

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for transfer) DOCKET NO. 950015-WU
of Certificate No. 388-W in Lee) ORDER NO. PSC-95-1441-FOF-WU
County from Tamiami Village) ISSUED: November 28, 1995
Utility, Inc.; and for a limited)
proceeding to increase rates to)
recover increased operation and)
maintenance expenses as a result)
of pending transfer by Tamiami)
Village Water Company, Inc.)
_____)

The following Commissioners participated in the disposition of this matter:

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

ORDER APPROVING TRANSFER

AND

NOTICE OF PROPOSED AGENCY ACTION ORDER
ESTABLISHING RATE BASE FOR PURPOSES OF THE TRANSFER

BY THE COMMISSION:

NOTICE IS HEREBY GIVEN by the Florida Public Service Commission that the actions discussed herein regarding the establishment of rate base for purposes of the transfer 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

Tamiami Village Utility, Inc. (TVU or utility) is a Class C utility in Lee County which provided water and wastewater service to approximately 742 customers in 1994. According to the 1994 annual report, TVU's consolidated annual revenues were \$326,371 and its consolidated net operating income was \$16,893. TVU's water system is comprised of its distribution facilities. It receives bulk water service from Lee County Utilities Department (Lee

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County). On August 3, 1994, TVU's shareholders voted to sell the water and wastewater facilities.

By Order No. PSC-95-0576-FOF-SU, issued May 9, 1995, in Docket No. 940963-SU, the Commission approved the application of North Fort Myers Utility, Inc. (NFMU), for amendment of its Wastewater Certificate No. 247-S to include the territory served by TVU, and for cancellation of TVU's Wastewater Certificate No. 332-S, which was processed under Section 367.071, Florida Statutes, as an application for transfer of TVU's territory to NFMU, cancellation of Certificate No. 332-S, and amendment of Certificate No. 247-S. On May 24, 1995, the Office of Public Counsel (OPC) filed a Motion for Reconsideration and Motion for Clarification of Order No. PSC-95-0576-FOF-SU. On August 8, 1995, Order No. PSC-95-0965-FOF-SU was issued granting in part and denying in part OPC's Motion for Reconsideration, amending Order No. PSC-95-0576-FOF-SU, and denying OPC's Motion for Clarification. Orders Nos. PSC-95-0576-FOF-SU and PSC-95-0965-FOF-SU are currently on appeal.

On December 8, 1994, TVU entered into a water service agreement with Tamiami Village Water Company, Inc. (TVWC or buyer), contingent upon Commission approval. Section 367.071, Florida Statutes, requires that no utility shall sell, assign, or transfer its certificate of authorization, facilities or any portion thereof, or majority organizational control without the approval of the Commission. On January 3, 1995, TVWC filed an application for the transfer of TVU's Water Certificate No. 388-W to TVWC. Concurrent with the transfer application, TVWC filed a petition for a limited proceeding to increase rates to recover increased operation and maintenance expenses as a result of the pending transfer. However, on February 15, 1995, TVWC filed a request for withdrawal of the petition. The Commission acknowledged that request by Order No. PSC-95-0466-FOF-WU, issued April 12, 1995.

TVWC provided notice of the transfer application pursuant to Sections 367.071 and 367.045, Florida Statutes, and Rule 25-30.030, Florida Administrative Code. Because numerous customers of TVU filed objections to the application, this matter was set for a formal hearing on November 3, 1995, in Ft. Myers. However, all objecting customers subsequently withdrew their objections and the hearing date was cancelled.

Application

The application is in compliance with Section 367.071, Florida Statutes, and other pertinent statutes and administrative rules concerning an application for transfer of certificate. In particular, the application contains a check in the amount of \$750,

which is the correct filing fee pursuant to Rule 25-30.020, Florida Administrative Code.

Further, Rule 25-30.037(2)(g), Florida Administrative Code, requires that the utility provide evidence that it owns the land upon which its treatment facilities are located. As noted above, the utility purchases water from Lee County, and therefore does not own a water treatment plant. However, the applicant has provided evidence that the utility owns the land upon which its distribution system is located. Additionally, a description of the territory served by the utility is appended to this Order as Attachment A, and is incorporated herein by reference.

The application contains proof of the utility's compliance with the noticing provisions set forth in Rule 25-30.030, Florida Administrative Code, including notice to the customers of the system to be transferred. As noted above, several objections to the notice of application were received and the matter was set for hearing. However, all objecting customers subsequently withdrew their objections either by letter or by documented telephone contact and the hearing was cancelled. Based on the foregoing, we hereby acknowledge the withdrawals of the several objections to the application filed in this docket.

With regard to the buyer's financial ability to operate the utility, TVWC indicates that it has \$26,095 of capital available to operate the utility in addition to a \$30,000 approved line of credit with a local bank. We believe that TVWC has adequate funds to fulfill the commitments and obligations related to the operation of the distribution facility and to make improvements to the facility as they may be needed in the future. In addition, the investment by the buyer was made in cash and no debt was assumed.

