

State of Florida



## Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FLORIDA 32399-0850

### -M-E-M-O-R-A-N-D-U-M-

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**DATE:** November 23, 2016

**TO:** Carlotta S. Stauffer, Commission Clerk, Office of Commission Clerk

**FROM:** Kelley F. Corbari, Senior Attorney, Office of the General Counsel *KFC*

**RE:** **Docket No. 140219-WU** – Application for staff-assisted rate case in Polk County by Alturas Utilities, LLC.

**Docket No. 140220-WU** – Application for staff-assisted rate case in Polk County by Sunrise Utilities, LLC.

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Attached please find a copy of filings made at the Florida Department of Environmental Protection in “*State of Florida, Department of Health in Polk County v. Sunrise Utilities, LLC and Alturas Utilities, LLC.*” Please file the attached document in the documents tab of the above-referenced docket file.

Thank you for your assistance in this matter. Should you have any questions, please do not hesitate to contact me.

KFC

Attachments:

- Notice of Violation and Orders for Corrective Action
- Petition for Informal Administrative Proceeding
- Department of Health’s Motion to Dismiss

RECEIVED -FPSC  
2016 NOV 23 PM 12:31  
COMMISSION  
CLERK

## Kelley Corbari

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**From:** Reis, Roland <Roland.Reis@flhealth.gov>  
**Sent:** Tuesday, November 22, 2016 3:41 PM  
**To:** Kelley Corbari  
**Cc:** Roth, Danielle; Stephanie Cuello; Whitley, Arcelia  
**Subject:** Sunrise Utilities  
**Attachments:** 16-10-18 NOV.pdf; 16-11-22 Motion to Dismiss.pdf; Exhibit A.pdf; Exhibit B.pdf; 16-11-10 Request for Hearing.pdf

Hello Kelley, just to keep you updated, please see attached administrative pleadings.

Enjoy your holidays...

Regards,

Roland Reis, Chief Legal Counsel  
Department of Health  
Heartland Legal Consortium  
1290 Golfview Ave., 4<sup>th</sup> Floor  
Bartow, FL 33830  
Tel. (863) 578-2105  
Fax. (863) 519-7626  
[Roland.Reis@flhealth.gov](mailto:Roland.Reis@flhealth.gov)

**BEFORE THE FLORIDA DEPARTMENT OF  
ENVIRONMENTAL PROTECTION**

**STATE OF FLORIDA, DEPARTMENT OF  
HEALTH IN POLK COUNTY**

**IN THE OFFICE OF THE  
SOUTHWEST DISTRICT**

**Petitioner,**

**OGC FILE NO.: 15-653PW1739**

**v.**

**SUNRISE UTILITIES, LLC, and  
ALTURAS UTILITIES, LLC**

**Respondents.**

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**NOTICE OF VIOLATION AND  
ORDERS FOR CORRECTIVE ACTION**

**TO:**

Stuart Sheldon, President  
Sunrise Utilities, LLC  
20 W. Tropical Way  
Fort Lauderdale, FL 33317

Stuart Sheldon, President  
Alturas Utilities, LLC  
20 W. Tropical Way  
Fort Lauderdale, FL 33317

The Department of Health (Department), pursuant to Interagency Agreement with the Department of Environmental Protection (DEP) gives notice to Sunrise Utilities, LLC (Sunrise), and to Alturas Utilities, LLC (Alturas) (Jointly, "Respondents") of the following findings of fact and conclusions of law with respect to violations of Chapters 403 and 376, Florida Statutes (FS), and Chapter 62, Florida Administrative Code (FAC).

**FINDINGS OF FACT  
PARAGRAPHS APPLICABLE TO ALL COUNTS**

1. The Department, pursuant to Interagency Agreement with the Florida Department of Environmental Protection (DEP), is the administrative agency of the State of Florida charged with the duty to administer and enforce the provisions of the Florida Safe Drinking Water Act, Sections 403.850, et seq., Florida Statutes, and the rules

promulgated thereunder, Florida Administrative Code (FAC) Title 62, within Polk County, Florida.

