLC (BCM), which manages and owns 100 percent of SOU. According to the application and subsequently filed support documents, on July 19, 2012, Mr. Leeward purchased, at a discount, an outstanding note from BBVA Compass Bank (Compass Bank) that County-Wide owed to Compass Bank. The note was comprised of principal, accrued interest, costs, and fees totaling \$1,067,747. However, the amount Mr. Leeward paid for the note is unknown. After purchasing the note, Mr. Leeward foreclosed on County-Wide on March 4, 2013. On April 8, 2013, Mr. Leeward acquired

the Utility assets at a public foreclosure auction for a total of \$301, which was comprised of the winning bid amount and associated documentary stamps. On January 1, 2014, the assets were transferred to SOU. Commission Staff made several attempts to obtain the purchase price of the note, including stating that the information could be filed under a confidential request, but the Buyer did not provide the requested information.

On November 19, 2015, the Buyer submitted a letter stating that the Buyer is unable to provide information regarding the amount paid to acquire the mortgage note from the bank because there is a non-disclosure and confidentiality agreement attached to the transaction between the Buyer and Compass Bank. The Buyer contends that the purchase price cannot be provided without violating the non-disclosure agreement with the bank. On May 17, 2017, the Buyer provided a signed affidavit stating that the mortgage and note on the assets were acquired for a dollar amount in excess of 80 percent of the net book value of \$79,051, as of January 1, 2014, the netbook value of which was identified in the Commission staff audit. On June 30, 2017, the Buyer informed Commission staff that an adjustment was necessary to correct the amount of contributions in aid of construction (CIAC) contained in Commission staff's recommendation. Commission staff agreed that CIAC should be reduced along with the associated accumulated amortization (AA) of the CIAC. As the correction to the balance of CIAC and AA of the CIAC increases the net book value from \$79,051 to \$90,065, a revised affidavit needed to be obtained from the Buyer. On July 11, 2017, the Buyer submitted an updated affidavit attesting he paid in excess of 80 percent of the Commission staff recalculated net book value of \$90,065.

According to the application, there are no customer deposits, guaranteed revenue contracts, developer agreements, customer advances, or leases of County-Wide that must be disposed of with regard to the transfer.

Facility Description and Compliance

Utility's water system is a consecutive system composed of water mains, as listed in Table 1 below, and nine fire hydrants. A consecutive system provides treated water purchased from another entity. On June 15, 2016, the Florida Department of Environmental Protection (DEP) conducted a Sanitary Survey. During DEP's inspection, it found that the Utility had neither a cross-connection control program in place, nor a cross-connection control plan on file. The Utility corrected these deficiencies on July 13, 2016. The report issued on July 26, 2016, stated that the Utility was in compliance with its rules and regulations.

Table 1
County-Wide Utility Co., Inc. Water Mains

Material	Diameter Pipe (inches)	Length (linear feet)
PVC	1	100
PVC	2	5,630
PVC	2 1/2	4,300
PVC	4	4,360
PVC	6	750
PVC	8	750
PVC	12	100

Source: County-Wide Utility Co., Inc. 2014 Annual Report

Technical and Financial Ability

Pursuant to Rules 25-30.037(1)(l) and (m), F.A.C., the application contains statements describing the technical and financial ability of the applicant to provide service to the proposed service area. According to the application, Mr. Leeward has been the general manager of County-Wide since 1986 and has extensive knowledge of the operations and management of the system. As referenced in the transfer application, SOU will fulfill the commitments, obligations and representations of the Seller with regards to utility matters.

We reviewed the financial statements of BCM, the sole manager and owner of SOU. According to the application, BCM has provided working capital funding to the Utility and will ensure the availability of any necessary funds for future capital needs. Based on the above, SOU has demonstrated the technical and financial ability to provide service to the existing service territory.

