BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for amendment of Certificates Nos. 359-W and 290-S to add territory in Broward County by SOUTH BROWARD UTILITY, INC.	DOCKET NO. 941121-WS ORDER NO. PSC-96-1137-FOF-WS ISSUED: September 10, 1996

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON
JOE GARCIA
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APPEARANCES:

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On behalf of South Broward Utility, Inc..

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On behalf of the City of Sunrise.

PHILLIP GILDAN AND SUSAN KORNSPAN, Nason, Gildan, Yeager, Gerson & White, P.A., United National Bank Tower, 1645 Palm Beach Lakes Boulevard, Suite 1200, West Palm Beach, Florida 33401.
On behalf of the City of Sunrise.

TIM VACCARO, Florida Public Service Commission, Division of Legal Services, Gerald L. Gunter Building, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850
On behalf of the Commission Staff.

FINAL ORDER AMENDING CERTIFICATES 359-W AND 290-S TO INCLUDE ADDITIONAL TERRITORY

BY THE COMMISSION:

BACKGROUND

South Broward Utility, Inc. (SBU or Utility) provides water and wastewater service in Broward County and services approximately 1,853 water and wastewater customers. The annual report for 1993

shows that the consolidated annual operating revenue for the system is $1,319,408 and the net operating income is $30,802. The utility is a Class B utility.

On October 18, 1994, pursuant to Section 367.045, Florida Statutes, SBU applied for an amendment of its water and wastewater Certificates Nos. 359-W and 290-S to add additional territory in Broward County. The proposed additional territory would consist of the "Carr Property" (97.95 acres) and "Imagination Farms" (900 acres). SBU states that the property owners plan to create single-family developments, totalling 1,200 units within the two properties.

On September 1, 1994, the City of Sunrise (Sunrise or City) filed a declaratory action in the Circuit Court in and for Broward County (Broward circuit court), in Case No. 94-010527. Sunrise petitioned the court to secure an order declaring that Sunrise had the exclusive right to serve the territory SBU wished to add to its service area. On September 26, 1994, SBU filed a motion to dismiss Sunrise's complaint, which was granted by the court on December 29, 1994, for lack of subject matter jurisdiction.

On November 17, 1994, Sunrise filed its Objection to and Motion to Dismiss, or in the Alternative, Motion to Stay Consideration of, South Broward Utility, Inc.'s Application for Amendment of Water Certificate No. 359-W and Wastewater Certificate No. 290-S in Broward County, Florida ("Sunrise' Objection"). By Order No. PSC-95-0614-FOF-WS, issued May 22, 1995, we denied Sunrise's motion. Thereafter, a formal hearing was scheduled.

On January 6, 1995, Sunrise filed with the circuit court an amended complaint. SBU filed a motion to dismiss Sunrise's amended complaint. On April 14, 1995, we filed, with the circuit court, a Petition for Leave to Intervene, or in the Alternative, to Appear as Amicus Curiae and Memorandum in Support of South Broward Utility, Inc.'s Motion to Dismiss. On April 18, 1995, the Broward County Circuit Court held a hearing on SBU's motion to dismiss. The court dismissed Sunrise's amended complaint without ruling on our petition to intervene and directed the City to litigate its claim before the Commission.

On May 3, 1995, Sunrise filed a Petition for Writ of Mandamus and Certiorari in the District Court of Appeal of the State of Florida Fourth District (District Court of Appeal). On August 15, 1995, the court entered an order treating Sunrise's petition as an appeal from a final order. On October 3, 1995, Sunrise filed its

Initial Brief with the court. On October 30, 1995, we filed a Motion for Leave to File Amicus Curiae Brief and the accompanying brief with the court.

On January 22, 1996, SBU filed its Motion for Preservation of Jurisdiction, or in the Alternative, Motion to Expedite Hearing and its Request for Oral Argument on this Motion. SBU also filed a Motion for Emergency Hearing on the aforementioned motion. On February 1, 1996, Sunrise timely filed its Response to South Broward Utility's Motion for Preservation of Jurisdiction. SBU renewed its Motion for Emergency Hearing on February 2, 1996. Sunrise filed a response on February 13, 1996. By Order No. PSC-96-0252-PCO-WS, issued February 22, 1996, we denied SBU's Motion for Emergency Hearing. By Order No. PSC-96-0420-FOF-WS, issued March 23, 1996, we denied SBU's Motion for Preservation of Jurisdiction, or in the Alternative, Motion to Expedite Hearing.

The Prehearing Conference was held on March 18, 1996, in Tallahassee, Florida. At the conference, the parties and staff identified nine issues to be addressed at the formal hearing. Prehearing Order No. PSC-96-0415-PHO-WS, was issued March 26, 1996. At the time the Prehearing Order was issued, two pending motions existed. SBU filed a Motion for Order Compelling Documents and a Motion for Protective Order, Including Request for Confidential Classification with respect to proprietary confidential business information of SBU's owner. At hearing, SBU indicated that Sunrise provided the documents addressed in the Motion to Compel. Therefore, there was no need to rule on this motion. As to the latter motion, Sunrise did not introduce SBU's confidential documents into evidence at the hearing. Therefore, we did not rule upon the motion.

On April 8 through 9, 1996, the Commission held the technical hearing in Fort Lauderdale, Florida. On April 24, 1996, the District Court of Appeal affirmed the Broward Circuit Court's decision to dismiss Sunrise's declatory action. Sunrise filed a Motion for Rehearing and Clarification of the District Court of Appeal's decision on May 1, 1996. On June 17, 1996, the District Court of Appeal denied Sunrise's motion.

Pursuant to Rule 25-22.056(3)(a), Florida Administrative Code, each party shall file a post-hearing statement which shall include a summary of each position. On May 7, 1996, SBU filed its Statement of Issues and Positions and a Request for Oral Argument of same. On the same date, Sunrise filed its Proposed Finding of Fact and Conclusions of Law, its Legal Brief on the Issues and its

Post-Hearing Statement of Positions. We include our ruling on each of Sunrise's proposed findings of fact and conclusions of law in Attachment A to this Order.

On May 23, 1996, SBU filed a Request for Return of Confidential Information. On July 12, 1996, Sunrise filed a Motion to Deny or Dismiss SBU's Amendment of Certificates Nos. 359-W and 290-S to Add Territory in Broward County.

FINDINGS OF FACT, LAW AND POLICY

Having heard the evidence presented at the hearing in this proceeding and having reviewed the recommendation of the Commission staff, as well as the post-hearing filings of the parties, we now enter our findings and conclusions.

SUNRISE'S MOTION TO DENY OR DISMISS SBU'S APPLICATION

On July 12, 1996, Sunrise filed its motion to deny or dismiss SBU's application for amendment of its water and wastewater certificates. In support of its motion, Sunrise states the following:

1. SBU and Clay Utility Company (Clay) have filed a joint application for transfer of SBU's Certificate Nos. 359-W and 290-S and utility facilities from SBU to Clay.

2. If there is a likelihood that the Commission will grant the application for transfer, then Clay is a party in interest in this amendment docket.

3. If Clay is a party in interest in this amendment docket, SBU no longer has standing to seek to add territory to its certificates.

As additional grounds for denial or dismissal of SBU's application for amendment, Sunrise also refers to its Notice of Filing Objection to SBU's Transfer of its Water and Wastewater Certificates and Utility Facilities in Docket No. 960695-WS. In its notice, Sunrise alleges that we must determine Clay's financial and technical ability to serve the area SBU seeks to add to its service territory, before we can grant SBU's amendment application.

On July 23, 1996, SBU filed a Memorandum in Response to and Motion to Strike Sunrise's motion. In support thereof, SBU states, among other things, the following:

1. Rule 1.260(c), Florida Rules of Civil Procedure, provides in part that "[i]n case of any transfer of interest, the action may be continued by . . . the original party . . . ." Therefore, even in the event of a transfer to Clay, SBU may continue the current action.