2. Respondents are persons within the meaning of Section 403.852(5), Florida Statutes.
3. Respondent Sunrise Utilities, LLC (Sunrise), owns and operates a Community Public Water System (PWS), PWS ID No. 6531739, located on Sunrise Terrace in Auburndale, Polk County, Florida (Sunrise PWS). Sunrise's water treatment plant (WTP) was first placed into service around 1970.
4. Respondent Sunrise Utilities, LLC, is also licensed by the Florida Public Service Commission (PSC) to operate Sunrise PWS as a drinking water utility, License # WU870. The utility was issued a Grandfather certificate by the PSC in 1997. Sunrise first became responsible for the utility in 2005.
5. Respondent Alturas Utilities, LLC, is owner of the real property and permanent structures on which Sunrise Utilities, LLC, operates Sunrise PWS, Polk County Tax Collector Parcel # 252821000000034040.
6. Respondent Alturas Utilities, LLC, also owns a (separate) PWS regulated by the Department, and is also licensed by the Florida Public Service Commission to operate a (separate) drinking water utility in the State of Florida.
7. Respondents are "suppliers of water" within the meaning of Section 403.852(8), Florida Statutes.
8. The owners and managing members of Sunrise Utilities, LLC, are Stuart Sheldon and Leslie Szabo.
9. The owners and managing members of Alturas Utilities, LLC, are Stuart Sheldon and Leslie Szabo.
10. With respect to Sunrise PWS, Alturas Utilities, LLC, is and acts as an alter ego of Sunrise Utilities, LLC.
11. Alturas Utilities, LLC, and Sunrise Utilities, LLC, accordingly are jointly and mutually responsible to the Department for compliance of Sunrise PWS with the Florida Safe Drinking Water Act; and to the customers of Sunrise Utilities, LLC, for continued supply of their drinking water services.

### COUNT I

12. Sunrise PWS is serviced by two hydro-pneumatic storage tanks, consisting of a 3,000 gallon water tank (Tank 1) which runs in series and feeds sequentially into a 6,000 gallon water tank (Tank 2), located adjacent to the well head.

13. On or about July 19, 2016, Tank 1 developed a hole which lead to a temporary shutdown of the PWS due to loss of pressure, and disruption in the water supply to the customers.

14. Respondents welded a metal plate over the hole to patch the leak. The welder secured by Respondents for the repair was not authorized by the National Board of Boiler and Pressure Vessel Inspectors (National Board) to repair pressurized vessels, as required by FAC Rule 555.330(3), Recommended Standards for Water Works.

15. As a result, Tank 1 can no longer be considered certified by the American Society of Mechanical Engineers (ASME), as required by FAC Rule 555.330(4), Standards of the American Water Works Association (AWWA).

16. On January 14, 2016, the Department and Sunrise had entered into a Consent Order (CO) for overdue maintenance of the 3,000 gallon hydropneumatic holding tank (Tank 1) on its PWS. Required maintenance included abrasive blast cleaning and interior recoating. The CO provided for progressive and cumulative fines for delays in the maintenance requirements.

17. Respondents never managed to complete, conduct, or otherwise comply with the Tank 1 maintenance requirements of the Consent Order.

18. The breakdown and loss of structural integrity created by the leak to Tank 1 alter the conditions of the January 2016 Consent Order, requiring a new Licensed Florida Professional Engineer or National Board inspection and certification if Respondents plan to continue using Tank 1.

### COUNT II

19. Respondents failed to notify the Department of the hole in Tank 1, and consequent disruption of the PWS water supply. Development of the leak in the holding tank, the shutdown of the system and consequent disruption in the water supply constitutes an emergency or abnormal operating condition for which the Department must be notified.

**COUNT III**

20. Respondents failed to provide boil water notices according to Department of Health "Guidelines for the Issuance of Precautionary Boil Water Notices".

**COUNT IV**

21. Tank 2 has deteriorated and is overdue for maintenance (interior blast cleaning and recoating). Necessary repairs for Tank 2 were noted under recommendations of Riddle-Newman Engineering for Tank No. 2, in their inspection dated May 1, 2013 which concluded that the tank would have to be cleaned and recoated "as soon as possible".

22. Respondents have failed to abrasively blast clean and recoat the interior of the 6,000 gallon hydropneumatic drinking-water storage tank (Tank 2), with an NSF-approved interior coating system for potable water. Typical coating systems are detailed in AWWA D102.

23. Tank 2 must be revamped to prevent further corrosion, or larger breakdowns such as have occurred with Tank 1 (Count I).

**COUNT V**

24. The Department has incurred expenses to date while investigating this matter in the amount of \$750 in fines and \$325 in administrative costs.

**CONCLUSIONS OF LAW**

The Department has evaluated the Findings of Fact with regard to the requirements of Chapters 403 and 376, FS, and FAC Title 62. Based on the foregoing facts the Department has made the following conclusions of law:

25. Respondents are "persons" within the meaning of §§403.031 and 403.852, FS.

26. Respondents are a Community Public Water System (PWS), PWS ID No. 6531739, as defined in §403.852(2), FS, and FAC Rule 62-555.350.

27. The facts related in Count I constitute a violation of FAC Rule 62-555.350(2), which requires suppliers of water to keep all necessary public water system components in operation and shall maintain such components in good operating condition so the components function as intended.

28. The facts related in Count II constitute a violation of FAC Rule 62-555.520(1)(d), which holds suppliers of water responsible for notifying the Department about emergency or abnormal operating conditions.

29. The facts related in Count III constitute a violation of FAC Rule 62-555.350(11), FAC Rule 62-555.335(18), §403.857, FS, and §381.0062(3)(c), FS, which requires boil water notices be issued when there are breaches and disruptions in the water supply, and that recession notices be provided once water supply and quality has been restored, according to Department of Health guidance provided in FAC 62-555.335.

