

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Notice of abandonment of water and wastewater systems in Charlotte County by Sun River Utilities, Inc.

DOCKET NO. 20220092-WS
ORDER NO. PSC-2022-0384-FOF-WS
ISSUED: November 10, 2022

The following Commissioners participated in the disposition of this matter:

ANDREW GILES FAY, Chairman
ART GRAHAM
GARY F. CLARK
MIKE LA ROSA
GABRIELLA PASSIDOMO

ORDER ACKNOWLEDGING ABANDONMENT
AND APPOINTMENT OF RECEIVER

BY THE COMMISSION:

Background

Sun River Utilities, Inc. (Sun River or Utility) is a Class C water and wastewater utility located in Charlotte and Desoto counties in the Southern Water Use Caution Area of the Southwest Florida Water Management District. The Utility serves approximately 61 residential water and wastewater customers. The Utility's 2021 Annual Report indicates that the Utility had total gross revenues of \$29,768 and a net operating loss of \$22,925.

The Utility has been operating in Charlotte County since 1982 and we granted its water and wastewater certificates (611-W and 527-S) in 1999, as Hunter Creek Utilities, LLC (Hunter Creek).¹ The Utility was subsequently transferred from Hunter Creek to MSM Utilities, LLC in 2004 and then transferred to Sun River in 2007.²

On September 25, 2007, Charlotte County adopted a resolution rescinding our jurisdiction, which we acknowledged by Order No. PSC-07-0984-FOF-WS. However, in 2008 Sun River filed an application for original certificates to provide service in Charlotte and Desoto Counties, pursuant to 367.171(7), Florida Statutes (F.S.), since the Utility's services now

¹Order No. PSC-99-0756-FOF-WS, issued April 19, 1999, in Docket No. 19980731-WS, *In re: Application for certificate to provide water and wastewater service in Charlotte County by Hunter Creek Utilities, LLC*.

²Order Nos. PSC-05-0147-PAA-WS, issued February 7, 2005, in Docket No. 20031042-WS, *In re: Application for transfer of Certificate Nos. 611-W and 527-S in Charlotte County from Hunter Creek Utilities, LLC to MSM Utilities, LLC, in Charlotte County* and PSC-07-0163-FOF-WS, issued February 23, 2007, in Docket No. 20060820-WS, *In re: Application for transfer of majority organizational control and Certificate Nos. 611-W and 527-S of MSM Utilities, LLC in Charlotte County to Sun River Utilities, Inc.*

transverse county boundaries.³ Subsequently, we granted Certificate Nos. 646-W and 554-S to Sun River in 2009.⁴ On December 10, 2015, Sun River filed a 60 day notice of its intent to abandon the Utility due to financial hardships associated with Utility operations. On February 5, 2016, Sun River rescinded its notice of abandonment, because the Utility was sold to North Charlotte Waterworks, Inc. (North Charlotte). North Charlotte filed an application for transfer of the Utility's systems and certificates.⁵ However, unlike previous owners, North Charlotte could not obtain adequate ownership or rights to continued use of the land upon which the treatment facilities are located, as required by Section 367.1213, F.S. Therefore, on December 23, 2020, North Charlotte and Sun River filed a joint notice of intent to abandon the water and wastewater systems effective April 30, 2021.⁶

Charlotte County filed a Petition for Appointment of Receiver with the Circuit Court of the Twentieth Judicial Circuit in and for Charlotte County (Circuit Court). The Circuit Court issued an Order in Case No. 21-0148CA, on April 30, 2021, in which it declared the Utility abandoned and appointed Michael Smallridge as receiver of the water and wastewater systems. On August 23, 2021, we acknowledged the joint abandonment of the Utility and the appointment of Michael Smallridge as the Utility's receiver.⁷

On May 9, 2022, Michael Smallridge filed a notice of intent to abandon the water and wastewater systems effective July 18, 2022, on behalf of Sun River. Like North Charlotte, he was also unable to obtain adequate ownership or rights to the continued use of the land upon which the treatment facilities are located. On July 12, 2022, we received notice from the Circuit Court of the appointment of CSWR - Florida Utility Operating Company, LLC (CSWR) as the receiver for Sun River, effective July 18, 2022.⁸

The purpose of this Order is to acknowledge the abandonment by Sun River and the appointment of the receiver. We have jurisdiction pursuant to Section 367.165, F.S.

Decision

Section 367.165(1), F.S., requires that a utility's owner or operator provide 60 days' notice to the county or counties in which the utility is located and to this Commission prior to abandonment of the utility. Failure to provide such notice constitutes a misdemeanor of the first degree, according to the statute. By letter dated May 9, 2022, Michael Smallridge, on behalf of Sun River, provided Charlotte County and this Commission 70 days' notice of its intent to abandon the Utility's water and wastewater systems as of July 18, 2022.

³Docket No. 20080272-WS

⁴Order No. PSC-09-0609-FOF-WS, issued September 8, 2009, in Docket No. 20080272-WS, *In re: Application for certificates to provide water and wastewater service in Charlotte and DeSoto Counties by Sun River Utilities, Inc.*

⁵Document No. 01342-2016, filed on March 14, 2016.

⁶Document No. 13752-2020, filed on December 24, 2020.

⁷Order No. PSC-2021-0316-FOF-WS, issued August 23, 2021, in Docket No. 20210038-WS, *In re: Joint notice of abandonment of water and wastewater systems in Charlotte and DeSoto Counties by Sun River Utilities, Inc. and North Charlotte Waterworks, Inc.*

⁸Document No. 04678-2022 filed July 12, 2022.

On May 25, 2022, Charlotte County filed a Motion requesting that the Circuit Court either direct Michael Smallridge to continue operating the Utility or appoint a receiver. Section 367.165(2), F.S., allows a receiver to be the governing body of a political subdivision, such as a county or any other person deemed appropriate. The receiver is responsible for operating the utility from the date of abandonment until the receiver disposes of the property of the utility in a manner designed to continue the efficient and effective operation of utility service. By Order dated July 8, 2022, the Circuit Court acknowledged the County's Motion and appointed CSWR as receiver of the Utility effective July 18, 2022. CSWR accepted that responsibility and began operating the Utility on that date.

The Circuit Court's Order gave CSWR the responsibility and authority to operate, maintain, and improve the system; apply for permits and interact with state agencies involving system operation; collect charges for service; pay expenses; discontinue operation or dispose of land, facilities, and assets to satisfy all outstanding obligations of the Utility, subject to court approval; and, do all things reasonably required to operate and maintain the system as a viable system. In addition, the Order requires an annual report be filed with the Circuit Court regarding the financial and operational status of the system.

In accordance with Rule 25-30.090(3), Florida Administrative Code, within 10 days of the appointment of a receiver by the Circuit Court, the receiver shall request from us a copy of the utility's tariff and most recent annual report. A copy of the Utility's tariff and 2021 Annual Report have been sent to CSWR. Further, the Utility is up to date on its regulatory assessment fees.

In consideration of the foregoing, we hereby acknowledge Sun River's notice of abandonment, pursuant to Section 367.165, F.S., and acknowledge the appointment of CSWR as the Utility's receiver as of July 18, 2022. Any further disposition regarding the Utility will be addressed in a separate docket.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the notice of abandonment by Sun River Utilities, Inc., and the appointment of CSWR - Florida Utility Operating Company, LLC as receiver are hereby acknowledged. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission this 10th day of November, 2022.



ADAM J. TEITZMAN
Commission Clerk
Florida Public Service Commission
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Tallahassee, Florida 32399
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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.

JSC

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.