

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-

DATE: June 30, 2017

TO: Office of Commission Clerk (Stauffer)

FROM: Division of Engineering (M. Watts, Graves) *RS*
Division of Accounting and Finance (Frank, Norris) *AK*
Division of Economics (Johnson) *CAS*
Office of the General Counsel (Janjic) *JSC*

Handwritten notes and signatures:
AK
BE
ALM

RE: Docket No. 150012-WU – Application for transfer of Certificate No. 390-W from County-Wide Utility Co., Inc. to Southwest Ocala Utility, Inc. in Marion County.

AGENDA: 07/13/17 – Regular Agenda – Proposed Agency Action for Issue 2 – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Brisé

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case 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, the Commission 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 (the 2005 SARC.)³

On October 16, 2016, staff presented its recommendation to the Commission. Staff recommended that the transfer be granted, with a proposed net book value and a negative acquisition adjustment. However, staff's recommendation was based on incomplete information due to the Utility's assertion that it could not provide the requested information as the information is protected by a confidentiality agreement with its bank. The Commission rejected staff's recommendation, deferred the item, and directed the Utility to provide the most accurate information to staff. The Utility maintains that it still cannot provide the precise data without violating the confidentiality agreement. Therefore, staff and the Utility have worked together to reach a solution each believes will satisfy the requirements of the Commission's rules and statutes, and still abide by the Utility's confidentiality agreement with its bank.

This revised recommendation addresses 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. The Commission has jurisdiction pursuant to Section 367.071, Florida Statutes (F.S.).

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.*

Discussion of Issues

Issue 1: Should the Commission approve the transfer of County-Wide Utility Co., Inc.'s water system and Certificate No. 390-W to Southwest Ocala Utility, Inc.?

Recommendation: Yes. The transfer of County-Wide's water system and the transfer of Certificate No. 390-W to SOU is in the public interest and should be approved effective the date of the Commission's vote. The resultant order should serve as SOU's certificate and should be retained by the Utility. The existing rates and charges should remain in effect until a change is authorized by the Commission in a subsequent proceeding. The tariffs reflecting the transfer should be effective for services rendered or connections made on or after the stamped approval date on the tariffs pursuant to Rule 25-30.475, Florida Administrative Code (F.A.C.). SOU should be responsible for filing the Utility's 2015 and 2016 annual reports and all future annual reports. Regulatory assessment fees (RAFs) have been paid through December 31, 2016. SOU should be responsible for all future RAFs. (M. Watts, Frank, Johnson)

Staff Analysis: 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 the 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 recommendation 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 Southwest Ocala Utility, Inc. (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. 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.

Staff believes that the amount paid to Compass Bank by Mr. Leeward on July 19, 2012, for the outstanding note should be included in determining the purchase price of the Utility. 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, \$79,051, as of January 1, 2014. Staff believes due to the circumstances of the confidentiality agreement with Compass Bank, the signed affidavit is sufficient for the purpose of determining whether an acquisition adjustment should apply at this juncture.

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

SOU's water system is a consecutive system composed of water mains, as listed in Table 1-1 below, and nine fire hydrants. A consecutive system provides treated water purchased from another entity. Therefore, the City of Ocala is responsible for ensuring the water meets primary and secondary water quality standards. 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 1-1
Southwest Ocala Utility, 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.

Staff 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, staff recommends that the Utility's existing rates and charges remain in effect until a change is authorized by this Commission in a subsequent proceeding.

Regulatory Assessment Fees (RAFs) and Annual Reports

Staff has verified that the annual reports have been filed through December 31, 2014, and RAFs 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 RAFs for all future years.

Conclusion

The transfer of County-Wide's water system and the transfer of Certificate No. 390-W to SOU is in the public interest and should be approved effective the date of the Commission's vote. The resultant order should serve as SOU's certificate and should be retained by the Utility. The existing rates and charges should remain in effect until a change is authorized by the Commission in a subsequent proceeding. The tariffs reflecting the transfer should 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 should be responsible for filing the Utility's 2015 and 2016 annual reports and all future annual reports. RAFs have been paid through December 31, 2016. SOU should be responsible for all future RAFs.

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.*

Issue 2: What is the appropriate net book value (NBV) for the SOU water system for transfer purposes?