30. The facts related in Count IV constitute a violation of FAC Rule 62-555.350(2), which requires suppliers of water to keep all necessary public water system components in operation and shall maintain such components in good operating condition so the components function as intended.

31. The costs and expenses related in Count V are reasonable costs and expenses incurred by the State while investigating this matter, which are recoverable pursuant to Section 403.141, FS.

#### **ORDERS FOR CORRECTIVE ACTION**

32. The Department has alleged that the activities related in the Findings of Fact constitute violations of Florida law. The Orders for Corrective Action state what you, Respondents, must do in order to correct and redress the violations alleged in this Notice.

33. The Department will adopt the Orders for Corrective Action as part of its Final Order in this case unless Respondents file a timely petition for a formal hearing or informal proceeding, pursuant to Section 403.121, FS. (See Notice of Rights.)

34. If Respondents fail to comply with the corrective actions ordered by the Final Order, the Department is authorized to file suit seeking judicial enforcement of the Department's Order pursuant to Sections 120.69; 403.121; and 403.131, FS.

35. Pursuant to the authority of Sections 403.061(8) and 403.121, FS, the Department proposes to have adopted in DEP's Final Order in this case the specific corrective actions that will redress the alleged violations.

36. Respondents shall forthwith comply with all DEP rules regarding Public Water Systems. Respondents shall correct and redress all violations in the time periods required below and shall comply with all applicable rules as set forth herein:

- a) FAC Rule 62-555.350(2), requiring Respondents to either repair Tank 1 (with overdue service maintenance) according to DEP standards and guidelines and properly certified inspection reports and approvals from a State of Florida professional engineer or a National Board authorized inspector; or to otherwise replace Tank 1, within 30 days from this Notice.
- b) FAC Rule 62-555.350(2), requiring Respondents to provide overdue service maintenance to Tank 2 according to DEP standards and guidelines within 30 days from this Notice.

37. Respondent Sunrise shall submit to the Department by November 15, 2016, a Report from a National Board authorized person or organization, or by a State of Florida licensed engineer, indicating whether Tank 1 can be brought into compliance with ASME standards, or must instead be replaced.

38. Respondents shall take any and all actions necessary to bring Tank 1 into compliance, either by repairs and maintenance, or by replacement as may be indicated in the Report, within the subsequent 30 days, or by December 15, 2016.

39. Respondent Sunrise shall submit to the Department by December 15, 2016, a copy of the completion report noting the interior to Tank 2 has been abrasively blast cleaned and recoated as identified above. The tank shall be inspected on or before the 5 year anniversary of the last inspection, which is May 1, 2018.

40. The fine and administrative costs associated with the violation of the January 14, 2016 Consent Order is \$750 in fines and \$325 in administrative costs, payable within 30 days of this Notice.

41. The fines and administrative costs associated with these current violations shall be based on the date of the completion report for the repairs and/or replacements of Tanks 1 and 2, according to the following schedule:

<b>Date</b>	<b>Fine</b>	<b>Admin Cost</b>
11/1/16 – 11/30/16	\$1,000.00	\$250.00
12/1/16 – 12/31/16	\$2,250.00	\$275.00
1/1/17 – Thereafter	\$5,000.00	\$300.00

42. Thirty days (30) after the interior to Tank 2 has been abrasively blast cleaned and recoated, Sunrise shall pay the Department stipulated fines and administrative cost as outlined in the above table. These amounts include civil penalties for alleged violations of Section 403.859, Florida Statutes, and of the Department's rules for costs and expenses incurred by the Department during the investigation of this matter and the preparation and tracking of this Consent Order.

43. Within 30 days of this Notice, Respondent shall make payment to the Department for costs and expenses in the amount of \$750 in fines and \$325 in administrative cost. Payment shall be made by cashier's check or money order. The instrument shall be made payable to the "Florida Department of Health in Polk County" and shall include thereon "OGC Case No. 15-653PW1739". The payment shall be sent to the Florida Department of Health in Polk County, 2090 East Clower Street, Bartow, Florida 33830.

44. Respondents shall allow all authorized representatives of the Department access to the property and plant at reasonable times for the purpose of performing inspections to determine compliance with the rules of the Department.

### **NOTICE OF RIGHTS**

Respondents' rights to negotiate or litigate this action are described below. Please read them carefully.

#### **Right to Negotiate**

1. This matter may be resolved if the Department and Respondents enter into a Consent Order, in accordance with Section 120.57(4), FS, upon such terms and conditions, as may be mutually agreeable.

### Right to Request a Hearing

2. Respondents have the right to a formal administrative hearing pursuant to §§120.569 and 120.57(1), FS, if Respondent disputes issues of material fact raised by this Notice of Violation and Orders for Corrective Action ("Notice").

