

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for transfer) DOCKET NO. 941106-SU
of majority organizational) ORDER NO. PSC-95-0489-FOF-SU
control of Certificate No. 379-S) ISSUED: April 18, 1995
issued to ALAFAYA UTILITIES,)
INC., in Seminole County to)
UTILITIES, 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 OF MAJORITY ORGANIZATIONAL CONTROL
AND CLOSING DOCKET

BY THE COMMISSION:

Background

Alafaya Utilities, Inc. (Alafaya or utility), is a Class A utility in Seminole County which operates under Wastewater Certificate No. 379-S. Alafaya provided wastewater service to approximately 3,899 customers in 1993. According to the 1993 annual report, Alafaya's annual revenues were \$1,134,301 and its net operating income was \$116,659.

South Country Corp., a California corporation, is the parent corporation of Alafaya. On September 28, 1994, South Country Corp. entered into a Stock Purchase Agreement with Utilities, Inc., a Delaware corporation, for the sale of Alafaya's capital stock. Pursuant to Section 367.071(1), Florida Statutes, and as an express condition subsequent, the Agreement is subject to Commission approval of the transfer of the Alafaya shares from South Country Corp. to Utilities, Inc. On October 17, 1994, Utilities, Inc., filed an application for transfer of majority organizational control of Alafaya from South Country Corp. to Utilities, Inc.

Petition to Intervene

On December 7, 1994, the City of Oviedo (City) filed a Petition to Intervene as a party in this docket. On December 19,

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1994, the utility filed a Response to the Petition to Intervene. On December 27, 1994, the City filed a Memorandum in Opposition to the utility's Response. On January 3, 1995, the utility filed a Memorandum in response to the City's Memorandum. However, on March 7, 1995, the City filed a Notice of Withdrawal of its Petition to Intervene. For this reason, we find that we need not rule upon the above-identified pleadings. Along with its Notice of Withdrawal, the City advised us that the City and the utility will enter into a Memorandum of Intent which provides for the settlement of all pending disputes between the City and the utility. We hereby acknowledge the City's Notice of Withdrawal of its Petition to Intervene in this docket.

Application

The application is in compliance with the governing statute, Section 367.071, Florida Statutes, and other pertinent statutes and administrative rules concerning an application for transfer of majority organizational control. The application contains a check in the amount of \$3,000, which is the correct filing fee pursuant to Rule 25-30.020, Florida Administrative Code. The applicant has provided evidence that the utility owns the land upon which its facilities are located, as required by Rule 25-30.037(1)(o), Florida Administrative Code. A description of the territory served by the utility is appended to this order as Attachment A, and is incorporated herein by reference.

In addition, the application contains proof of 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. No objections to the notice of application were received and the time for filing such has expired. As noted above, after the period of time for the filing of objections had expired, on December 7, 1994, the City filed, and subsequently withdrew, a Petition to Intervene in this docket.

With regard to the purchaser's technical ability, Utilities, Inc., has approximately thirty years of experience in the water and wastewater utility industry. At the present time, Utilities, Inc., provides safe and reliable water and wastewater service to approximately 130,000 customers in thirteen states. In addition, Utilities, Inc., has stated that it will retain Alafaya's current employees, including six certified wastewater plant operators (two Class A, two Class B, and two Class C). The plant will continue to be staffed twenty-four hours per day.

We have contacted the Department of Environmental Protection (DEP) and have learned that there are no outstanding notices of

violation against the utility. There is, however, a recent Settlement Agreement between Alafaya and DEP, specifying certain improvements to the percolation ponds which are necessary to maintain the wastewater design capacity at 1.1 MGD. The improvements discussed in the Settlement Agreement represent the minimum level of upgrades. It is estimated that these improvements will cost approximately \$100,000. Other capital improvements will be made to bring the facilities up to Utilities, Inc.'s standards, and to expand the re-use system. These improvements are estimated to cost at least \$500,000.

