

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for transfer) DOCKET NO. 950675-WS
of Certificates Nos. 516-W and) ORDER NO. PSC-96-0164-FOF-WS
448-S in Marion County from CHC) ISSUED: February 6, 1996
2, Ltd. to Sun Communities)
Operating Limited Partnership;)
and application for amendment of)
certificates to correct)
description of service)
territory.)

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 AMENDING CERTIFICATES NOS. 516-W AND 448-S
TO REFLECT ADDITIONAL TERRITORY
AND
APPROVING TRANSFER

AND

NOTICE OF PROPOSED AGENCY ACTION
SETTING RATES AND CHARGES AND RULING ON
RATE BASE AND ACQUISITION ADJUSTMENT

BY THE COMMISSION:

NOTICE IS HEREBY GIVEN by the Florida Public Service Commission that the action discussed herein regarding the establishment of rate base and acquisition adjustment and setting rates and charges for purposes of the transfer is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

Background

CHC 2, Ltd. (CHC 2 or utility) is a Class C utility which provides water and wastewater service in Marion County to approximately 495 water customers and 132 wastewater customers in

DOCUMENT NUMBER-DATE

01303 FEB-6 96

FPSC-REG-OPDS-REPORTING

the Saddle Oak Club Mobile Home Park (Saddle Oak or MHP). The annual report for 1994 shows that the consolidated annual operating revenue for the system was \$50,408 and the net operating loss was \$29,570. On June 15, 1995, CHC 2 applied for an amendment of the Water Certificate No. 516-W and Wastewater Certificate No. 448-S in order to correct an error that was contained in Order No. 21827 and in CHC 2's tariffs regarding the description of its service territory. In addition, on June 15, 1995, Sun Communities Operating Limited Partnership (Sun Communities) applied for a transfer of the CHC 2, Ltd. water and wastewater system (Water Certificate No. 516-W and Wastewater Certificate No. 448-S in Marion County) to Sun Communities.

Pursuant to Section 367.071, Florida Statutes, no utility shall sell, assign, or transfer its certificate of authorization, facilities or any portion thereof, or majority organizational control without approval of this Commission. Although the parties have come to an agreement on the sale and Sun Communities has been operating and managing the system for CHC 2, the official closing is contingent upon our approval.

Amendment of Certificate

CHC 2 filed for an amendment of the Water Certificate No. 516-W and Wastewater Certificate No. 448-S on June 15, 1995. CHC 2 filed the application in order to correct an error that was made regarding the description of its service territory in Docket No. 880955-WS. At the time that the utility applied for its original certificate in Docket No. 880955-WS, it was the utility's intention to serve the area which is now known as the Saddle Oak Club Mobile Home Park. However, the notice which the utility filed in Docket No. 880955-WS did not match the survey map filed with the application in that it contained a smaller area. The service territory granted was the territory as outlined in the utility's notice. The utility did not determine the problem until the new owner purchased the utility in 1995. The new property description includes a majority of territory in Order No. 21827. Four parcels of land included in Order No. 21827 will remain in the composite territory description that is set forth in the transfer application and contained in Attachment A.

Pursuant to Section 367.045(2), Florida Statutes, a utility may not delete or extend its service area outside the area described in its certificate until it obtains an amended certificate. Section 367.161(1), Florida Statutes, authorizes this Commission to assess a penalty of not more than \$5,000 for each offense, if a utility is found to have knowingly refused to comply with, or to have willfully violated, any provision of Chapter 367,

Florida Statutes, or any lawful rule or order by the Commission. Utilities are charged with the knowledge of the Commission's rules and statutes. Additionally, "[i]t is a common maxim, familiar to all minds that 'ignorance of the law' will not excuse any person, either civilly or criminally." Barlow v. United States, 32 U.S. 404, 411 (1833). CHC 2's conduct meets the standard of "willful violation." In Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL titled In Re: Investigation Into The Proper Application of Rule 25-14.003, F.A.C., Relating to Tax Savings Refund for 1988 and 1989 for GTE Florida, Inc., the Commission, having found that the company had not intended to violate the rule, nevertheless found it appropriate to order it to show cause why it should not be fined, stating that "'willful' implies an intent to do an act, and this is distinct from an intent to violate a statute or rule." Id. at 6.