At a formal hearing, Respondents will have the opportunity to be represented by counsel or other qualified representative, to present evidence and argument on all issues involved, and to conduct cross-examination and submit rebuttal evidence.

3. Respondents have the right to an informal administrative proceeding pursuant to Sections 120.569 and 120.57(2), FS, if Respondents do not dispute issues of material fact raised by this Notice. If an informal proceeding is held, Respondents will have the opportunity to be represented by counsel or other qualified representative, to present to the agency written or oral evidence in opposition to the Department's proposed action, or to present a written statement challenging the grounds upon which the Department is justifying its proposed action.

4. If Respondents desires a formal hearing or an informal proceeding, Respondents must file a written responsive pleading entitled "Petition for Administrative Proceeding" within 20 days of receipt of this Notice. The petition must be in the form required by F.A.C. Rule 28-106.2015 and include the following:

- (a) The name, address, and telephone number, and facsimile number (if any) of each petitioner if respondents are not represented by an attorney or qualified representative;
- (b) The name, address, telephone number, and facsimile number of the attorney or qualified representative of respondents, if any, upon whom service of pleadings and other papers shall be made;

- (c) A statement of when petitioner received the Notice;
- (d) A statement requesting an administrative hearing identifying those material facts that are in dispute. If there are none, the petition must so indicate; and
- (e) The notation "OGC Case No. 15-653PW1739" shall be included in the request.

A petition is filed when it is received by the Department of Environmental Protection, Office of General Counsel, 2600 Blair Stone Road, Tallahassee, Florida 32399-2400. A copy of the Petition must also be mailed at the time of filing to the District Office named above at the address indicated. Failure to file a petition within the 21 days constitutes a waiver of any right such person has to an administrative hearing pursuant to Section 120.57, Florida Statutes.

#### Right to Request Mediation

5. Respondents may request mediation after filing a petition for hearing. Requesting mediation will not adversely affect the right to a hearing if mediation does not result in a settlement. The mediation will be held if the parties enter a written agreement, which is described below, within 30 days after receipt of the NOV. The mediation must be completed within 60 days of the agreement unless the parties otherwise agree.

The agreement to mediate must include the following:

- (a) The names, addresses, and telephone numbers of any persons who may attend the mediation;
- (b) The name, address, and telephone number of the mediator selected by the parties, or a provision for selecting a mediator within a specified time;
- (c) The agreed allocation of the costs and fees associated with the mediation;
- (d) The agreement of the parties on the confidentiality of discussions and documents introduced during mediation;

- (e) The date, time, and place of the first mediation session, or a deadline for holding the first session, if no mediator has yet been chosen;
- (f) The name of each party's representative who shall have authority to settle or recommend settlement; and
- (g) The signatures of all parties or their authorized representatives.

As provided in §120.573, FS, the timely agreement of all parties to mediate will toll the time limitations imposed by §§120.569 and 120.57, FS, for requesting and holding an administrative hearing. Unless otherwise agreed by the parties, the mediation must be concluded within sixty days of the execution of the agreement. If mediation results in settlement of the administrative dispute, the Department must enter a final order incorporating the agreement of the parties. Persons whose substantial interests will be affected by such a modified final decision of the Department have a right to petition for a hearing only in accordance with the requirements for such petitions set forth above, and must therefore file their petitions within 21 days of receipt of this notice.

If mediation terminates without settlement of the dispute, the Department shall notify the Respondent in writing that the administrative hearing processes under §§120.569 and 120.57, FS, remain available for disposition of the dispute, and the notice will specify the deadlines that then will apply for challenging the agency action and electing remedies under those two statutes.

#### Waivers

6. Respondents will waive the right to a formal hearing or an informal proceeding if a petition is not filed with the Department within 20 days of receipt of this Notice. These time limits may be varied only by written consent of the Department.

#### General Provisions

7. The allegations of this Notice together with the Orders for Corrective Action will be adopted by the Department in a Final Order if Respondents fail to timely

file a petition for a formal hearing or informal proceeding, pursuant to §403.121, FS. A Final Order will constitute a full and final adjudication of the matters alleged in this Notice.

8. If Respondents fail to comply with the Final Order, the Department is authorized to file suit in circuit court seeking a mandatory injunction to compel compliance with the Order, pursuant to §§120.69; 403.121; and 403.131, FS. The Department may also seek to recover damages, all costs of litigation including reasonable attorney's fees and expert witness fees, and civil penalties of not more than \$5,000 per day for each day that Respondents have failed to comply with the Final Order.

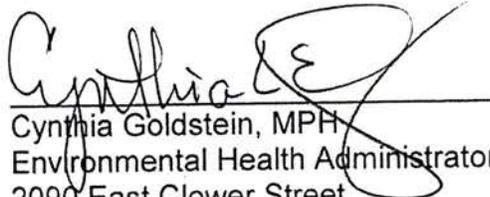
9. This matter may be resolved if the Department and Respondent enter into a Consent Order, in accordance with Section 120.57(4), FS, upon such terms and conditions as may be mutually agreeable.