2. The Commission has heard the evidence on the issues set forth in this docket, has received post-hearing statements filed by the parties as well as staff's recommendation, and is ready to rule upon such issues.

3. The issue of whether Clay will fulfill the commitments, obligations and representation of SBU as required by Section 367.071(1), Florida Statutes, will be decided in Docket No. 960695-WS.

In order to sustain a motion to dismiss, the moving party must demonstrate that, accepting all allegations in the petition as facially correct, the petition still fails to state a cause of action for which relief may be had. See Varnes v. Dawkins, 624 So. 2d 349 (Fla. 1st DCA 1993).

In this docket, SBU petitions us to grant an amendment of its water and wastewater certificates to add additional territory. SBU's petition states a cause of action for which relief may be had pursuant to Section 367.045, Florida Statutes. Accordingly, Sunrise's motion to dismiss shall be denied.

Furthermore, we find that SBU's and Clay's joint application for transfer has no bearing on this docket. As SBU asserts, the parties have provided sufficient evidence at hearing, as well as post-hearing statements, for us to make a final determination in this docket. The question as to whether Clay will be able to fulfill the obligations, commitments and representations of SBU, which may or may not include the territory SBU seeks to add, is an issue to be determined in Docket No. 960695-WS. Based on the foregoing, we hereby deny Sunrise's motion to deny or dismiss SBU's application for amendment of its certificates.

NEED FOR SERVICE

Section 367.045(2)(b), Florida Statutes, states:

> (2) A utility may not delete or extend its service territory outside the area described in its certificate of authorization until it has obtained an amended certificate of authorization from the commission. When a

> utility applies for an amended certificate of authorization from the commission, it shall:
>
> (b) Provide all information required by rule or order of the commission, which information may include . . . the need or lack of need for service in the area that the applicant seeks to delete or add. . . .

The City of Sunrise has characterized the issue as, whether there has been a request for service from SBU. In its brief, Sunrise argues that the sole evidence before us shows that all of the property owners have requested service from Sunrise. Therefore, Sunrise alleges that service is not required from SBU. However, SBU witness Goodell testified that representatives of the owner of Imagination Farms contacted SBU for provision of service. Additionally, he testified that SBU prepared its application for extension of service at the request of the owner of the Carr Property, who had requested service from SBU.

Sunrise also argues in its brief that SBU's own service availability tariff prohibited it from extending lines unless it had a written request for service. Sunrise alleges that since SBU does not have a written request for service, its own tariff would prevent it from extending service.

We believe that the threshold issue of generic need for service in an area of land is quite different than the require- for a written request to extend service to a specific customer in an area is clearly within a service territory. Section 367.045, Florida Statutes, provides that the required information to be filed by the applicant seeking an amendment of its certification, may include information on need for service. However, the statute does not specify that the utility must show that it specifically received a request for service. Rule 25-30.036 (3), Florida Administrative Code, specifies the filing requirements for a utility proposing to extend its service area. Regarding need for service, the rule merely requires that the applicant provide "a statement showing . . . the need for service." Certainly, in an analysis of any territory expansion filing, a specific request for service to the applicant would bolster the merit of its filing. However, as SBU pointed out in its brief, "[a]n individual has no organic, economic or political right to service by a particular utility merely because he deems it advantageous to himself." Storey v. Mayo, 217 So. 2d 304, 307 (Fla. 1968) Therefore, the issue remains simply whether a need for service exists.

In response to Sunrise's argument regarding SBU's service availability tariff, we note that tariff provisions are designed as a protection for both a utility's customers and the utility itself. In this case, the provision cited by Sunrise relates to a situation where, once an area is included in the service area of an investor-owned utility, the utility will not commit capacity or its financial resources to extend lines until it receives a commitment from a future customer, in the form of a written agreement or contract. Obviously, the tariff cannot apply unless the customer is within the utility's approved territory. This is standard industry practice, and protects the utility from making unproductive extensions, and therefore protects the customers in the long run by managing rate base and keeping rates reasonable. In fact, Sunrise indicated at hearing that it follows a similar policy of requiring a developer agreement prior to the reservation of capacity.

While the positions indicate a diametric difference of opinion, the testimony is unanimous in presenting the fact that a need does indeed exist. Sunrise witnesses repeatedly offered evidence that land owners within the disputed territory had either verbally contacted the city or submitted written letters indicating a future desire for service. South Broward witness Goodell also affirmed verbal and written contacts with property owners or agents of owners expressing a concern and interest in receiving water and wastewater service. Therefore, we find that a need for service exists in the disputed territory.

WHEN NEED FOR SERVICE WILL BEGIN

SBU alleges that service to the disputed territory will not be necessary until about the Spring of 1997, whereas Sunrise asserts that service is required immediately to the area.
The basis for the City's position that service is required immediately, is that the city received a request for service from Mr. Pownall for the area within the Pownall property known as the Dairy Farm. The Health Department requested that the farm utilize another source of water, rather than the farm's existing well, because it had concerns about contamination of the water supply provided by the well. The City stated that it had already set a meter on the property to serve the farm.

On rebuttal, witness Goodell stated that he drove to the spot, and found equipment that would be used in the installation of a 2-inch meter, but that nothing was connected, and no meter was on-site. However, he testified that he understood that the City would have the 16-inch supply line connected in another 3 to 4 weeks after the hearing.

In its brief, SBU argued that this specific episode of service was clearly of a temporary nature, because the dairy farm will cease to exist when the land is converted to residential use. The City clarified that the service to the farm was strictly to serve the farm, and not for residential service. In addition, the city stated that service to this area in the long run was expected to be provided as residential and commercial service.

Based on Rule 25-30.055 (b)(1), Florida Administrative Code, a 2-inch meter would only serve approximately 8 equivalent residential connections (ERCs). We find that this connection alone does not constitute a major initiation of service to the entire territory that is at stake in this docket. We also find that a request for emergency service from one source does not necessarily commit a "customer" to that source for ongoing, regular service. Nevertheless, technically, the record indicates that there is a limited immediate need for service by the farm.

However, the issue is broader than identifying a temporary service connection. It provides the parties a forum to explain their view of the proposed development in this area, and therefore the necessary time frames to plan and construct facilities required to serve the area. As witnesses Goodell and Kassawara testified both parties anticipate that the first area to be developed in the disputed territory is the Pasadena Residential land, also called Imagination Farms East.

Sunrise stated that it was currently working with the owner/developer to provide water and wastewater service. Sunrise stated as its position in the prehearing order that the actual dates for providing service would be summer to fall of 1996. Although construction of lines has occurred, we find that no water or wastewater could or does flow through those lines at this time. Also, there are no signed developer agreements for service in that area.

SBU supports the time frame of spring 1997 by referring to several facts, which in combination, lead to its conclusion. For example, SBU provided a copy of the City of Sunrises' Application for Installation of Wastewater Collection/Transmission System for its water main/force main extension down Shotgun Road. Page three of the exhibit identifies an estimated completion date of February 1997. SBU also notes that a number of development and permitting processes must first occur prior to the provision of service, and estimates a need no sooner than spring of 1977. Finally, at the time of the hearing, the City did not have a signed developer agreement with the owners of the Pasadena property.

We find that the record supports an emergency need for water service to the Pownall farm, due to possible contamination of its existing well. This service will be provided by the City of Sunrise. However, the record supports a broader view that development will first occur in the Pasadena Residential plot, and that water and wastewater service will not be required until the spring of 1997. Therefore, we find that water and wastewater service required as a result of development will be needed in the Disputed Territory in approximately the Spring of 1997.