With regard to the purchaser's financial ability, Utilities, Inc., provided a statement that it has both the regulatory experience and the financial ability to ensure consistent compliance with environmental protection regulations. Utilities, Inc., agreed to pay \$2,400,000 to South Country Corp. for the purchase of stock shares as outlined in the Stock Purchase Agreement dated September 28, 1994. The purchase of Alafaya's common stock is a cash transaction. Therefore, there are no entities which have provided funding in connection with this transfer. Furthermore, Utilities, Inc., has provided a copy of the Purchase Agreement and a statement that it will fulfill the commitments, obligations, and representations of the transferor.

Based on the foregoing, we find that the transfer of majority organizational control of Alafaya from South Country Corp. to Utilities, Inc., is in the public interest. The application for transfer of majority organizational control is hereby approved.

Rate Base

Traditionally, the Commission establishes rate base at the time of a transfer because the utility's purchase price as compared to the rate base is an integral part of determining whether the transfer is in the public interest. In particular, purchase prices far over the rate base may flag financial viability concerns. Establishing rate base also provides a snapshot of the utility's assets and liabilities at that point in time. However, the establishment of rate base is not conducted when the transfer involves the sale of stock. The stock is publicly traded and its price has no regulatory relationship to the established rate base. Furthermore, the stock sale will not alter the utility's asset and liability accounts. Accordingly, this transfer of stock ownership will not change the rate base balance. Therefore, we do not establish rate base in this docket.

Rates and Charges

The utility's approved rates and charges were effective September 12, 1993, pursuant to a 1993 index increase.

Rule 25-9.044(1), Florida Administrative Code, provides that:

[i]n case of change of ownership or control of a utility which places the operation under a different or new utility, . . . the company which will thereafter operate the utility business must adopt and use the rates, classification and regulations of the former operating company (unless authorized to change by the Commission).

Utilities, Inc., has not requested a change in the rates and charges of the utility and we see no reason to change them at this time. Accordingly, the utility shall continue operations under its existing tariff by applying its approved rates and charges until authorized to change by this Commission in a subsequent proceeding. The utility has filed a revised tariff reflecting the change in issuing officer due to the transfer of majority organizational control. The tariff shall be effective for services provided or connections made on or after the stamped approval date on the tariff sheets. Because no further action is required, this docket shall be closed.

Based on the foregoing, it is, therefore,

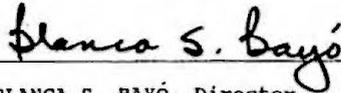
ORDERED by the Florida Public Service Commission that the transfer of majority organizational control of Alafaya Utilities, Inc., 110 Alafaya Woods Boulevard, Oviedo, Florida 32765, from South Country Corp., to Utilities, Inc., 2335 Sanders Road, Northbrook, Illinois 60062, is hereby approved. It is further

ORDERED that the City of Oviedo's Notice of Withdrawal of its Petition to Intervene in this docket is hereby acknowledged. It is further

ORDERED that Alafaya Utilities, Inc., shall continue to charge the rates and charges approved in its tariff until authorized to change by this Commission. It is further

ORDERED that this docket is hereby closed.

By ORDER of the Florida Public Service Commission, this 18th day of April, 1995.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

RGC

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.

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 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 and/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

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UTILITIES, INC.

SEMINOLE COUNTY - ALAPAYA WASTEWATER SYSTEM

ALAPAYA WOODS SERVICE AREA

TERRITORY DESCRIPTION

Order No. 14841 in Docket No. 850209-SU

Township 21 South, Range 31 East.

Section 22

The S.E. 1/4 of the N.W. 1/4, the N.W. 1/4 of the S.W. 1/4 of the N.E. 1/4, the S.W. 1/4 of the S.W. 1/4 of the N.E. 1/4. The S 3/4 of the E 1/2 of the S.W. 1/4 of the N.E. 1/4 the E. 1/2 of the S.E. 1/4 of the N.E. 1/4, the N 1/2 of the S.E. 1/4 less the W. 1/4 of the N.W. 1/4 of the S.E. 1/4.