Recommendation: The net book value of the water system for transfer purposes is \$79,051, as of January 1, 2014. Within 90 days of the date of the final order, SOU should be required to notify the Commission in writing, that it has adjusted its books in accordance with the Commission's decision. The adjustments should be reflected in SOU's 2015 Annual Report when filed. Specifically, the Utility should confirm that the adjustments to all applicable National Association of Regulatory Utility Commissioners, Uniform System of Accounts (NARUC USOA) primary accounts as shown on Schedule No. 2, Page 3 of 3, have been made to SOU's books and records. In the event the Utility needs additional time to complete the adjustments, notice should be provided within seven days prior to the deadline. Upon providing good cause, staff should be given administrative authority to grant an extension of up to 60 days. (Frank, M. Watts)

Staff Analysis: Rate base was last established for the Utility as of December 31, 2005, in its 2005 SARC.⁵ The purpose of establishing NBV for transfers is to determine whether an acquisition adjustment should be approved. The NBV does not include normal ratemaking adjustments for used and useful plant or working capital. The Utility's NBV has been updated to reflect balances as of January 1, 2014. Staff's recommended NBV, as described below, is shown on Schedule No. 2.

Utility Plant in Service (UPIS)

The Utility's general ledger reflected a UPIS balance of \$219,537, as of January 1, 2014. Staff reviewed UPIS additions since the last rate case and as a result has increased UPIS by \$7,177. The Utility had retired its wells and water treatment plant, and interconnected to the City of Ocala on October 29, 2005, which was prior to the date it filed its 2005 SARC (November 10, 2005).⁶ After extensive investigation, the Commission found that the retired system would have been sufficient to continue to serve the existing customers, and the reason the Utility interconnected with the City of Ocala was to be able to serve anticipated development. Therefore, the interconnection with the City of Ocala was disallowed from rate base during the Utility's last rate case as imprudent since it was not deemed necessary to serve the Utility's current (at the time) customers. Staff believes that it is appropriate in the instant docket to continue to exclude the interconnection from rate base, consistent with Order No. PSC-07-0604-PAA-WU.⁷ However, since the interconnection is now the only source of water to supply all current customers, it should be considered in future rate proceedings. As discussed above, staff recommends UPIS should be increased by \$7,177 to reflect a UPIS balance of \$226,714 as of January 1, 2014.

⁵Order No. PSC-07-0604-PAA-WU, issued July 30, 2007, in Docket No. 050862-WU, *In re: Application for a staff-assisted rate case in Marion County by County-Wide Utility Co., Inc.*

⁶Document No. 10900-05, filed on November 10, 2005, in Docket No. 050862-WU, *In re: Application for a staff-assisted rate case in Marion County by County-Wide Utility Co., Inc.*

⁷Order No. PSC-07-0604-PAA-WU, issued July 30, 2007, in Docket No. 050862-WU, *In re: Application for a staff-assisted rate case in Marion County by County-Wide Utility Co., Inc.*

Land

The Utility's general ledger reflected a land balance of \$2,815, as of January 1, 2014. By Order No. PSC-07-0604-PAA-WU,⁸ the Commission established the value of the land to be \$2,815. There have been no additions to land purchased since that order was issued. Therefore, staff recommends land of \$2,815, as of January 1, 2014.

Accumulated Depreciation

The Utility's general ledger reflected an accumulated depreciation balance of \$93,858, as of January 1, 2014. Staff calculated the appropriate accumulated depreciation balance to be \$93,655. As a result, accumulated depreciation should be decreased by \$203.

CIAC

As of January 1, 2014, the Utility's general ledger reflected a CIAC balance of \$87,008; and an accumulated amortization of CIAC balance of \$40,982. Staff increased CIAC by \$10,839 based on audited receipts since the Commission approved beginning balances from its last rate case. Using a composite rate, staff also calculated and increased accumulated amortization of CIAC by \$42. Therefore, staff recommends a CIAC balance of \$97,847 and an accumulated amortization of CIAC balance of \$41,024, as of January 1, 2014.

Net Book Value

The Utility's general ledger reflected an NBV of \$82,468. Based on the adjustments described above, staff recommends that the NBV for the Utility's water system, as of January 1, 2014, is \$79,051 (\$82,468 - \$3,417). Staff's recommended NBV is shown on Schedule No. 2, Page 1 of 3, and the NARUC USOA balances for UPIS and accumulated depreciation as of January 1, 2014, are shown on Schedule No. 2, Page 3 of 3.