Rates and Charges

The Utility's rates and charges were last approved in 2007 pursuant to its 2005 SARC.⁴ The rates were subsequently amended to reflect a four-year rate reduction required by Section 367.0816, F.S., in 2011, and numerous price indexes. The Utility's existing rates are shown on Schedule No. 1. Rule 25-9.044(1), F.A.C., provides that, in the case of a change of ownership or control of a utility, the rates, classifications, and regulations of the former owner must continue unless authorized to change by this Commission. Therefore, we find that the Utility's existing rates and charges shall remain in effect until a change is authorized by this Commission in a subsequent proceeding.

⁴Order No. PSC-07-0604-PAA-WU, issued July 30, 2007, in Docket No. 050862-WU, In re: Application for staff-assisted rate case in Marion County by County-Wide Utility Co., Inc.

Annual Reports and Regulatory Assessment Fees (RAFTs)

We have verified that the annual reports have been filed through December 31, 2014, and RAFTs have been paid through December 31, 2016. The 2015 and 2016 Annual Reports have not been filed. SOU will be responsible for filing the Utility's annual reports and paying RAFTs for all future years.

Conclusion

The Utility has provided information regarding the transfer of County-Wide's water system and the transfer of Certificate No. 390-W to SOU that is necessary for us to make a determination that the transfer is in the public interest and shall be approved effective the date of our vote. The resultant order shall serve as SOU's certificate and shall be retained by the Utility. The existing rates and charges shall remain in effect until a change is authorized by this Commission in a subsequent proceeding. The tariffs reflecting the transfer shall be effective for services rendered or connections made on or after the stamped approval date on the tariffs pursuant to Rule 25-30.475, F.A.C. SOU shall be responsible for filing the Utility's 2015 and 2016 annual reports and all future annual reports. RAFTs have been paid through December 31, 2016. SOU shall be responsible for all future RAFTs.

We recognize that the Buyer provided an affidavit attesting he paid in excess of 80 percent of the recalculated net book value of \$90,065. While the affidavit was provided, this Commission did not rely upon it or use it and ultimately, declined to make a determination as to the net book value and the acquisition adjustment at this time. Therefore, the matter shall be taken up at the next rate proceeding for this Utility.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the application for approval of transfer of County-Wide Utility Co., Inc.'s water system and Certificate No. 390-W to Southwest Ocala Utility, Inc., is in the public interest and approved effective July 13, 2017. The transferred territory is described in Attachment A. This Order shall serve as Southwest Ocala Utility, Inc.'s certificate and shall be retained. The tariffs reflecting the transfer shall be effective for services rendered or connections made on or after the stamped approval date on the tariffs pursuant to Rule 25-30.475, F.A.C. It is further

ORDERED that the existing rates and charges shall remain in effect until a change is authorized by this Commission in a subsequent proceeding. It is further

ORDERED that Southwest Ocala Utility, Inc. shall be responsible for filing the Utility's 2015 and 2016 Annual Reports and all future Annual Reports. RAFTs have been paid through December 31, 2016. Southwest Ocala Utility, Inc. shall be responsible for paying all future RAFTs. It is further

ORDERED that this Commission declined to make a determination as to the net book value and the acquisition adjustment at this time and we find that the matter shall be taken up at the next rate proceeding for this Utility.

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission this 7th day of August, 2017.



CARLOTTA S. STAUFFER
Commission Clerk
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Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

DJ

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.

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 Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, 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 and/or wastewater utility by filing a notice of appeal with the Office of Commission Clerk, 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.

Southwest Ocala Utility, Inc.
Water Territory Description
Marion County

Township 16 South, Range 21 East

Section 4

The Southwest $\frac{1}{4}$

Less and except that portion of the Northeast $\frac{1}{4}$ of said Southwest $\frac{1}{4}$ of said Section 4 lying North and West of State Road 200

and

Less and except that portion of the Northeast $\frac{1}{4}$ of said Southeast $\frac{1}{4}$ of the Southwest $\frac{1}{4}$ of said Section 4 lying North and West of State Road 200.

Section 5

The East $\frac{3}{4}$ of the South $\frac{1}{2}$ of the Southeast $\frac{1}{4}$.