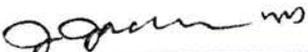
10. The Department is not barred by the issuance of this Notice from maintaining an independent action in circuit court with respect to the alleged violations. If such action is warranted, the Department may seek injunctive relief, damages, civil penalties of not more than \$5,000 per day, and all costs of litigation.

11. Copies of Department rules referenced in this Notice may be examined at any Office of the Department of Environmental Protection or may be obtained by written request to the person listed on the last page of this Notice.

DONE AND ORDERED this 18<sup>th</sup> day of October, 2016.

**FLORIDA DEPARTMENT OF HEALTH  
POLK COUNTY HEALTH DEPARTMENT**

  
\_\_\_\_\_  
Cynthia Goldstein, MPH  
Environmental Health Administrator  
2090 East Clower Street  
Bartow, Florida 33830

  
\_\_\_\_\_  
Joy L. Jackson, MD, Director  
Florida Department of Health in Polk County  
1290 Golfview Ave., 4<sup>th</sup> Floor  
Bartow, Florida 33830

Copies furnished to:

Leslie Szabo

FLORIDA DEPARTMENT OF  
ENVIRONMENTAL PROTECTION

SUNRISE UTILITIES, LLC, and  
ALTURAS UTILITIES, LLC,  
Petitioner,

CASE NO: OGC FILE NO.: 15-653W1739

vs.

STATE OF FLORIDA, DEPARTMENT  
OF HEALTH IN POLK COUNTY,  
Respondent.

RECEIVED

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Environmental Health  
FDOR - Bartow

**PETITION FOR INFORMAL ADMINISTRATIVE PROCEEDINGS**

Pursuant to Florida Administrative Code (and other applicable statutes, if any), the Petitioner, SUNRISE UTILITIES, LLC and ALTURAS UTILITIES, LLC., appearing pro se in the above captioned action, hereby file this Petition for Informal Administrative Proceedings ("Petition"), in regard to the Notice of Violation and Order for Corrective Action submitted by Respondent, State of Florida, Department of Health in Polk County, and in support of its petition, LESLIE SZABO, as owner and managing member of SUNRISE UTILITIES, LLC and ALTURAS UTILITIES, LLC, states as follows:

1. **Rule 28-106.201(2)(a), Florida Administrative Code. The name and address of each agency affected and each agency's file or identification number, if known.** The State Agency affected is the State of Florida Department of Health in Polk County, whose address is 1290 Golfview Avenue, 4th Floor, Bartow, Florida.

2. **Rule 28-106.201(2)(b), Florida Administrative Code. The name, address, any e-mail address, any facsimile number, and telephone number of the petitioner, if the petitioner is not represented by an attorney or a qualified representative; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding.** The names and address of the petitioners are SUNRISE UTILITIES, LLC, whose address is 20 West Tropical Way, Fort Lauderdale, Florida 33317 and ALTURAS UTILITIES, LLC, whose address is 20 West Tropical Way, Fort Lauderdale, Florida 33317. For the purpose of this petition, the

petitioner's contact information shall be LESLIE SZABO as owner, manager, and primary stock holder, whose mailing address is 20 West Tropical Way, Fort Lauderdale, Florida 33317, contact phone number (954) 632-8827, no fax number available and e-mail address: l.szabo@rogers.com.

3. The petitioner is not represented by an attorney as petitioner is filing this petition Pro Se. All pleading and other papers shall be made directly to LESLIE SZABO as owner, manager, and majority stock holder, whose mailing address is 20 West Tropical Way, Fort Lauderdale, Florida 33317, contact phone number (954) 632-8827, no fax number available and e-mail address: l.szabo@rogers.com.

4. **Rule 28-106.201(2)(c), Florida Administrative Code. A statement of when and how the petitioner received notice.** Petitioner received Notice of Violation and Orders for Corrective Action on October 27, 2016 by process server. Petitioner was served with the same exact notice on two separate occasions after the serving of the notice on October 27, 2016.

5. **Rule 28-106.201(2)(d), Florida Administrative Code. A statement of all disputed issues of material fact.** Petitioners request an informal administrative hearing on OGC Case No. 15-653.PW1379 regarding all issue in violation stated on the Notice of Violation and Order for Corrective Action.

6. **Rule 28-106.201(2)(g), Florida Administrative Code. A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the agency to take with respect to the agency's proposed action.** SUNRISE UTILITIES, LLC and ALTURAS UTILITIES, LLC requests protection for SUNRISE UTILITIES, LLC and ALTURAS UTILITIES, LLC's customer's interest by maintaining the lowest water rate base for their customers for the entire area;

#### **Reservation of Right to Amend**

SUNRISE UTILITIES, LLC and ALTURAS UTILITIES, LLC.'s reserves its right to amend this Petition following its receipt and review of additional documents and information that will be received through public records requests and discovery conducted in this proceeding and those materials are analyzed.