TOTAL PROJECTED ERCS IN NEW TERRITORY

The development potential of the disputed territory has a direct bearing on whether SBU has the ability to serve the disputed area in terms of capacity. SBU filed its application using a total projected number of 1200 ERCs which was based on the current zoning number at projected build-out. SBU later modified this number to 1073 ERCs, based on the current zoning of 1 single family residence per acre for the Pasadena and Pownall Residential land and the four properties of Golden Pond, Silverado, Pownall Commercial and the Carr property. However, witness Goodell also noted that some of the property may be developed as commercial property rather than remain single family because of contamination near the landfill in the Imagination Farms land.

Commercial property generally has a higher density than one structure per acre, which is the current zoning. We believe that this may have been part of SBU's consideration in developing the maximum 1200 number.

The City acknowledged that the territory is currently zoned for a maximum number of 1200 ERCs. Based on the foregoing, we find that the total projected ERCs in the area SBU seeks to add to its certificates is 1200 water and wastewater ERCs.

FINANCIAL ABILITY

SBU's witness Cassidy testified that SBU is in very strong financial condition. He referenced the 1994 Annual Report, stating that SBU had total utility plant in excess of $15,000,000 and total net plant of $12,000,000. The report also indicated that the owner of SBU had contributed more than $6,500,000 to the capital of the company in 1994, and slightly less than that amount in 1993. Witness Cassidy also stated that, since January 1, 1995, the owner of SBU has paid all of the long term debt, and, therefore, the current, total equity capital of SBU is approximately $5,000,000. He stated that the utility would have no problem in obtaining financing from either its owner or commercial banks, should it be

required to fund necessary construction to serve the disputed territory. Witness Cassidy stated that cash flow for 1996 was $523,716, which includes only $67,000 of allowance for funds prudently invested (AFPI). Finally, witness Cassidy testified that the owner, the Hugh Culverhouse Trust, continued the financial relationship with the utility by contributing $4,200,000 to paid in capital in 1995. We find that the financial viability of the Trust itself is substantial. In 1994 it was valued at about $197,000,000 and is expected to be valued at this level for 1995. The projected 1996 net cash flow for the Trust is over $22 million.

SBU's witness Goodell also testified on the financial ability of the utility to serve the disputed area. Based on a revised cost estimate, he stated that it would cost approximately $671,000 to serve the entire territory. Most of this cost of extension would be borne by the developer, who would pay for the onsite extension. Offsite extensions could be paid for by the developer, or possibly be subject to a refundable agreement. Witness Goodell also testified that SBU does not require any plant expansion to serve the estimated 1200 ERCs, which is one reason why SBU believes that the utility will be even better off financially if the amendment is granted.

Sunrise utilized SBU's 1992, 1993 and 1994 Annual Reports filed with the Commission to point out that, based on composite statistics, the utility experienced a loss in water and wastewater of $186,000 and $310,000 in 1992, $149,000 and $169,000 in 1993, and a loss in wastewater of $37,000 in 1994. The City also noted that had the utility not received the large amounts of AFPI in 1994, there would have been a deficit in water revenues, and an even greater deficit in wastewater revenues. Finally, the City questioned the large reliance on the owner of SBU for financial support, without the existence of a written agreement or contract.

SBU's operations over the past few years indicate that the utility has experienced losses in operating revenues. However, the record indicates financial health for SBU's future operations. The single most significant factor in this future scenario, is the lack of any long-term debt. This will result in a corresponding reduction in interest expense and a greater amount of net income. In fact, the utility stated that interest expense had been between approximately $340,000 to $360,000 from 1992 to 1994. We believe that it is also significant that no substantial additions to plant will be required to serve the area, based on the estimated ERCs.

Regarding the City's argument that there is no written agreement between the owner and the utility concerning financial support of the utility, the evidence is clear that the Trust has

supported the utility in the strongest of terms, and that this relationship has continued through 1996. Witness Cassidy testified that it has been represented to the utility, that the Trust intends to continue this support. The utility states that there was never any reason to require a written agreement. The Trust owns 100 percent of the utility. The trustees have a fiduciary responsibility to run SBU in a sound financial manner on behalf of the income beneficiary, Mrs. Culverhouse.

We find that the combination of available financial support from the trust, in addition to the elimination of long-term debt and associated interest, will continue to allow the utility to operate and serve both its existing and future customers. Therefore, we find that SBU has the financial ability to serve the disputed territory.

PLANT CAPACITY AND TECHNICAL ABILITY

South Broward alleges that it has both the capacity and technical ability to provide service to the disputed territory. Sunrise asserts that SBU does not have the capacity or ability to serve the territory.

Capacity

Water

In its brief, the City addressed SBU's wastewater system. It made no attempt to argue whether the water system could provide service. SBU's water treatment plant has a design capacity of 2.0 million gallons per day (mgd), and ground storage of 1.5 mgd. The utility's current consumptive use permit authorizes an average daily water withdrawal of 1.46 mgd. SBU does not require a larger daily withdrawal to meet current customer demand, but it will apply to the Southwest Water Management District to increase its average daily withdrawal, when necessary.

Using the information developed by SBU in response to Sunrise's interrogatories, we find that at the buildout of SBU's service area, the utility will have a water demand of 802,943 gallons per day (gpd). If the utility requested a withdrawal permit to withdraw the maximum amount of water, this would still leave 1,197,057 gpd available to serve 1200 ERCs. Water customers are generally expected to use 350 gpd, therefore 1200 ERCs would consume 420,000 gpd, which is well under 1.2 million mgd. In consideration of the foregoing, we find that SBU has the water plant capacity to serve the disputed territory.

Wastewater

In its brief, the City argues that the existing plant of SBU could not serve all of its current territory at build-out and all of the disputed territory at build-out. SBU provided evidence to the contrary. SBU witness Goodell testified that the wastewater facilities have a design capacity of 1.0 mgd and a permit capacity of .99 mgd. SBU asked for the reduction to .99 mgd to avoid costs that are incurred at the 1.0 mgd level, since the plant was not currently using 1.0 mgds of capacity. SBU witness Waitz testified that SBU's current committed capacity is .1 mgd, and its existing wastewater flow is .45 mgd. SBU witness Goodell calculated wastewater usage at 280 gpd per ERC, which is the number generally used to calculate wastewater usage. At 280 gpd, 1200 ERCs would use 336,000 gpd of SBU's existing wastewater flow, resulting in 110,000 gpd of remaining capacity after SBU served its existing customers and new customers in the disputed territory.

To contradict SBU's information, Sunrise used the three month average peak number of .568 mgd from the utility's monthly operating reports submitted to DEP. At .568 mgd usage current and committed connections of .1 mgd, SBU's remaining plant capacity would be 332,000 gpd, which is less than the 336,000 gpd required for 1200 ERCs.

We find that the most reasonable numbers to use in developing a consistent scenario are found in SBU's response to Sunrise's interrogatories. This information states that, at buildout of SBU's existing service area, wastewater flows will be 678,131 gpd. With a 1.0 mgd plant and .1 mgd of current, committed connections, this leaves 220,000 gpd of capacity, which is less than the 336,000 gpd required for 1200 ERCs.

However, witness Goodell and Waitz testified that the treatment process could be modified to change from extended aeration to complete mix. Witness Waitz explained that this process allowed the utility to process up to four times the existing treatment level for the organic material.

We also recognize that not all ERCs will be connected at one time. The 1994 annual report indicates that the utility projects 100 new connections per year from its existing territory. The record also indicates that the parties anticipate that the first area to be developed in the disputed territory is the Pasadena Residential area, which is zoned as 413 ERCs. If 100 connections per year is used as the standard rate of adding connections in the new territory, and the utility reached its built-out capacity of 678,131 gpd, identified earlier, adding 100 connections would equal

an additional 28,000 gpd per year. At that rate, it would take almost eight years for the wastewater plant to reach capacity. We find this is more than enough time for the utility to pursue either expansion or alternative treatment methods. Should plant expansion be required, we find, as discussed earlier, that the utility has the financial ability necessary to accomplish this task.