While CHC 2's provision of service outside of its territory constitutes a failure to comply with Order No. 21827, we find that the violation of Section 367.045(2) does not rise to the level warranting a show cause proceeding. The utility has indicated that its original intent was to serve the entire mobile home park, and that upon discovery of the violation, it filed an application to amend the certificate.

With the exception of the fact that CHC 2 is serving territory not contained in its certificate, the application is in compliance with the governing statute, Section 367.045, and other pertinent statutes and administrative rules concerning an application for amendment of certificate. The application contains a check in the amount of \$200, which is the correct filing fee pursuant to Rule 25-30.020, Florida Administrative Code. The utility has provided a copy of the warranty deeds which provide for the continued use of the land on which the water and wastewater treatment facilities are located as required by Rule 25-30.036(3)(d), Florida Administrative Code. Adequate service territory, system maps and a territory description have been provided as prescribed by Rule 25-30.036(3), (e), (f), and (i), Florida Administrative Code. A description of the territory requested by the Utility is appended to this Order as Attachment A.

The utility has submitted an affidavit consistent with Section 367.045(2)(d), Florida Statutes, that it has tariffs and annual reports on file with the Commission. In addition, the application contains proof of compliance with the noticing provisions set forth in Rule 25-30.030, Florida Administrative Code. No objections to the application were received, and the time for such filings have expired. Further, the Department of Environmental Protection (DEP)

has advised that there are no outstanding notices of violation against this utility.

Based on the above information, we find that it is in the public interest to amend Certificate Nos. 516-W and 448-S to include the territory described in attachment A of this Order, which by reference is incorporated herein.

Transfer of Certificates

Sun Communities applied for a transfer of Water Certificate No. 516-W and Wastewater Certificate No. 448-S from CHC 2 to Sun Communities on June 15, 1995. Sun Communities contracted to purchase the utility when it purchased the mobile home park associated with the utility.

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. The application contains \$2,250, which is the correct filing fee pursuant to Rule 25-30.020, Florida Administrative Code. Sun Communities provided evidence that it owns the land upon which the utility's facilities are located as required by Rule 25-30.037(2)(g), Florida Administrative Code.

The application contains a copy of the contract for sale which includes the purchase price, terms of payment and a list of the assets purchased and liabilities assumed. Based on the application, there are no developer agreements which the buyer is obligated to assume or fulfill. In addition, there are no customer deposits, guaranteed revenue contracts, developer agreements, customer advances, or leases. Further, the utility currently has no outstanding debts.

In addition, the application contains proof of compliance with the noticing provisions set forth in Rule 25-30.030, Florida Administrative Code. No objections to the application were received, and the time for such filings have expired. The local planning agency was provided notice of the application and did not file a protest. As stated herein, we have approved the amendment of the territory for the certificates at issue in this proceeding. The description of the territory to be transferred is contained in Attachment A.

Sun Communities has indicated that it has the technical and financial ability to operate the system. The company will retain all employees of the seller who were involved in the daily operations of the utility. Further, DEP has advised that there are

no outstanding notices of violation against this utility. Sun Communities supplied a financial statement indicating that approximately 93 percent of the company's net worth is invested in real estate, with approximately \$17 million in liquid assets. While we have some concerns about the liquidity of the assets, we believe the owner possesses the overall financial ability to operate the water and wastewater facility. Because of the system's small size, the assets of the new owner should be adequate to insure the continued operations of the utility.

The utility has submitted an affidavit consistent with Section 367.045(2)(d), Florida Statutes, which states that it has tariffs and annual reports on file with the Commission. Customers will experience no change in rates or charges as a result of the transfer.

Based on the above information, we find it to be in the public interest to grant the application of Sun Communities for transfer of Water Certificate No. 516-W and Wastewater Certificate No. 448-S.