Section 8

That portion of the Northeast $\frac{1}{4}$ lying North and West of State Road 200. Except: Beginning at the intersection of the South boundary of the Northeast $\frac{1}{4}$ and the Northerly right-of-way of State Road 200; thence North $89^{\circ} 53' 23''$ West a distance of 1,458.52 feet; thence North $00^{\circ} 00' 34''$ East a distance of 665.08 feet; thence North $89^{\circ} 53' 23''$ East a distance of 1,326.73 feet; thence South $69^{\circ} 21' 33''$ East a distance of 557.40 feet; thence Southwesterly along the Northwestern right-of-way line of State Road 200 to the POINT OF BEGINNING.

Section 9

That portion of the Northwest $\frac{1}{4}$, lying North and West of State Road 200.

FLORIDA PUBLIC SERVICE COMMISSION
authorizes
Southwest Ocala Utility, Inc.
pursuant to
Certificate Number 390-W

to provide water service in Marion 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.

<u>Order Number</u>	<u>Date Issued</u>	<u>Docket Number</u>	<u>Filing Type</u>
11868	04/21/83	810369-W	Grandfather Certificate
PSC-97-0578-FOF-WU	05/20/97	970085-WU	Amendment
PSC-03-0792-FOF-WU	07/03/93	030453-WU	Name Correction
PSC-2017-0311-FOF-WU	08/07/17	20150012-WU	Transfer

**Southwest Ocala Utility, Inc.
 Monthly Water Rates**

Residential and General Service

Base Facility Charge by Meter Size

5/8" x 3/4"	\$10.33
3/4"	\$15.50
1"	\$25.83
1 1/2"	\$51.64
2"	\$82.64
3"	\$165.27
4"	\$258.26
6"	\$516.47

Charge per 1,000 gallons – Residential

0-10,000 gallons	\$2.59
10,001-20,000 gallons	\$3.24
Over 20,000 gallons	\$3.87

Charge Per 1,000 gallons – General Service

\$2.74

Private Fire Protection

Base Facility Charge by Meter Size

4"	\$21.52
6"	\$43.04
8"	\$68.87
10"	\$99.00

Initial Customer Deposits

Residential Service and General Service

5/8" x 3/4"	\$50.00
3/4"	\$75.00
1"	\$125.00
Over 1"	2 times the average estimated bill

Miscellaneous Service Charges

	<u>Business Hours</u>	<u>After Hours</u>
Initial Connection Charge	\$21.00	N/A
Normal Reconnection Charge	\$21.00	\$42.00
Violation Reconnection Charge	\$21.00	\$42.00
Premises Visit Charge (in lieu of disconnection)	\$21.00	\$42.00
Late Payment Charge		\$5.00

Service Availability Charges

Main Extension Charge

Residential – Per ERC⁵ \$1,540.00

**Allowance for Funds Prudently Invested – Bahia Oaks
Transmission and Distribution
Calculation of Carrying Cost per ERC by Month:**

	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>
January	\$28	\$360	\$718	\$1,103	\$1,518
February	\$55	\$389	\$750	\$1,137	\$1,555
March	\$83	\$419	\$781	\$1,172	\$1,593
April	\$110	\$449	\$813	\$1,206	\$1,630
May	\$138	\$478	\$845	\$1,241	\$1,667
June	\$165	\$508	\$877	\$1,275	\$1,704
July	\$193	\$538	\$909	\$1,309	\$1,741
August	\$220	\$567	\$941	\$1,344	\$1,778
September	\$248	\$597	\$973	\$1,378	\$1,815
October	\$275	\$626	\$1,005	\$1,413	\$1,852
November	\$303	\$656	\$1,037	\$1,447	\$1,889
December	\$330	\$686	\$1,069	\$1,481	\$1,926

1. The amounts indicated above are per ERC. (ERC=350)
2. The number of remaining ERCs is 422 as of 1/1/2006.
3. If the number of the remaining ERCs has not connected by December 31, 2010, the maximum charge of \$1,926 remains in effect after December 31, 2008.
4. When the number of remaining ERCs have connected, the charge will cease.

⁵Equivalent residential connection