Respectfully submitted,

*[Handwritten Signature]*

LESLIE SZABO, LESLIE SZABO as owner,  
manager, and primary stock holder  
Petitioner  
20 West Tropical Way  
Fort Lauderdale, Florida 33317  
Contact phone number (954) 632-8827  
E-mail address: l.szabo@rogers.com

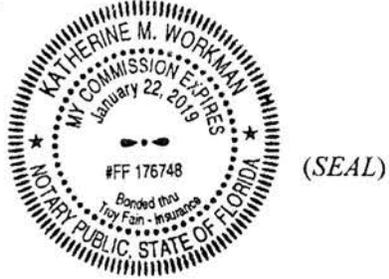
11/10/2016  
Date

State Of FLORIDA  
County Of Polk

Affirmed and signed before me, on 11/10/2016, by LESLIE SZABO  
[ ] who is personally known to me, or  
[✓] who produced the following identification: Florida Driver License

LESLIE SZABO personally appeared before me at the time of notarization, and, after being given the oath,  
signed and acknowledged signing the foregoing answer and response.

*Katherine M. Workman*  
Notary Public  
Expiration Date & Commission Number



**CERTIFICATE OF SERVICE**

I certify that a copy of this document was [ ] hand delivered [✓] mailed [ ] mailed & faxed to the  
following person(s) on 11/10/2016.

Environmental Health Administrator  
Attn: Cynthia Goldstein, MPH  
2090 East Clower Street  
Bartow, Florida 33830

Florida Department of Health in Polk County  
Attn: Joy L. Jackson MD, Director  
1290 Golfview Avenue, 4th Floor  
Bartow, Florida 33830

*[Handwritten Signature]*

LESLIE SZABO, LESLIE SZABO as  
owner, manager, and primary stock holder  
Petitioner  
20 West Tropical Way  
Fort Lauderdale, Florida 33317

11/10/2016  
Date

**BEFORE THE FLORIDA DEPARTMENT OF  
ENVIRONMENTAL PROTECTION**

**STATE OF FLORIDA, DEPARTMENT OF  
HEALTH IN POLK COUNTY**

**Petitioner,**

**DEP CASE NO.: 16-1398  
OGC FILE NO.: 15-653PW1739**

**v.**

**SUNRISE UTILITIES, LLC, and  
ALTURAS UTILITIES, LLC**

**Respondents.**

**DEPARTMENT OF HEALTH MOTION TO DISMISS  
PETITION FOR INFORMAL ADMINISTRATIVE PROCEEDINGS**

**COMES NOW** the Department of Health in Polk County (Department), by and through its undersigned counsel, and states as follows:

1. On October 18, 2016, the Department filed a Notice of Violation (NOV) against Respondents, which are Limited Liability Companies in the State of Florida.
2. The NOV identified Stuart Sheldon as Registered Agent for both Sunrise Utilities, LLC (Sunrise), and Alturas Utilities, LLC (Alturas), according to records provided to the Florida Department of State (DOS) (Composite Exhibit A) and available on the DOS website. (Composite Exhibit B)
3. DOS records also designate or declare Sunrise and Alturas to have a "manager", thereby being "manager-managed" LLC's, and that Stuart Sheldon is the "manager" of Sunrise and Alturas. (Exhibits A and B)
4. On November 14, 2016, a Petition for Informal Administrative Proceedings was received by the Department of Health in Polk County, dated November 10, 2016, and submitted by Leslie Szabo on behalf of Sunrise and Alturas.

5. Mr. Szabo identifies himself as the "owner, manager, and primary stockholder" of the Respondent Companies.
6. However, according to DOS records, Mr. Szabo has not been designated as a legal "manager" of Sunrise or Alturas. Instead, documents show Stuart Sheldon was designated as "Manager" by Leslie Szabo himself (Exhibit A).
7. No response to the NOV has been filed by Stuart Sheldon. Respondents Sunrise and Alturas have not provided a copy of their respective operating agreements through Mr. Sheldon, which would identify the manager/member position or status of each owner, or otherwise indicate the authoritative or restrictive powers and/or duties of the individual LLC managers or members.
8. It is undisputed that Mr. Szabo is otherwise, at minimum, just a "member" of the Respondent limited liability companies.
9. In a manager-managed limited liability company, a "member" is not an "agent" of the limited liability company for the purpose of its business activities solely by reason of being a member. Sec. 605.04074(2), Florida Statutes (FS).
10. Mr. Szabo is therefore, without further evidence or proof otherwise, unable to bind or represent Sunrise or Alturas in this matter as an agent of Sunrise or Alturas.
11. The Department would also note that a limited liability company is an entity distinct from its members. §605.0108, FS. The Department therefore questions Mr. Szabo's authority to represent Respondents in this adversarial legal matter as a pro se litigant.