We find that the utility has sufficient time and resources to make an expansion, if that becomes necessary. However, the utility has the option of changing its treatment mode, which will greatly increase its capacity. Therefore, we find that SBU has the wastewater treatment capacity to serve the disputed territory.

Technical Ability

Again, SBU's position is that it possesses the technical ability to provide service to the disputed area, and the City's position is that SBU has not demonstrated that it can provide consistent, environmentally sound service.

Most of the City's position was developed through the cross examination of witness Goodell, which focused on several violations of the local Broward County Department of Natural Resource and Protection (DNRP) standards concerning nitrogen or effluent. These violations occurred in the months of November 1994, December 1994, January 1995, February 1995, March 1995, April 1995, September 1995 and October 1995. Also, in March 1995, the DNRP issued a Notice of Violation (NOV) to SBU because it failed to meet the effluent standard for fecal coliform.

SBU acknowledged the exceeded parameters and the NOV from the DNRP. The utility also stated that it had taken two measures to deal with these issues on a forward-going basis. The excess nitrogen was dealt with by adding a new timer which was easier for operators to adjust and control in managing the aeration process. After the NOV, the utility discovered it had a low area or pit in the collection system where sand and grit were building up and creating other problems. Since making these changes, the utility has not received any further NOVs or had any exceedances of the DNRP standards. SBU further stated that the it had never exceeded any Department of Environmental Protection (DEP) standards, nor ever received any NOVs from DEP.

Other points made by SBU in supporting the utility's technical ability to provide service related to management expertise of the company. Witness Goodell testified that, as the president, he has been in the water and wastewater utility business for approximately nineteen years and is a registered professional engineer in

Florida. SBU is staffed in conformance with DEP regulations with a plant superintendent, six full time personnel and two part time personnel for weekend duty. Because the utility is part of the Culverhouse family of utilities, personnel can be transferred if necessary. Finally, witness Goodell testified that SBU has a very experienced contract staff for billing and customer service questions.

The utility's DNRP overages, including its NOV from DNRP, are important to note. However, Sunrise characterized these actions as consistently being unable to meet standards. The utility has been in operation since 1986, and these appear to be the only violations that the utility has experienced. Therefore, we do not find that SBU has consistently failed to meet these standards. The utility has taken action to prevent continuing problems in this area. Since taking such action, the record indicates that SBU has not violated DEP standards. We also find that the utility has adequate staffing to manage operations and respond to customers. Therefore, we find that SBU has the technical ability to provide water and wastewater service to the disputed territory.

COMPREHENSIVE PLANS

The City argues that SBU's application conflicts with the three local comprehensive plans of Broward County, Town of Davie and City of Sunrise. It states that all three plans identify Sunrise as a regional service provider, that granting the amendment to SBU would conflict with portions of the comprehensive plans, and that maps from each plan indicate the disputed territory is within the City of Sunrise's service territory.

SBU states that there is no clear identification of Sunrise as a regional service provider, that allowing SBU to serve the disputed territory would not conflict with comprehensive plan objectives, and that the maps do not present a consistent picture of what entity should serve the disputed area.

The primary argument by the City is that it has been identified as a regional service provider by the three comprehensive plans of Broward County, City of Sunrise and Town of Davie. Two documents that were attached to witness Baylor's testimony appear to be the source of that statement. One consists of selected pages from the Broward County 201 Facilities Plan, which state that an analysis of the most cost effective delivery of service to the region was conducted, and the results divided the county into eight areas, with the west area to be serviced by Sunrise treatment plants. The second document to support the City's argument is language in the Broward County 1989 Land Use

Plan, which states, "While the initial regional plan for wastewater services envisioned four major regional facilities, the current regional plan has several major facilities". The text goes on to identify the major facilities, of which Sunrise is one.

Another argument by the City on this issue is that allowing SBU to serve the disputed territory will result is conflict with various comprehensive plans. The Broward County Land Use Plan states that an overall objective is to "Coordinate Future Land Uses with Availability of Regional and Community Facilities and Services". It further identifies several policies that require connection to centralized service, and provision of service by entities that can provide adequate service. The Town of Davie 1989 Comprehensive Plan includes a summary of the service provided by the larger systems to the city, which includes South Broward Utility and the City of Sunrise. Smaller service providers are identified under "Other Systems". The information on the City of Sunrise Comprehensive Plan sets forth the capacities and service areas of the city's various plants, and includes a map showing the expected service area.

Finally, Sunrise included copies of maps with the sections of the comprehensive plans of the county and two cities. The City argues that these maps show that the disputed territory has been designated as being within the City of Sunrise service area.

With regard to the City's argument that it has been designated a regional service provider, SBU stated in their brief that neither the County 201 Plan nor the 1989 Land Use Plan clearly specify Sunrise as a regional service provider. First, the County 201 Plan was dated 1984, which was prior to the development of SBU and connection of customers in 1986. Therefore, there could be no assessment of SBU in providing water or wastewater service in the area. Second, the 1989 Land Use Plan indicates that four facilities had originally been planned to be designated as regional facilities, but now several systems are identified as major facilities. The first plan (County 201) divided the area into eight service areas, yet the second document, which appears to be referring to the first, contemplates that only four systems would be designated as regional. Sunrise was not singled out as one of the four regional systems. SBU also states that the Davie plan refers to four primary service providers within Davie, including SBU. Therefore, the Davie plan did not establish either the City of Sunrise or SBU as a regional service provider.

With regard to the city's second argument concerning consistency with plan objectives, SBU witness Goodell testified that service to the area is, in fact, consistent with the

objectives stated in the Broward County plan and the City of Davie plan. Policy number 08.01.04, page II-18, states:

> in order to protect the health, safety, and welfare of Broward County's residents, development should not be permitted in those portions of Broward County with inadequate potable water and wastewater facilities.

Witness Goodell testified that SBU meets that goal by providing adequate potable water and wastewater treatment service. He further testified that service by SBU would be consistent with other county goals identified with policies 08.01.05 through .09 because they relate to the provision of service through centralized facilities. Also, SBU would meet the plan's goal of providing service to unincorporated areas that meets all federal, state, and local quality standards, and maximize the use of existing facilities. Witness Goodell also stated that the City of Davie's Objectives 1,2,3,6,7, and 8 would be met with service to the area from SBU.

Finally, witness Goodell testified that the maps provided by the City do not indicate that the disputed territory is within the Sunrise's service area. Each of these maps showed a different interpretation as to what the service territories would be of all of the utilities in the area. He testified that none of the maps correlate with each other or concur with what the existing service areas of all the cities have evolved to be at this time. Some were drawn up before the existence of SBU. One of the maps with the Town of Davie's Comprehensive Plan, actually showed that the City of Davie was to serve part of the disputed area, which, to use the City's approach, would place the City of Sunrise's Comprehensive Plan in dispute with the Town of Davie.

We do not find that the City's argument that the comprehensive plans identify it as a regional service provider is accurate. We agree with SBU's arguments that the County 201 Plan was developed prior to the establishment of SBU and that, therefore SBU would not have been included in any analysis. Also, the 1989 Land Use Plan included a discussion about regional service providers, where the City was identified as a major facility. However, it was not specified as a regional system. Finally, while the Davie Plan mentions both the City of Sunrise and SBU as major service providers, neither is specified as a regional service provider.

We also find that service to the disputed area by SBU would not be inconsistent with the objectives identified in the Broward County Land Use Plan. The focus in the Plan was on providing

service through centralized facilities, which is exactly how SBU would provide service. In addition, we do not find that the information attached to the Town of Davie Comprehensive Plan is inconsistent with SBU providing service to the area. In fact, the attachment states that there are no service problems relating to SBU, whereas there are several problems associated with service from the City of Sunrise. Finally, staff believes that the information included in the record for the City of Sunrise Comprehensive plan does not provide any insight into whether service by SBU would be consistent or inconsistent.