Rate Base

According to the transfer application, the net book value of the system being transferred was estimated as \$234,918 on December 31, 1994 as determined from CHC 2's annual report. However, we have never officially established rate base for this utility. Our Staff conducted an audit of the books and records of the utility to determine the rate base (net book value) at the time of transfer.

A previous audit performed under Docket No. 880935-WS, when CHC 2, Ltd. purchased Saddlebrook Mobile Home Park, identified additions of \$19,276 to the water plant and \$7,083 to the wastewater plant for the period of December 24, 1983, through July 31, 1988. During that time period there were unclassified capital additions totalling \$76,850. In the audit performed for this transfer, we were able to identify water and wastewater plant additions of \$40,364 and \$92,079, respectively, from August 1, 1988 through June 16, 1995. However, payments totaling \$79,110 were recorded in the General Ledger for September 1988 and October 1988 as being for the water and wastewater plants. We were unable to find any supporting documentation to verify the nature of the expenditures or to determine the proper allocation of the expense between water and wastewater plant improvements, if applicable. As a result, we calculate the utility's Plant in Service to total \$59,640 for the water system and \$99,162 for the wastewater system, which excludes a total of \$155,960 (\$76,850 in 1987 and \$79,110 in 1988) of unclassified plant additions and the original cost of the

utility. An original cost study will be necessary in order to determine an accurate balance for Plant in Service.

Our audit also revealed that the utility did not maintain an account for Contributions-in-Aid-of-Construction (CIAC) and has not charged new customers the tap-in fee in accordance with Order No. 21827. From August, 1988 through mid-1990, the utility imputed CIAC and recorded it as "Revenue - Impact Fee" in its records. CHC 2 stopped imputing CIAC in mid-1990. The utility stated that the tap-in fee was often negotiated into the selling price of the mobile home and not charged separately. In addition, the utility did not amortize CIAC in accordance with Chapter 25-30.140, Florida Administrative Code.

As the audit revealed, CHC 2 did not maintain its records in conformance with the NARUC System of Accounts. As a result, we cannot determine the appropriate rate base. Rate base will be established in the course of a rate proceeding when an original cost study will be performed. Therefore, we find it appropriate to refrain from establishing a rate base for this utility.

Compliance with the Uniform System of Accounts

Pursuant to Rule 25-30.115, Florida Administrative Code, a utility must maintain its accounts and records in conformance with the 1984 NARUC Uniform System of Accounts (USOA). As stated herein, CHC 2 did not maintain its books and records in accordance with the USOA. The new owner, Sun Communities, has the ability to keep the books in conformance with the USOA. Therefore, we find it appropriate to order Sun Communities to maintain its accounting books and records in conformance with the USOA, and Rule 25-30.115, Florida Administrative Code, in order to facilitate future audits of this utility system.

Acquisition Adjustment

The parties did not request an adjustment, which may be granted when the purchase price differs from the original cost calculation. Because rate base cannot be established, a finding regarding an acquisition adjustment cannot be made at this time. Therefore, no acquisition adjustment will be made in this instance.

Rates and Charges

The utility's approved rates and charges were effective September 11, 1989 pursuant to Order No. 21827 issued in Docket No. 880935-WS. Rule 25-9.044(1), Florida Administrative Code, provides that in the event of a transfer, the new owner shall adopt and use

the rates, classification and regulations of the former owner, unless authorized to change by the Commission. Sun Communities has not requested a change in the rates and charges of the system. Therefore, we find it appropriate to require Sun Communities to continue operations under the existing tariff and apply the approved rates and charges. The utility has filed a tariff reflecting the transfer of ownership. Our staff will approve the tariff filing effective for services provided or connections made on or after the stamped approval date.

Pursuant to Section 367.081(1), Florida Statutes, a utility may only charge the rates that have been approved by this Commission. Sun Communities, like CHC 2 before it, has not billed customers the gallonage charge as outlined in the tariff (\$1.00 per 1,000 gallons of usage above 5,000 gallons). The utility has not read the meters and has only billed customers for the minimum usage. Furthermore, the utility has not charged the mobile home park for the usage occurring at the common areas. This failure to charge the appropriate rates results in a loss of revenues, and makes it difficult to get a clear picture of the utility's operating revenues for the purpose of regulation and rate-making. Therefore, we find it appropriate to order Sun Communities to bill all customers, including related parties, in accordance with approved tariffs on a going forward basis.