Acquisition Adjustment

An acquisition adjustment results when the purchase price differs from the NBV of the assets at the time of the acquisition. According to the signed affidavit discussed in Issue 1, the Utility and its assets were purchased for a dollar amount in excess of 80 percent of the net book value. Pursuant to Rule 25-30.0371, F.A.C., a positive acquisition adjustment may be appropriate when the purchase price is greater than the NBV, and a negative acquisition adjustment may be appropriate when the purchase price is less than 80 percent of NBV. Because SOU is not requesting a positive acquisition adjustment and the affidavit discussed in Issue 1 attests that the purchase price was greater than 80 percent of the net book value of \$79,051, staff recommends that neither a positive nor negative acquisition adjustment is warranted at this time.

Conclusion

Based on the above, staff recommends that the NBV of the water system for transfer purposes is \$79,051, as of January 1, 2014. SOU should be required to notify the Commission in writing that it has adjusted its books in accordance with the Commission's decision. Specifically the Utility should submit a letter within 90 days of the final order in this docket, confirming that the adjustments to all applicable NARUC USOA primary accounts as shown on Schedule No. 2,

⁸Order No. PSC-07-0604-PAA-WU, issued July 30, 2007, in Docket No. 050862-WU, *In re: Application for a staff-assisted rate case in Marion County by County-Wide Utility Co., Inc.*

Page 3 of 3, have been made to SOU's books and records. In the event the Utility needs additional time to complete the adjustments, notice should be provided within seven days prior to the deadline. Upon providing good cause, staff should be given administrative authority to grant an extension of up to 60 days. The adjustments should be reflected in SOU's 2015 and 2016 Annual Reports when filed.

Issue 3: Should this docket be closed?

Recommendation: If no protest to the proposed agency action is filed by a substantially affected person within 21 days of the date of the order, a consummating order should be issued and the docket should be closed administratively after SOU has provided proof that its general ledgers have been updated to reflect the Commission-approved balances as of January 1, 2014. (Janjic)

Staff Analysis: If no protest to the proposed agency action is filed by a substantially affected person within 21 days of the date of the order, a consummating order should be issued and the docket should be closed administratively after SOU has provided proof that its general ledgers have been updated to reflect the Commission-approved balances as of January 1, 2014.

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
*	*	150012-WU	Transfer

***Order Numbers and dates to be provided at time of issuance**

**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 ERC⁹ \$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.

⁹Equivalent residential connection

**Southwest Ocala Utility, Inc. Water System Schedule
Water System
Schedule of Net Book Value as of January 1, 2014**

<u>Description</u>	<u>Balance Per Utility</u>	<u>Adjustments*</u>	<u>Staff Recommendation</u>
Utility Plant in Service	\$219,537	\$7,177 A	\$226,714
Land & Land Rights	2,815	0	2,815
Accumulated Depreciation	(93,858)	203 B	(93,655)
CIAC	(87,008)	(10,839) C	(97,847)
Amortization of CIAC	<u>40,982</u>	<u>42</u> D	<u>41,024</u>
Total	<u>\$82,468</u>	<u>(\$3,417)</u>	<u>\$79,051</u>

* Adjustments are shown on the following page, Schedule No. 2, Page 2 of 3

**Explanation of Staff's Recommended
Adjustments to Net Book Value as of January 1, 2014
Water System**

<u>Explanation</u>	<u>Amount</u>
A. Utility Plant In Service	
I. To reflect appropriate amount of utility plant in service.	<u>\$7,177</u>
B. Accumulated Depreciation	
I. To reflect appropriate amount of accumulated depreciation.	<u>\$203</u>
C. Contributions-in-Aid-of-Construction (CIAC)	
I. To reflect appropriate amount of CIAC.	<u>(\$10,839)</u>
D. Accumulated Amortization of CIAC	
I. To reflect appropriate amount of accumulated amortization of CIAC.	<u>\$42</u>
Total Adjustments to Net Book Value as of January 1, 2014.	<u>(\$3,417)</u>

Southwest Ocala Utility, Inc.
Water System
Schedule of Staff Recommended Account Balances as of January 1, 2014

Account			Accumulated
<u>No.</u>	<u>Description</u>	<u>UPIS</u>	<u>Depreciation</u>
331	Transmission & Distribution Mains	\$167,931	\$(56,649)
334	Meters & Meter Installations	49,545	(32,598)
335	Hydrants	2,551	(479)
336	Backflow Prevention Devices	4,400	(3,300)
339	Other Plant & Misc.	2,287	(629)
340	Office Furniture & Equipment	<u>0</u>	<u>0</u>
	Total	<u>\$226,714</u>	<u>(\$93,655)</u>