The maps referenced by the City of Sunrise indicate that the disputed territory has been considered to be within the service area of the City of Sunrise and the Town of Davie. We have discounted the Broward 201 Plan map because it was published in 1984, which was two years prior to the existence of SBU. However, there have been modifications and changes to the maps that indicate some degree of flexibility in defining these "service" areas. For example, the 1989 Broward Comprehensive plan appears to designate a water and wastewater service area identified as area 32 and area 7 respectively, to be served by the City of Sunrise. However, the Town of Davie's 1989 Comprehensive Plan carves out a portion on the southeastern side of that same area to be served by the Town of Davie. Davie's Plan also shows that a section in the western part of its service area is served by the City of Sunrise through an interlocal agreement. This area also contains portions of the disputed territory. The City of Sunrise's 1993 Comprehensive Plan shows the eastern portion representing the Town of Davie, but not the area designated in the interlocal agreement. The maps also show that the westernmost boundary of Sunrise's service area changes among the maps, generally moving to the east.

The record does not specify the weight to be given to the overall objectives stated in these plans, as opposed to the service areas shown in the maps. Since the maps show changes over time, it appears that there is flexibility in determining service territories. At this time, the maps indicate that the service areas of both the City of Sunrise and the Town of Davie contain portions of the disputed territory. The Town of Davie did not file a protest to this proceeding. All of the territory is in unincorporated areas.

Additionally, staff notes that Section 367.045, Florida Statutes does not require the Commission to deny an application for extension of service if the application is inconsistent with local comprehensive plans. Section 367.045 (5)(b), Florida Statutes, provides:

> When granting or amending a certificate of authorization, the commission need not consider whether the issuance or amendment of the certificate of authorization is inconsistent with the local comprehensive plan of a county or municipality unless a timely objection to the notice required by this section has been made by an appropriate motion or application. If such an objection has been timely made, the commission shall consider, but is not bound by, the local comprehensive plan of the county or municipality.

In summary, there is no clear designation of the City of Sunrise as a regional service provider. We find that service to the area by SBU meets the stated objectives in the Broward County Plan and the Town of Davie Plan. The record does not provide information on the objectives of the City of Sunrise Plan. The maps indicate the disputed area is in the unincorporated areas of both the Town of Davie and the City of Sunrise. These maps also indicate that service areas have changed over time. Based on the foregoing, we find that the amendment request by SBU is not inconsistent with the local comprehensive plans.

DUPLICATION OF SERVICE

SBU asserts that granting it the territory amendment will not result in competition with or duplication of the City of Sunrise system. The City argues that SBU carried the burden to show that SBU's requested extension would not compete or duplicate the service of any other providers, and that SBU did not rebut that the extension would compete and duplicate service by the City of Sunrise.

With regard to SBU's duplication of or competition with other providers, Section 367.045, Florida Statutes and Rule 25-22.0405, Florida Administrative Code, require that a utility must notice certain entities when it files for an extension of territory. This list contains all regulated utilities located within the county, all local governments, the local Water Management District, DEP, and Public Counsel. SBU met this requirement. Rule 25-30.036 (3), Florida Administrative Code, sets forth the filing requirements for an applicant to extend its service area. However, as SBU stated in its brief, the rule does not require an applicant to provide any information relating to duplication or competition with other systems. Section 367.045(2)(a), Florida Statutes, does not require this information either.

With respect to the issue of SBU's competition with or duplication of Sunrise's system, City witness Kassawara testified that the water and wastewater mains built to the area were always a part of the City's Master Plan, and therefore the system was planned and constructed to provide service to this area. He testified that if the City was not allowed to serve this area, it would impose a hardship on the City's utility system and its customers. Witness Baylor added that the City had planned for this service and had expended considerable public monies to serve this area. His testimony included a discussion of anticipated water treatment plant expansions. He also testified that the City currently had budgeted and appropriated funds to provide the line extensions to the area. Witness Baylor also stated that the City had received a request for emergency service from Mr. Pownall for the Dairy Farm, and that it had already set a meter on the property.

At hearing witness Baylor was asked a number of questions concerning the expansion of existing facilities and the planning and budgeting process for constructing facilities. He testified that the master plan designs for growth in a generic fashion, based on planning board information and other information received. The plan is for the whole area, not just one specific area. He conceded that the City will not be able to serve all of its projected customers in the year 2000 with its current facilities. He also testified that additional construction of pump stations, storage facilities and repump stations were required for the area, not just the disputed territory. This is further supported by his testimony that the city's budget for funding additions to the system did not specify specific lines. For example, the line on Shotgun Road constructed by the City would not have appeared specifically in the budget, but funding would have been authorized through a generic category allowing expansion of the system.

We find that there is no duplication of facilities, because the City has stated that its current facilities could not serve all of its projected customers by the year 2000, and most of the development in the disputed area would be in that time frame. SBU cannot duplicate what has not been built. In addition, plant expansions, line extensions and even the budgetary process indicate the city uses a generic approach to construction, rather than a customer/area specific approach.

With respect to the actual provision of service through the master plan lines, witness Baylor admitted that despite its presence in the disputed territory, the water main was unconnected at both ends. He also agreed that no water could be provided through the line by the City of Sunrise. Witness Baylor also

stated that this was the same situation for the wastewater main identified on the City's exhibits. This testimony was in opposition to earlier testimony stating that the lines were ready to provide service at the time of hearing in the disputed area.

Finally, the City argues that SBU would be duplicating service because it already had a 2-inch line and meter set to provide emergency service to the Pownall Dairy Farm. However, as discussed earlier, witness Goodell testified that no line was connected and no meter was on site. Therefore, we find no duplication by SBU on this point.

In conclusion, the City states that service to the area by SBU will compete and duplicate its service by duplicating facilities, lines and service to a customer. We find that competition or duplication will not exist, because the plans for expanded City facilities include the entire City service area and not just the disputed territory; the lines constructed to the territory are not connected, cannot provide service and are not inside the disputed territory; and there is no current service to any customer within the disputed area. Accordingly, we find that granting the disputed territory to SBU will not result in competition with or duplication of the Sunrise system.

CONSIDERATION OF PUBLIC INTEREST

SBU states that it is in the public interest to grant its application to amend the disputed territory into their certificated service area. The City states in its brief that it is not in the public interest to grant SBU's application.

One of the challenges in any issue of this nature is to identify and narrow the various factors to be considered in the decision making process. In formulating our decision, we have used the guidelines specified in our rules, statutes and testimony relating to the previous issues discussed in this Order.

Rules 25-30.036(1) and (3), Florida Administrative Code, detail a number of technical requirements necessary for an extension of service, such as maps, ownership, potential customers, impact on the utility, impact on existing customers and tariffs. We find that each of these standards has been met in the utility's filing. In addition, the rule requires support for broader concepts such as the utility's financial and technical ability to provide service and the need for service in the area requested; and whether the request is consistent with the local comprehensive plan and if not, a statement as to why the extension would be in the public interest. These concepts were specifically discussed

earlier in this Order. We have found that the utility possesses the financial and technical ability, and that an extension of territory will not be inconsistent with the local comprehensive plans.

Furthermore, Section 367.045(5)(a), Florida Statutes, provides that we may not grant an amendment to a certificate of authorization for an extension of a system which will compete with or duplicate another system, unless we first determine that such other system is inadequate to meet the reasonable needs of the public, or that the person operating the system is unable, refuses or neglects to provide reasonably adequate service. The evidence shows that duplication of service in the disputed territory does not exist. Therefore, we made no finding regarding Sunrise's ability to provide service.

In summary, we find that SBU met its burden of proof to support an amendment of its certificates to add the disputed territory. Therefore, we find that it is in the public interest to grant SBU's amendment application.