While the utility's failure to bill its appropriate rates and charges constitutes a violation of Section 367.081(1), we find that a show cause proceeding against the utility is not appropriate. Our requirement that the utility correct its billing sufficiently addresses that violation. If the utility fails to comply, then a show cause proceeding may be appropriate.

If there are no timely protests to the proposed agency action provisions of this order, no further action will be required and the docket shall be closed.

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that Certificates Nos. 516-W AND 448-S, originally held by CHC 2, Ltd., are hereby amended to include the territory described in Attachment A of this Order. It is further

ORDERED that the transfer of Certificates Nos. 516-W and 448-S from CHC 2, Ltd., as amended herein, to Sun Communities Operating Limited Partnership, is hereby approved. It is further

ORDERED that Sun Communities Operating Limited Partnership shall maintain its accounting books and records in conformance with the Uniform System of Accounts and Rule 25-30.115, Florida Administrative Code. It is further

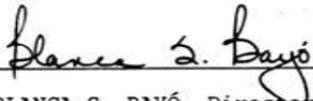
ORDERED that Sun Communities Operating Limited Partnership shall continue to charge the rates and charges approved in CHC 2, Inc.'s tariff until authorized to change by this Commission in a subsequent proceeding. It is further

ORDERED that Sun Communities Operating Limited Partnership shall bill all customers in accordance with the charges contained in its approved tariff.

ORDERED that the provisions of this Order issued as proposed agency action shall become final and effective unless an appropriate petition, in the form provided by Rule 25-22.036, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings or Judicial Review" attached hereto. It is further

ORDERED that in the event this Order becomes final, this Docket should be closed.

By ORDER of the Florida Public Service Commission, this 6th day of February, 1996.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

MEO

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

As identified in the body of this order, our action regarding rate base and acquisition adjustment and setting rates and charges for purposes of the transfer is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, at 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on February 27, 1996. In the absence of such a petition, this order shall become effective on the date subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If the relevant portion of this order becomes final and effective on the date described above, any party adversely affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days of the effective date of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

Any party adversely affected by the Commission's final action in this matter may request: (1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of

Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

ATTACHMENT A

SUN COMMUNITIES OPERATING LIMITED PARTNERSHIP

SADDLE OAK CLUB MOBILE HOME PARK

WATER AND WASTEWATER SERVICE AREA

COMPOSITE TERRITORY DESCRIPTION

MARION COUNTY

Township 16 South, Range 21 East, Section 4

Parcel 1

Commence at the center of Section 4, Township 16 South, Range 21 East, Marion County, Florida, run N 00°15'37"E, along the East line of the NW 1/4 of said Section 4, 488.66 feet to the point of beginning; thence S 89°56'18"W, 489.72 feet; thence N 00°15'45"E, 571.13 feet; thence S 89°56'18"W, 140.00 feet; thence N 00°15'45"E, 20.00 feet, thence S 89°56'18"W, 556.32 feet; thence S 00°15'45"W, 15 feet; thence S 89°56'18"W, 140.00 feet to a point in the West line of the East 1/2 of said NW 1/4; thence N 00°15'45"E, along the said west line, 255.00 feet to the NW corner of the South 1/2 of the said NW 1/4; thence N 89°56'18"E, along the North line of the South 1/2 of the said NW 1/4, 1326.57 feet; thence S 00°15'37"W, along the east line of the said NW 1/4, 831.34 feet to the point of beginning. Contains 14.06 acres, more or less.