**WHEREFORE** the Department requests that the Petition for Informal Administrative Proceedings filed in this matter by Leslie Szabo be **DISMISSED**.

**STATE OF FLORIDA  
DEPARTMENT OF HEALTH  
IN POLK COUNTY**



Roland Reis, Chief Legal Counsel  
1290 Golfview Ave., 4<sup>th</sup> Floor  
Bartow, Florida 33830  
Tel.: (863) 578-2105  
Fax: (863) 519-7626  
[Roland.Reis@flhealth.gov](mailto:Roland.Reis@flhealth.gov)

**CERTIFICATE OF SERVICE**

I **HEREBY CERTIFY** that a true and correct copy of this Motion to Dismiss has been sent by US Mail and by email (where available) to:

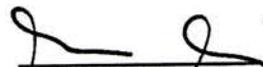
Lea Crandall, Agency Clerk  
Department of Environmental Protection  
Office of the General Counsel  
2600 Blair Stone Road  
Tallahassee, FL 32399-2400  
[Lea.Crandall@dep.state.fl.us](mailto:Lea.Crandall@dep.state.fl.us)

Leslie Szabo  
20 West Tropical Way  
Fort Lauderdale, FL 33317  
[l.szabo@rogers.com](mailto:l.szabo@rogers.com)

Stuart Sheldon, Manager  
Sunrise and Alturas Utilities, LLC  
20 West Tropical Way  
Fort Lauderdale, FL 33317

this 22<sup>nd</sup> day of November, 2016.

**STATE OF FLORIDA  
DEPARTMENT OF HEALTH**

  
Roland Reis, FBN 562653  
Chief Legal Counsel

AMENDMENT TO ARTICLES OF ORGANIZATION  
OR SUNRISE UTILITIES, LLC

FILED

04 FEB 10 AM 11:38

This Amendment to the Articles of Organization is entered into in accordance with Florida Statute 608.411 for the purpose of amending the Articles of Organization as follows:

SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

A. The name of the limited liability company is: SUNRISE UTILITIES, LLC.

B. The date of filing of the Articles of Organization was November 3, 2003.

C. Amendments: Paragraph "C" is amended as follows:

The name and street address of the limited liability company's registered agent for service of process in the state is Stuart Sheldon, 20 W. Tropical Way, Ft. Lauderdale, Florida 33317.

D. The limited liability company will have a manager. The manager of the limited liability company is Stuart Sheldon.

E. This Amendment was approved by the unanimous vote of 100% of the members of SUNRISE UTILITIES, LLC.

Dated: January 22, 2004.

~~Leslie Szabo~~

STATE OF FLORIDA  
COUNTY OF POLK *Miami - Aceto*

The foregoing instrument was acknowledged before me this 22 day of January, 2004, by LESLIE SZABO, who has produced a \_\_\_\_\_ as identification.

*personally known*

~~NOTARY PUBLIC~~



SARALYN NEMSER  
MY COMMISSION # DD 152826  
EXPIRES: October 4, 2006  
Bonded Thr. Budget Notary Services

Exhibit A1

Having been named as registered agent and to accept service of process for the above stated limited liability company at the place designated in this certificate, I hereby accept the appointment as registered agent and agree to act in this capacity. I further agree to comply with the provisions of all statutes relating to the proper and complete performance of my duties, and I am familiar with and accept the obligations of my position as registered agent as provided for in Chapter 608, F.S.

  
STUART SHELDON  
REGISTERED AGENT'S SIGNATURE

F:\USERS\USER3\CORP\LLC\SUNRISE.AMENDMENT.wpd

**FILED**  
04 FEB 10 AM 11:38  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

**L03000042695**

04 FEB 10 AM 11:38

SECRETARY OF STATE  
TALLAHASSEE, FLORIDA



900028362879

02/10/04--01034--016 \*\*35.00

\_\_\_\_\_  
(Requestor's Name)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(City/State/Zip/Phone #)

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MARVIN KAPLAN

FAX NO: 1 888 492 8666

P.01  
P.01

*Handwritten scribble*

**AMENDMENT TO ARTICLES OF ORGANIZATION  
OF ALTURAS UTILITIES, LLC**

FILED  
2004 AUG 11 PM 1:35  
JULY OF CORPORATIONS  
TALLAHASSEE, FLORIDA

This Amendment to the Articles of Organization is entered into in accordance with Florida statute 608.411 for the purpose of amending the Articles of Organization as follows:

A. The name of the limited liability company is: ALTURAS UTILITIES, LLC.

B. The date of filing of the Articles of Organization was November 3, 2003.

Amendments: Paragraph 'C' is amended as follows:

The name and street address of the limited liability company's registered agent for service of process in the state is Stuart Sheldon, 20 W. Tropical Way, Ft. Lauderdale, Florida 33317.