CLOSING OF THE DOCKET

This docket has already been to hearing. However, on May 23, 1996, SBU filed a Request for the Return of Confidential Information. This request refers to documents which relate to the Hugh Culverhouse Trust, which SBU provided to Sunrise and the Commission Division of Records and Reporting prior to the technical hearing. SBU regards these documents as confidential and seeks their return. This matter shall be addressed in an Order from the Prehearing Officer. Therefore, this docket shall be closed administratively, after staff's approval of revised tariff sheets concerning the territory and resolution of SBU's Request for the Return of Confidential Information.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Water Certificate No. 359-W and Wastewater Certificate No. 290-S, held by South Broward Utility, Inc., are hereby amended to include the additional territory described in Attachment B of this Order, which by reference is incorporated herein. It is further

Ordered that South Broward Utility, Inc. shall charge the customers in the territory herein the rates and charges approved in its tariff until authorized to change by this Commission. It is further

ORDERED that each of the findings in the body of this Order is hereby approved in every respect. It is further

ORDERED that this docket shall be closed administratively, after staff's approval of the revised tariff sheets concerning the additional territory, and upon resolution of South Broward Utility, Inc.'s Request for the Return of Confidential Information.

By ORDER of the Florida Public Service Commission, this 10th day of September, 1996.

Blanca S. Bayó

BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

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Commissioner Joe Garcia dissents from the Commission's decision in this matter with the following statement:

My vote in this docket reflects my grave concerns as to whether the granting of this application is "in the public interest." Clearly, there are other utilities within the geographic proximity capable of providing service to the territory in question. Our Agenda Conference discussion convinced me that the determination of the public interest is illusory where Commission rules and Florida Statutes only provide for consideration of one side of the story.

A determination of what is in the public interest should not be made in a vacuum. Yet, that is the very situation we have created. We are moved to equate SBU's proof of technical and financial capability with the public interest. In my view, the notion of the public interest is too broad to be so simply appraised. Where a dispute over territory exists, the public interest must be determined against the backdrop of that dispute. I was not satisfied with the evidence presented in order to conclude that the grant of this application was in the public interest.

The Commission's decision inappropriately places the burden on the City of Sunrise to show that they could provide adequate service (or that SBU could not provide adequate service), especially considering the apparent belief that the City was not "forthcoming in their participation at the proceedings", and "chose not to put other evidence in the record." The implication of such comments taints the right afforded the City by Section 367.022, Florida Statutes.

In conclusion, I fear that, by our decision, we have created a situation that is not in the public interest and one we all clearly wanted to avoid: a territory grab and a race to provide service first (where we recognize only one runner), which ultimately will cause a duplication of facilities and eventually increased costs for all ratepayers.

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, 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 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

PROPOSED FINDINGS OF FACT

Pursuant to Rule 25-22.056(2), Florida Administrative Code, Proposed Findings of Fact shall be succinct, shall clearly cite to the record and shall not contain mixed questions of law and fact. We have reviewed the City of Sunrise's Proposed Findings of Fact and rule on them as follows:

1. On October 20, 1994, South Broward Utility, Inc. ("SBU") filed an Application with the Public Service Commission ("PSC" or "Commission") to add territory ("Territory") to its PSC water and sewer certificates. Exhibit 7, TWG-15.

   RULING: Accept.

2. The Territory consists of Imagination Farms and Carr Property. Exhibit 7, TWG-15, Exhibit A.

   RULING: Accept.

3. In Exhibit "A" to its Application, as required by the Commission, SBU made its allegation regarding the need for service by SBU. Exhibit 7, TWG-15; R. 79.

   RULING: Reject as argumentative based on Sunrise's use of the word "allegation", and Sunrise's suggestion that SBU must show a need for service by SBU.

4. The basis for SBU's claimed need for service was because SBU had allegedly been requested by the owners of Imagination Farms and the Carr Property to serve these properties. Exhibit 7, TWG-15, Exhibit A; R. 80.

   RULING: Reject as argumentative based on Sunrise's use of the word "allegedly".

5. The Imagination Farms property was once owned, in its entirety, by Mr. Pownall ("Pownall"), but before SBU filed its Application with the PSC, Pownall sold portions of the Imagination Farms property to Howard J. Zimmerman and Associates ("Zimmerman"). R. 72; 76.

   RULING: Accept.

6. SBU never spoke with Pownall, and Pownall never requested that SBU provide service to Imagination Farms. R. 75-76.

RULING: Accept.

7. Pownall has requested service from Sunrise, in writing. Exhibit 2.

RULING: Accept.

8. Zimmerman never requested that SBU provide service to Imagination Farms, and Zimmerman notified the Commission directly that SBU's representation, in Exhibit "A" of its Application, was not true. Exhibit 11.

RULING: Accept.

9. Zimmerman has requested service from Sunrise, in writing. Exhibit 2 and 19.

RULING: Accept.

10. No person(s) or business(es) within the Territory have requested utility service from SBU. Exhibit 2; Exhibit 11; Exhibit 24; Exhibit 25.

RULING: Reject as unsupported by the record.

11. SBU presented no evidence that any person(s) or business(es) submitted a written application to SBU for the extension of service to the Territory.

RULING: Reject as argumentative.

12. The Department of Community Affairs approved comprehensive plans of Broward County, the City of Sunrise, and the Town of Davie; the Service Territory Agreement between the Town of Davie and the City of Sunrise, entered into in Broward Circuit Court, Case No. 85-05855 CN; the Broward County 201 Utilities Plan; the Utility Purchase Agreements between former, PSC certified utility, West Broward Utilities, Inc. and the City of Plantation and the City of Sunrise; and the City of Sunrise Utility Master Plan provide that the Territory is within the City of Sunrise Utility Service Territory. R. 168-171; R. 238-242; R. 244-245; and Exhibits 18, CER-1; CER-2; CER-3, 20, DAB-1; DAB-2; DAB-3; DAB-4.

RULING: Reject as unsupported by the record.

13. The City of Sunrise has the necessary utility facilities in place; is ready, willing and able to provide utility service; has been requested to provide utility service; and within a few weeks will be providing utility service to the portion of its existing service territory that SBU seeks to add to its PSC certificate. R. 171-172; R. 190-191; R. 195-199; R. 223-229; R. 236-245; R. 271-275; R. 287; and Exhibits 2, 19, TAK-1, TAK-2, TAK-3, TAK-4, 23, 24, 25.

RULING: Reject as argumentative or conclusory.

14. The City of Sunrise already provides utility service: (1) within the middle of the Territory to the Broward County Landfill; (2) abutting the eastern boundary of the Territory; (3) to the north of the Territory; and (4) to the west of the Territory. R. 90-92; R. 212; R. 224-230; R. 243; R. 271.

RULING: Accept.

15. Pownall's Dairy Farm, inside the Territory, will be served by the City of Sunrise in a few weeks, as soon as the City's existing main inside the Territory is connected and charged with water. R. 218-219; R. 226; R. 272; and Exhibit 2.

RULING: Accept.

16. Service within the Territory is required immediately, as evidenced by the Pownall Dairy Farm's written request to connect to the City of Sunrise's utility system. R. 218-219; R. 226; R. 272; and Exhibit 2.

RULING: Accept.

17. Based on current zoning, 1200 ERCs will be served in the Territory, but proposed use amendments have totalled 2400 ERCs. R. 211; Exhibit TAK-1.

RULING: Reject as unsupported by the record.

18. SBU relies upon the Hugh F. Culverhouse Trust for financial stability and survival. However, there is no written agreement obligating the Trust to financially support SBU. R. 131-133.

RULING: Reject the first sentence as unsupported by the record. Accept the second sentence.

19. SBU has run deficits in the last several years. R. 124-131, R. 288.

RULING: Accept.