Parcel 2

Beginning at the center of Section 4, Township 16 South, Range 21, East, Marion County, Florida, Run N 89°56'18"E, along the South line of the NE 1/4 of said Section 4, 503.09 feet; thence S 41°33'45"W, 1165.33 feet; thence S 48°26'15"E, 250.00 feet to a point intersecting the northwesterly right-of-way line of State Road S-200 (100 foot right-of-way); thence S 41°33'45"W, along said right of way line 60.00 feet; thence N 48°26'15"W, 250.00 feet; thence S 41°33'45"W, 210.00 feet; thence S 48°26'15"E, 20.00 feet; thence S 41°33'45"W, 310.00 feet; thence S 88°44'02"W, 29.42 feet; thence S 89°56'49"W, 663.75 feet; thence N 00°15'45"E, 2383.51 feet; thence N 89°56'18"E, 140.00 feet; thence N 00°15'45"E, 15.00 feet; thence N 89°56'18"E, 556.32 feet; thence S 00°15'45"W, 20.00 feet; thence N 89°56'18"E, 140.00 feet; thence S 00°15'45"W, 571.13 feet; thence N 89°56'18"E, 489.72 feet; thence S 00°15'37"W, 488.66 feet to the point of beginning. Contains 64.33 acres, more or less.

Parcel 3 (Formerly Parcel I in Order No. 21827):

Commence at the center of said Section 4, Township 16 South, Range 21 East, thence N. 89°56'18" E. along the South line of the NE 1/4 of said Section 4, 503.09 feet; thence S. 41°33'45" W. 1165.33 feet; thence S. 48°26'15" E., 250.00 feet to a point intersecting the Northwesterly right of way line of State Road S-200 (100 foot right of way); thence S. 41°33'45" W. along said right of way line 60.00 feet for the Point of Beginning; thence N. 48°26'15" W. 250.00 feet; thence S. 41°33'45" W. 210.00 feet; thence S. 48°26'15" E. 20.00 feet; thence S. 41°33'45" W. 310.00 feet; thence S. 48°26'15" E. 230.00 feet to a point intersecting the Northerly right of way line of State Road S-200 (100 foot right of way); thence N. 41°33'45" E. along said right of way line 520.00 feet to the Point of Beginning.

Parcel 4 (Formerly Parcel II in Order No. 21827):

Commence at the center of said Section 4, thence N. 89°56'18" E. along the South line of the NE 1/4 of said Section 4, 503.09 feet; thence S. 41°33'45" W. 415.33 feet for the Point of Beginning; thence continue S. 41°33'45" W. 250.00 feet; thence S. 48°26'15" E. 250.00 feet to a point intersecting the Northwesterly right of way line of State Road S-200 (100 foot right of way); thence N. 41°33'45" E. along said right of way line 250.00 feet; thence N. 48°26'15" W. 250.00 feet to the Point of Beginning. All being in Section 4, Township 16 South, Range 21 East.

Parcel 5 (Formerly Parcel III in Order No. 21827):

Commence at the Center of said Section 4, Township 16 South, Range 21 East; thence N. 89°56'18" E. along the South line of the NE 1/4 of said Section 4, 503.09 feet; thence S. 41°33'45" W. 165.33 feet for the Point of Beginning; thence continue S. 41°33'45" W. 250.00 feet; thence S. 48°26'15" E. 250.00 feet to a point intersecting the Northwesterly right of way line of State Road S-200 (100 foot right of way); thence N. 41°33'45" E. along said right of way line 250.00 feet; thence N. 48°26'15" W. 250.00 feet to the Point of Beginning.

Parcel 6 (Formerly Parcel IV in Order No. 21827):

Commence at the center of said Section 4, Township 16 South, Range 21 East; thence N. 89°56'18" E. along the South line of the NE 1/4 of said Section 4, 503.09 feet for the Point of Beginning; thence S. 41°33'45" W. 165.33 feet, thence S. 48°26'15" E. 250.00 feet to a point intersecting the Northwesterly right of way line of State Road S-200 (100 foot right of way); thence N. 41°33'45" E. along

ORDER NO. PSC-96-0164-FOF-WS
DOCKET NO. 950675-WS
PAGE 13

said right of way line 387.48 feet to the aforesaid South line of the NE 1/4 of Section 4; thence S. 89°56'18" W. along said South line 334.44 feet; more or less to the Point of Beginning.