D. The limited liability company will have a manager. The manager of the limited liability company is Stuart Sheldon.

E. This Amendment was approved by the unanimous vote of 100% of the members of ALTURAS UTILITIES, LLC.

Dated: January 27<sup>th</sup>, 2004.

*Handwritten signature of Leslie Szabo*  
Leslie Szabo

STATE OF FLORIDA  
COUNTY OF POLK

The foregoing instrument was acknowledged before me this 27<sup>th</sup> day of January, 2004, by LESLIE SZABO, who has produced a known to me as identification.

*Handwritten signature of Stuart Sheldon*  
NOTARY PUBLIC



Stuart Sheldon  
Commission #DD157341  
Expires: Oct 10, 2006  
Bonded Through  
Atlantic Bonding Co., Inc.

Exhibit A2

Having been named as registered agent and to accept service of process for the above stated limited liability company at the place designated in this certificate, I hereby accept the appointment as registered agent and agree to act in this capacity. I further agree to comply with the provisions of all statutes relating to the proper and complete performance of my duties, and I am familiar with and accept the obligations of my position as registered agent as provided for in Chapter 608, F.S.

*Stuart Sheldon*  
.....  
STUART SHELDON  
REGISTERED AGENT'S SIGNATURE

F:\USERS\USER3\CORP\LLC\SUNRISE.AMENDMENT.wpd

FILED  
2004 AUG 11 PM 1:35  
DIVISION OF CORPORATIONS  
TALLAHASSEE, FLORIDA

L03000042820

STEPHEN F. BAKER  
ATTORNEY AT LAW  
800 FIRST STREET SOUTH  
WINTER HAVEN, FLORIDA 33880-3666

(City/State/Zip/Phone #)

PICK-UP     WAIT     MAIL

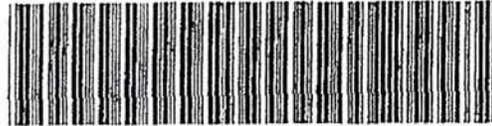
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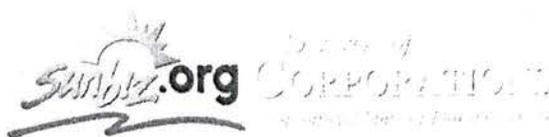


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2004 AUG 11 PM 1:35  
DIVISION OF CORPORATIONS  
TALLAHASSEE, FLORIDA

J. BRYAN AUG 13 2004



Department of State / Division of Corporations / Search Records / Detail By Document Number /

**Detail by Entity Name**

Florida Limited Liability Company  
SUNRISE UTILITIES, L.L.C.

Filing Information

Document Number	L03000042695
FEI/EIN Number	20-0357527
Date Filed	11/03/2003
State	FL
Status	ACTIVE
Last Event	AMENDMENT
Event Date Filed	02/10/2004
Event Effective Date	NONE

Principal Address

20 W. TROPICAL WAY  
FORT LAUDERDALE, FL 33317

Changed: 07/18/2005

Mailing Address

20 W. TROPICAL WAY  
FORT LAUDERDALE, FL 33317

Changed: 07/18/2005

Registered Agent Name & Address

SHELDON, STUART  
20 W. TROPICAL WAY  
FORT LAUDERDALE, FL 33317

Name Changed: 08/09/2004

Address Changed: 08/09/2004

Authorized Person(s) Detail

**Name & Address**

Title MGR

SHELDON, STUART  
20 W. TROPICAL WAY  
FORT LAUDERDALE, FL 33317

Exhibit B1

**Annual Reports**

Report Year	Filed Date
2014	03/09/2014
2015	02/22/2015
2016	04/17/2016

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<a href="#">11/03/2003 -- Florida Limited Liabilities</a>	<a href="#">View image in PDF format</a>

Florida Department of State, Division of Corporations



**Detail by Entity Name**

Florida Limited Liability Company  
ALTURAS UTILITIES, L.L.C.

Filing Information

Document Number	L03000042820
FEI/EIN Number	N/A
Date Filed	11/03/2003
State	FL
Status	ACTIVE
Last Event	REINSTATEMENT
Event Date Filed	02/10/2005

Principal Address

20 WEST TROPICAL WAY  
FT. LAUDERDALE, FL 33317

Changed: 01/31/2006

Mailing Address

20 WEST TROPICAL WAY  
FT. LAUDERDALE, FL 33317

Changed: 01/31/2006

Registered Agent Name & Address

SHELDON, STUART  
20 W. TROPICAL WAY  
FT. LAUDERDALE, FL 33317

Name Changed: 08/11/2004

Address Changed: 08/11/2004

Authorized Person(s) Detail

**Name & Address**

Title MGM

SHELDON, STUART  
20 W TROPICAL WAY  
FT LAUDERDALE, FL 33317

Annual Reports

Exhibit B2

Report Year	Filed Date
2014	03/09/2014
2015	02/22/2015
2016	04/17/2016

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