20. SBU has consistently been unable to meet the environmental treatment standards for wastewater effluent imposed by the Broward County Department of Natural Resource Protection ("DNRP"). R. 57-71; and Exhibits 8, 9, 10.

RULING: Reject as argumentative and unsupported by the record.

21. SBU was also issued a Notice of Violation by DNRP in March 1995 for greatly exceeding the environmental limitations for fecal coliform, to which SBU admitted liability. R. 69-71; and Exhibit 10.

RULING: Accept.

22. The capacity of SBU's wastewater system is 1.0 mgd. R. 511.

RULING: Accept.

23. SBU's current customers use .568 mgd of the 1.0 mgd wastewater capacity, based on the existing average daily flow of SBU, calculated on the regulatory required standard of the average daily flow of the three maximum consecutive months. R. 89; and Exhibit 9.

RULING: Reject as unsupported by the record.

24. SBU has a current, contractually-committed, but unconnected, wastewater demand of .1 mgd. R. 511. Thus, of its 1.0 mgd of wastewater capacity, SBU has .332 mgd available for new customers, i.e., 1.0 mgd - .568 mgd (used) - .1 mgd (committed).

RULING: Accept the first sentence. Reject the second sentence because there is no transcript cite as required by Rule 25-22.056(2)(b), Florida Administrative Code.

25. Based on the anticipated flow from the 1200 ERCs to be connected within the Territory, the total anticipated additional capacity needed to serve the new customers in the Territory is .42 mgd, per SBU's expert Sumner Waitz. R. 511.

RULING: Reject as unsupported by the greater weight of the competent and substantial evidence.

26. SBU cannot serve its existing customers, its currently-committed customers and the new customers in the Territory from its existing wastewater facilities. Adding the .568 mgd of capacity being used to serve SBU's existing customers, to the .1 mgd of capacity currently committed to serve other customers, to the .42 mgd of capacity needed to serve the new customers in the Territory, exceeds the available 1.0 mgd of capacity.

RULING: Reject as argumentative and because there is no transcript cite as required by Rule 25-22.056(2)(b), Florida Administrative Code.

27. SBU cannot serve its current, PSC-certificated service area to build out from its existing facilities if it serves the Territory it seeks to add. Adding the current .568 mgd average daily flow of SBU to its .1 mgd committed connections in its current PSC-certificated service area totals .668 mgd, leaving only .332 mgd of remaining capacity to serve: (1) the remaining customers in SBU's current, PSC-certificated service area to which SBU is already obligated to serve; and (2) the new customers in the Territory which will require .42 mgd of capacity per SBU's expert Sumner Waitz, which alone exceeds the .332 mgd of available capacity.

RULING: Reject as argumentative and because there is no transcript cite as required by Rule 25-22.056(2)(b), Florida Administrative Code.

28. SBU's build-out population in its current certificated service area will total 9,224 people, based upon SBU's required 1995 regulatory filing with the Florida Department of Environmental Protection ("DEP"). Exhibit 12 at p. 64.

RULING: Reject as unsupported by the record.

29. As filed with the DEP, the average daily flow for SBU's current, PSC-certificated area at build-out will total .92 mgd based upon the current Broward County Land Use Plan for wastewater flow of 100 gallons per day per person, times the build-out population of 9,224 people. Exhibit 12 at p. 34.

RULING: Reject as unsupported by the record.

30. Based on SBU's wastewater capacity of 1.0 mgd and its build-out utilization of .92 mgd, SBU cannot serve, from its existing wastewater facilities, both its existing certificated service area needs of .92 mgd, and the anticipated need of .42 mgd from the area its seeks to add to its PSC certificate. Adding the .92 mgd to the .42 mgd exceeds SBU's 1.0 mgd capacity.

RULING: Reject as argumentative and because there is no transcript cite as required by Rule 25-22.056(2)(b), Florida Administrative Code.

31. The Broward County Comprehensive Plan provides for water and sewer utility service to be provided by regional water and sewer utilities. It provides that the area which SBU seeks to add to its PSC certificate is within the utility service area of the City of Sunrise, which it categorized as one of its regional plan major utilities. SBU is characterized as a small provider, and not as a Comprehensive Plan-required regional provider. Exhibit 20, DAB-1.

RULING: Reject the first and third sentences as not supported by the record. Accept the second sentence.

32. The City of Sunrise Comprehensive Plan provides that the area which SBU seeks to add to its PSC certificate is within the City of Sunrises' regional utility service area. Exhibit 20, DAB-2.

RULING: Accept.

33. The Town of Davie Comprehensive Plan provides that the area which SBU seeks to add to its PSC certificate is to receive its water and sewer utility service from the City of Sunrise. Exhibit 20, DAB-3.

RULING: Accept.

34. There are other utility service providers in the geographic proximity of the Territory, including, Town of Davie, City of Sunrise, City of Pembroke Pines, and Cooper City. R. 55.

RULING: Accept.

35. The City of Sunrise has the necessary utility facilities in place; is ready, willing and able to provide utility service; has been requested to provide utility service; and within a few weeks will be providing utility service to the portion of

its existing service territory that SBU seeks to add to its PSC certificate. R. 171-172; R. 190-191; R. 195-199; R. 223-229; R. 236-245; R. 271-275; and Exhibits 2, 19, TAK-1, TAK-2, TAK-3, TAK-4; 23, 24, 25.

RULING: Reject as argumentative or conclusory.

36. The City of Sunrise already provides the utility service: (1) within the middle of the Territory to the Broward County Landfill; (2) abutting the eastern boundary of the Territory; (3) to the north of the Territory; and (4) to the west of the Territory. R. 90-92; R. 212; R. 224-230; R. 243; R. 271.

RULING: Accept.

37. The City of Sunrise's water and sewer utility facilities were planned, constructed and are in place to provide service to the Territory. R. 198-199; R. 238-242; R. 274-275.

RULING: Reject as unsupported by the greater weight of the competent and substantial evidence.

38. The City of Sunrise has a 16 inch water main, a 12 inch sewer force main, and a 2 inch service lateral already located inside the Territory, which lines shortly will be providing service inside the Territory. R. 191; R. 223-224; R. 218-219; R. 226.

RULING: Reject as unsupported by the greater weight of the competent and substantial evidence.

39. The City of Sunrise has numerous other existing water mains and sewer force mains abutting the Territory to the east, north and west. R. 224-230; Exhibit 2.

RULING: Accept.

40. SBU put on no evidence that the numerous utility service providers in the geographic proximity, including the City of Sunrise, are inadequate to meet the reasonable needs of the public or unable, refusing or neglecting to provide reasonably adequate service.

RULING: Reject as argumentative.

41. The City of Sunrise has been requested to serve Imagination Farms and has agreed and undertaken to do so. R. 196-197; Exhibit 2, TAK-2, 3, 4, 5.

RULING: Accept.

42. The City of Sunrise is able to serve the Carr Property today, the remaining property in the Territory, from its existing lines running the length of the eastern boundary of the Carr Property. R. 198, 274.

RULING: Reject as unsupported by the greater weight of the competent and substantial evidence.

43. The City of Sunrise is not unable, refusing or neglecting to provide reasonably adequate service. R. 236-238; R. 271-274; R. 197; and Exhibits 20, DAB-3, 23; 19; TAK-4.

RULING: Reject as argumentative or conclusory.

44. The City of Sunrise incorporates Proposed Findings of Fact 6-16, 20-21, 26-27, and 30-44 for Issue 9.

RULING: Reject as repetitive.

45. Based on current rates, the monthly utility bill for an ultimate, on-line single family customer within the Territory, if served by the City of Sunrise, would total $43.69, and if served by SBU would total $62.33. R. 285-286.

RULING: Reject as unsupported by the greater weight of the competent and substantial evidence.