The S 8/46 chains of the N.E. 1/4 of the N.W. 1/4, the S. 1/2 of the W. 3/4 of the N.W. 1/4 of the N.E. 1/4., The N. 1/2 of the N.E. 1/4 of the S.W. 1/4 of the N.E. 1/4. The W. 1/2 of the N.W. 1/4 of the S.E. 1/4 of the N.E. 1/4. The S.W. 1/4 of the S.E. 1/4 of the N.E. 1/4.

Section 23

The S. 3/4 of the W. 1/2, the N.E. 1/4 of the N.W. 1/4, the W. 1/4 of the E. 1/2, the E. 1/2 of the N.W. 1/4 of the N.E. 1/4, the N.E. 1/4 of the N.E. 1/4, less the S. 295 feet thereof.

Section 26

The N. 1/2 of the N.W. 1/4, the S.E. 1/4 of the N.W. 1/4.

ATTACHMENT A

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UTILITIES, INC.

SEMINOLE COUNTY - ALAFAYA WASTEWATER SYSTEM

ALAFAYA WOODS SERVICE AREA

TERRITORY DESCRIPTION

Order No. 15573 in Docket No. 860014-SU

Township 21 South Range 31 East

Section 23

The south 1/2 of the northwest 1/4 of said Section;
The north 1/4 of the west 1/2 of the northeast 1/4 of the northwest
1/4 of said section;
The southwest 1/4 of said section;

Section 26

The north 1/2 of the northwest 1/4 of said section;
The southeast 1/4 of the northwest 1/4, less the north 1/2 of the
northwest 1/4 of the southeast 1/4 of the northwest 1/4 of said
section.

Order No. 18486 in Docket No. 870923-SU

Township 21 South, Range 31 East

All of the Southwest 1/4 south of road in Section 13.

From the Northeast corner of Section 23, Township 21 South, Range
31 East, Seminole County, Florida run S 00°15'13" W 828.19 along
the east line of the Northeast 1/4 of Section 23, thence run N
89°42'34" W 35.00 feet to the Point of Beginning. Thence continue
N 89°42'34" W 1291.68 feet along the North line of the South 495.00
feet of the Northeast 1/4 of the Northeast 1/4 of said Section;
thence run S 00°14'20" W 495.00 feet along the West line of the
Northeast 1/4 of the Northeast 1/4 of said Section; thence run S
89°42'34" E 1291.56 feet along the South line of the Northeast 1/4
of the Northeast 1/4 of said Section; thence run N 00°15'13" E
495.00 feet along the Westerly Right of Way line of Lockwood Road
to the Point of Beginning.

ATTACHMENT A

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UTILITIES, INC.

SEMINOLE COUNTY - ALAPAYA WASTEWATER SYSTEM

ALAPAYA WOODS SERVICE AREA

TERRITORY DESCRIPTION

Order No. 18486 in Docket No. 870923-SU

South 3/4 of east 3/8 (less north 231 feet of east 660 feet and beginning 1,192.97 feet north 0°25'58" west of southeast corner run south 56°14'08" west 66.06 feet north 80°10'45" west 316.41 feet, north 16°03'38" west 188.67 feet, north 19°45'34" east 141.29 feet, north 77°12'32" east 379.06 feet, south 0°25'58" east 414.36 feet to beginning), all in Section 23.

South 3/4 of east 1/4 plus north 3/4 of west 1/2 of east 1/2 south of State Road 203 and south 3/4 of east 1/2 of west 1/2 (less the north 495 feet of said south 3/4 of east 1/2 of west 1/2 and also less the north 330 feet of the east 301.74 feet of the north 1/2 of the southeast 1/4 of the northeast 1/4), all in Section 24.