With regard to the buyer's technical ability, the president and owner of TVWC has stated that he is familiar with the current operations of the facility, and that he is a Certified Public Accountant presently engaged by TVU to prepare the utility's annual report. He was also engaged by TVU during its rate case and previous index filings and pass-throughs, and has been involved in water and wastewater operations for the past fifteen years. He has served as an external auditor and has performed other accounting functions for other utilities. Moreover, we have been informed by Lee County that the TVU distribution system is sufficient to serve the present customers, and that this system has not been the subject of any enforcement action within the past two years. Lee County administers, monitors, and enforces all of the federal, state, and local laws, statutes, and rules pertaining to public drinking water systems on a countywide basis.

The application contains a copy of the contract for the sale of the TVU water system and a statement which includes the purchase price, terms of payment, and a list of assets purchased and liabilities assumed. TVWC provided a statement that it will fulfill the outstanding commitments, obligations and representations of TVU with regard to utility matters.

Based on the foregoing, we find that the transfer of Water Certificate No. 388-W from TVU to TVWC is in the public interest and it is hereby approved.

Rate Base

According to the application, the net book value of the system being transferred as of the date of the proposed transfer is \$76,517. Rate base was previously established by this Commission in Docket No. 910560-WS, which was an application for approval of a rate increase. According to Order No. PSC-92-0807-FOF-WS, issued August 11, 1992, in that docket, rate base at that time was \$108,485. Our calculation of rate base is shown on Schedule No. 1, with an adjustment to rate base shown on Schedule No. 2.

We have conducted an audit of the utility's books and records to determine the rate base (net book value) at the time of transfer. We have determined that the utility's books and records are maintained in substantial compliance with Commission directives. However, as a result of the rate base audit, we hereby adjust the accumulated amortization of contributions-in-aid-of-construction (CIAC). The utility used an amortization rate for CIAC of 4.1%, when this rate should have been changed based on current depreciation expense to plant. The depreciation expense net of office equipment and general plant is \$6,867. Plant net of office equipment and general plant is \$207,178, with a composite rate of 3.31%. Therefore, an adjustment is necessary to reduce the accumulated amortization of CIAC by (\$3,441).

An acquisition adjustment results when the purchase price of a utility differs from the original cost calculation. The acquisition adjustment resulting from the transfer of TVU is (\$33,795). In the application, TVWC requested an acquisition adjustment in order to balance the books. However, on October 5, 1995, the president and owner of TVWC filed an affidavit stating that TVWC withdraws this request, and that TVWC agrees that a negative acquisition adjustment should not be included in the calculation of rate base for transfer purposes. The owner originally believed that the Commission would require the acquisition adjustment in order for the utility to balance the books for reporting purposes. He now understands that this is not

necessary. Further, the owner stated that he did not realize that an acquisition adjustment would affect rate base, and that it was not his intention to ask for a negative acquisition adjustment because he agrees with our calculation of rate base.

It is Commission practice that in the absence of extraordinary circumstances, the purchase of a utility system at a premium or discount shall not affect the rate base calculation. We do not view a desire to balance the books as extraordinary. Moreover, TVWC has withdrawn its request for inclusion of an acquisition adjustment and agrees that a negative acquisition adjustment should not be included in the calculation of rate base for transfer purposes. Therefore, a negative acquisition adjustment shall not be included in the calculation of rate base.

Based on the adjustment as set forth herein, we find that rate base for TVWC is \$57,795 for the water system as of December 31, 1994. This rate base calculation is used purely to establish the net book value of the property being transferred, and does not include the normal ratemaking adjustments of working capital calculations and used and useful adjustments.

Rates and Charges

The utility's current rates and charges became effective on August 31, 1992, pursuant to Order No. PSC-92-0807-FOF-WS, issued in Docket No. 910560-WS. The Commission approved these rates when TVU applied for a rate increase. Since then, the utility has filed for a price index increase every year, the most recent being the 1994 index which became effective May 15, 1995. Rule 25-9.044(1), Florida Administrative Code, requires the new owner of a utility to adopt and use the rates, classification and regulations of the former operating company unless authorized to change by this Commission.