46. The current service availability charges for an ultimate on-line single family customer connecting within the Territory, if served by the City of Sunrise, would total $2,250, which includes plant, lines and meter fee. If served by SBU, it would total $3,639.62, which includes plant, lines, meter fee and AFPI charges. Sunrise does not have an AFPI charge. It would therefore cost $1,389.62 more per customer to connect to SBU's system than to connect to the City of Sunrise's utility system. R. 15; R. 286-287; R. 215; and Exhibit 2.

RULING: Reject as unsupported by the record.

47. SBU is owned by the Culverhouse Trust which owned two other water and sewer utilities, Shadowrock Utilities, Inc. and Central County Utilities, Inc. The Culverhouse Trust has already sold both these utilities. R. 83-84.

RULING: Accept.

48. The Culverhouse Trust desires to sell SBU. R. 83. As the utility owner seeks to sell SBU, it has no intention to serve the Territory.

RULING: Accept first sentence. Deny second sentence as argumentative and because there is no transcript cite as required by Rule 25-22.056(2)(b), Florida Administrative Code.

PROPOSED CONCLUSIONS OF LAW

We have reviewed each of the City of Sunrise's Proposed Conclusions of Law. The Proposed Conclusions of Law and our findings are as follow:

1. South Broward Utility, Inc. ("SBU") did not demonstrate a need for service from SBU in the territory which SBU seeks to add to its PSC certificate ("Territory").

RULING: Reject because the proposed conclusion does not constitute a conclusion of law.

2. SBU did not receive any requests for utility service from person(s) or business(es) within the Territory.

RULING: Reject because the proposed conclusion does not constitute a conclusion of law.

3. There is no need for service in the Territory.

RULING: Reject because the proposed conclusion does not constitute a conclusion of law.

4. SBU did not demonstrate the nonexistence of service from other sources within the geographic proximity of the Territory.

RULING: Reject because the proposed conclusion does not constitute a conclusion of law.

5. Service from other sources exists within the geographic proximity of the Territory.

RULING: Reject because the proposed conclusion does not constitute a conclusion of law.

6. SBU did not demonstrate the financial ability to serve the Territory.

RULING: Reject because the proposed conclusion does not constitute a conclusion of law.

7. SBU does not have the financial ability to serve the Territory.

RULING: Reject because the proposed conclusion does not constitute a conclusion of law.

8. SBU did not demonstrate that it has the plant capacity and technical ability to serve the Territory.

RULING: Reject because the proposed conclusion does not constitute a conclusion of law.

9. SBU does not have the plant capacity and technical ability to serve the Territory.

RULING: Reject because the proposed conclusion does not constitute a conclusion of law.

10. SBU did not demonstrate that service by SBU to the Territory would be consistent with the local comprehensive plans governing the Territory, or why the public interest would be served by ignoring those comprehensive plans.

RULING: Reject because the proposed conclusion does not constitute a conclusion of law.

11. Service by SBU to the Territory would be inconsistent with the local comprehensive plans, and the public interest would be not served by ignoring those comprehensive plans.

RULING: Reject because the proposed conclusion does not constitute a conclusion of law.

12. SBU did not demonstrate that service by SBU to the Territory would not be in competition with or duplication of any other system or portion of a system.

RULING: Reject because the proposed conclusion does not constitute a conclusion of law.

13. SBU did not demonstrate that, such other systems or portions of systems are inadequate to meet the reasonable needs of the public, or the persons operating such systems are unable, refusing, or neglecting to provide reasonably adequate service.

RULING: Reject because the proposed conclusion does not constitute a conclusion of law.

14. Service by SBU to the Territory would be in competition with and a duplication of other systems or portions of systems, including Sunrise, and such other systems or portions thereof are adequate to meet the reasonable needs of the public and the persons operating them are not unable, refusing or neglecting to provide reasonably adequate service.

RULING: Reject because the proposed conclusion does not constitute a conclusion of law.

15. SBU did not demonstrate that it would be in the public interest for the Commission to grant SBU's Application.

RULING: Reject because the proposed conclusion does not constitute a conclusion of law.

16. It would not be in the public interest for the Commission to grant SBU's Application.

RULING: Reject because the proposed conclusion does not constitute a conclusion of law.

17. SBU has not met the legal requirements necessary for the Commission to grant SBU's Application to extend its PSC certificate to serve the Territory.

RULING: Reject because the proposed conclusion does not constitute a conclusion of law.

18. SBU's Application to extend its PSC certificate to serve the Territory cannot be granted.

RULING: Reject because the proposed conclusion does not constitute a conclusion of law.

ATTACHMENT B

Township 50 South, Range 40 East, Broward County, Florida.

Section 21

All of the Southeast one-quarter (SE 1/4) of Section 21, Township 50 South, Range 40 East.

Section 26

All of that part of the West one-half (W 1/2) of Section 26, Township 50 South, Range 40 East, lying North of the South right-of-way line of the South New River Canal; excepting therefrom the following described parcel of land;

Beginning at the Northeast corner of said West one-half (W 1/2), of Section 26;

Thence Southerly, along the East line of said West one-half (W 1/2), a distance of 620 feet;

Thence Westerly, parallel with the North line of said West one-half (W 1/2), a distance of 670 feet;

Thence Northerly, parallel with said East line of the West one-half (W 1/2), a distance of 620 feet to the intersection with said North line of the West one-half of Section 26;

Thence Easterly, along said North line, a distance of 670 feet to the Point of Beginning.

AND

All of that part of the East one-half (E 1/2) of Section 26, Township 50 South, Range 40 East, lying North of the South right-of-way line of the South New River Canal; excepting therefrom the following described parcel of land:

Beginning at a point on the East line of said Section 26, which is 603 feet South of the Northeast corner of said Section 26;

Thence Westerly, along a line which is 603 feet South of and parallel with the North line of said Section 26 a distance of 2641 feet more or less to the West line of said Northeast one-quarter (NE 1/4);

Thence Northerly, along said West line, a distance of 603 feet more or less to the Northwest corner of said Northeast one-quarter (NE 1/4) of Section 26;

Thence Easterly, along said North line of Section 26 a distance of 2641 feet more or less to said Northeast corner of said Section 26;

Thence Southerly, along said East line of Section 26 a distance of 603 feet more or less to the Point of Beginning.

Section 27

All of that part of the Southwest one-quarter (SW 1/4) of Section 27, Township 50 South, Range 40 East, lying north of the South right-of-way line of the South New River Canal, excepting therefrom the North one-half (N 1/2), of the North one-half (N 1/2), of the Northwest one-quarter (NW 1/4), of said Southwest one-quarter (SW 1/4) of Section 27 and also excepting therefrom the following described parcel of land;

Beginning at the Northeast corner of said Southwest one-quarter (SW 1/4) of Section 27;

Thence Southerly, along the East line of said Southwest one-quarter (SW 1/4) of Section 27, a distance of 375 feet more or less;

Thence Westerly, along a line 375 feet South of and parallel with the North line of said Southwest one-quarter (SW 1/4), a distance of 385 feet or more or less;

Thence Northerly, along a line 385 feet West of and parallel with the said East line of the Southwest one-quarter (SW 1/4) of Section 27 a distance of 375 feet more or less to the intersection with the said North line of the Southwest one-quarter (SW 1/4) of Section 27;

Thence Easterly, along said North line a distance of 385 feet more or less to the Point of Beginning.

AND

All of that part of the East one-half (E 1/2) of Section 27, Township 50 South, Range 40 East, lying North of the South right-of-way line of the South New River Canal, excepting therefrom the North one-half (N 1/2) of the North one-half (N 1/2) of the Northwest one-quarter (NW 1/4) of the Northeast one-quarter (NE 1/4) of said Section 27.

Section 28

All that part of Section 28, Township 50 South, Range 40 East, lying North of the South right-of-way line of the South New River Canal.