West 1/4 (less beginning 1,607.33 feet north 0°25'58" west of southwest corner run north 77°12'32" east 800.92 feet to the westerly line of Lockwood Road, then southerly along said westerly line of Lockwood Road along a curve concave easterly having a radius of 1,003.48 feet, then run southerly along said curve and westerly line 292.05 feet through a central angle of 16°40'32", then south 76°55'43" west 631.73 feet, south 56°14'08" west 315.67 feet, north 0°25'58" west 414.36 feet to beginning) and northeast 1/4 of northwest 1/4 and north 495 feet of southeast 1/4 of northwest 1/4, all in Section 24.

West 1/2 of northwest 1/4, all in Section 25.

South 1/2 of north 1/2 of east 3/4 (less beginning 30 feet east southwest corner run east 2,543.29 feet, north 60°7'52" west 1,325.05 feet, north 51°21'58" west 638.59 feet, north 44°26'23" west 382.81 feet, southerly on curve 182.37 feet, south 35°22' west 810.22 feet, southerly on curve 347.39 feet, south 1°18' west 160.95 feet to beginning and south 21 feet of west 417 feet of east 1,320 feet) and northeast 1/4 of northeast 1/4, and northeast 1/4 of northwest 1/4 (less road), all in Section 25.

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UTILITIES, INC.

SEMINOLE COUNTY - ALAFAYA WASTEWATER SYSTEM

ALAFAYA WOODS SERVICE AREA

TERRITORY DESCRIPTION

Order No. 18486 in Docket No. 870923-SU

East 3/4 of northeast 1/4, all in Section 26.

The southwest 1/4 of the southeast 1/4, all in Section 24, and the northwest 1/4 of the northeast 1/4, all in Section 25.

Township 21 South, Range 32 East

West 1/2 of Sections south of State Road 419 (less Government Lots 1, 2, 3 and 4), all in Section 19.

Southeast 1/4 of Government Lot 1 south of State Road 203, Government Lot 2, less the northwest 1/4 of the northwest 1/4 of said Government Lot 2, together with Government Lots 3 and 4, all in Section 19.

Northwest 1/4 of Section 30.

(Less all road rights of way).

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UTILITIES, INC.

SEMINOLE COUNTY - ALAFAYA WASTEWATER SYSTEM

ALAFAYA WOODS SERVICE AREA

TERRITORY DESCRIPTION

Order No. 19579 in Docket No. 880562-SU

Township 21 South, Range 31 East.

The Northwest 1/4 of the Northwest 1/4 of Section 23, Township 21 South, Range 31 East, Seminole County, Florida, LESS: Beginning at the Northwest corner of said Section 23, run S. 00°04'40" E. 25.00 feet along the West line of said Northwest 1/4; thence run S. 89°47'12"E. 146.29 feet along the South Right of Way Line of MITCHELL HAMMOCK ROAD; thence run Southeasterly 284.82 feet along the arc of a curve concave Southerly having a radius of 1161.00 feet, a central angle of 14°02'10" and a chord of 283.71 feet that bears S.82°46'07"E.; thence run S.75°45'02"E. 300.24 feet; thence run Easterly 613.85 feet along the arc of a curve concave Northerly having a radius of 1293.00 feet, a central angle of 27°12'03"E.; thence run N.00°04'30"E. 137.11 feet along the East line of said Northwest 1/4 of the Northwest 1/4 to the Northeast corner of said Northwest 1/4 of the Northwest 1/4; thence run N. 89°47'12" W. 1327.03 feet along the North line of said Northwest 1/4 of the Northwest 1/4 to the Northwest corner of said Section 23 and the Point of Beginning.

Order No. PSC-93-0358-FOF-SU in Docket No. 920885-SU

Township 21 South, Range 31 East, Seminole County

In Section 25

The Northwest 1/4 of the Southwest 1/4.

The North 3/4 of the Southwest 1/4 of the Southwest 1/4.

In Section 26

The East 3/4 of the Northeast 1/4 of the Southeast 1/4.

The East 3/4 of the South 1/4, less that portion lying North and West of the Centerline of the Northwest branch of the Little Econlockhatchee River.