TVWC does not request a change in the rates and charges of the utility and we see no reason to change them at this time. TVWC shall continue to charge the rates and charges approved in TVU's tariff until authorized to change by this Commission in a subsequent proceeding. TVWC has filed revised tariff sheets reflecting the change in ownership. The rates and charges shall be effective for service rendered or connections made on or after the stamped approval date on the tariff sheets.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the transfer of Certificate No. 388-W from Tamiami Village Utility,

Inc., Post Office Box 4458, North Fort Myers, Florida 33918-4458, to Tamiami Village Water Company, Inc., 13281 McGregor Boulevard, Fort Myers, Florida 33919, is hereby approved. It is further

ORDERED that rate base for purposes of the transfer is \$57,795 as of December 31, 1994. It is further

ORDERED that Tamiami Village Water Company, Inc., shall adopt and begin charging the rates and charges which were previously approved in Tamiami Village Utility, Inc.'s, tariff until authorized to change by this Commission. It is further

ORDERED that the revised tariff sheets filed by Tamiami Village Water Company, Inc., reflecting the change in ownership, shall be effective for service rendered or connections made on or after the stamped approval date. It is further

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

ORDERED that the provisions of this Order regarding the establishment of rate base for purposes of the transfer 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.

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By ORDER of the Florida Public Service Commission, this 28th
day of November, 1995.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

by: Kary Flynn
Chief, Bureau of Records

(S E A L)

RGC

Commissioner J. Terry Deason dissents with an opinion, in which Commissioner Joe Garcia concurs.

Commissioner J. Terry Deason, dissenting from the majority decision to exclude a negative acquisition adjustment from the calculation of rate base.

I dissent from the majority decision only on the issue of non-recognition of the acquisition adjustment. The Commission's policy to ignore acquisition adjustments in the absence of good cause has been maintained for the purpose of giving an incentive to better managed and/or better financed utilities to take over struggling utilities. The incentive has historically been given with no showing that the acquiring utility is better managed or financed. Regardless of the validity of maintaining that policy, it appears to have no application here.

For an incentive to work, the target of the incentive must be aware of the existence of the incentive and act accordingly. Otherwise, the regulatory mechanism that extends the incentive (i.e. the bonus ratebase allowance that gives the owner a return on investment he has not made) results in ratepayers receiving nothing in the bargain but the opportunity to pay higher rates.

Extending the policy to a utility purchaser who acts without knowledge of the "incentive" is akin to paying a reward for the capture of a dangerous criminal when the capturer was unaware of the existence of the reward. It is a well-settled principle of law that the courts will not enforce a claim for such a payment. Certainly the offeror may still pay the reward out of civic-

mindedness. In that instance, however, such generosity and gratuity with the offeror's own funds might be laudable. In the case where ratepayer funds are not at stake, the Commission should not be similarly generous with those funds.

In this case it is clear that the applicant was unaware of our policy. There is nothing in the record which indicates that this purchase was made in reliance upon the policy. In fact, the owner's initial request that the negative acquisition adjustment be recognized indicates just the opposite. It appears that he was either unaware of the policy or willing to accept a return on the purchase price -- his investment in the system. Understandably, after deferral and after learning that the Commission's policy would result in a higher ratebase, the applicant withdrew his request. These circumstances do not support application of our policy. Therefore, I dissent.

Commissioner Joe Garcia concurs.

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), 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, our actions regarding the establishment of rate base for purposes of the transfer are preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the actions 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, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on December 19, 1995. 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

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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

Tamiami Village Water Company, Inc.

TERRITORY DESCRIPTION

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

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

Subject to easements, restrictions and reservations of record.

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

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

Thence N. 05°56'20"E. along said prolongation for 348.19 feet; thence S. 84°03'40"E. for 290.00 feet; thence S.05°56'20"W. along

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

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

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

Thence continue N.05°56'20"E. along said prolongation for 371.45 feet; thence S.89°53'40"E. along the Southerly line of an 80.00 feet wide parcel 11 land as recorded in O.R.B. 1687, page 1106 for 291.50 feet; thence S.05°56'20"W. along said Westerly right of way (100.00 feet from the center line) of said Tamiami Trail for 401.00 feet; thence N.84°03'40"W. for 290.00 feet to the Point of Beginning. Containing 2.572 acres more or less.

SCHEDULE NO. 1

Tamiami Village Utility, Inc.

SCHEDULE OF WATER RATE BASE

As of December 31, 1994

<u>DESCRIPTION</u>	<u>BALANCE PER UTILITY</u>	<u>COMMISSION ADJUSTMENTS</u>	<u>BALANCE PER COMMISSION</u>
Utility Plant in Service	216,505		216,505
Land	0		0
Accumulated Depreciation	(116,293)		(116,293)
Contributions-in- aid-of-Construction	(103,713)		(103,713)
Amortization of Accumulated CIAC	<u>64,736</u>	<u>(3,441)</u>	<u>61,295</u>
TOTAL	<u>\$61,236</u>	<u>(\$3,441)</u>	<u>\$57,795</u>

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SCHEDULE No. 2

Tamiami Village Utility, Inc.

SCHEDULE OF WATER RATE BASE ADJUSTMENTS

EXPLANATION

ADJUSTMENT

Accumulated Amortization of CIAC To adjust accumulated amortization rate from 4.1% to 3.31%.	<u>\$ 37,587</u>
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