

State of Florida



Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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**DATE:** FEBRUARY 17, 2000

**TO:** DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

**FROM:** DIVISION OF WATER AND WASTEWATER (CLAPP, REDEMANN) *BSM @*  
DIVISION OF LEGAL SERVICES (CROSSMAN) *PPR* *fw* *bl*

**RE:** DOCKET NO. 990915-WS - APPLICATION BY SUN LIFE TRAILER RESORTS LIMITED PARTNERSHIP FOR TRANSFER OF MAJORITY ORGANIZATIONAL CONTROL OF BUTTONWOOD BAY UTILITIES, INC., HOLDER OF CERTIFICATES 431-W AND 364-S IN HIGHLANDS COUNTY, MERGER INTO BUTTONWOOD BAY WATER & SEWER COMPANY, LLC, AND NAME CHANGE ON CERTIFICATES TO BUTTONWOOD BAY WATER & SEWER COMPANY, LLC.  
COUNTY: HIGHLANDS

**AGENDA:** FEBRUARY 29, 2000 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE

**CRITICAL DATES:** NONE

**SPECIAL INSTRUCTIONS:** NONE

**FILE NAME AND LOCATION:** S:\PSC\WAW\WP\990915WS.RCM

CASE BACKGROUND

Buttonwood Bay Utilities, Inc. (Buttonwood or utility) is a Class C utility located in Highlands County and serves approximately 960 water and wastewater customers. The utility was issued Water Certificate No. 431-W and Wastewater Certificate No. 364-S pursuant to Order No. 13672, issued September 11, 1984, in Docket No. 840177-WS. The utility's 1998 annual report lists total utility operating revenues of \$102,302 for water and \$72,137 for wastewater with a net operating income of \$23,227 for water and a net operating loss for wastewater of \$18,401.

Sun Life Trailer Resorts Limited Partnership (Sun Life or Buyers) formed Buttonwood Bay Water & Sewer Company, LLC (BBW&SC)

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on June 15, 1999. The actual transfer of the utility stock from Buttonwood Bay Investors (Buttonwood Investors or Seller) to Sun Life took place on June 17, 1999. On June 21, 1999, Buttonwood and BBW&SC were merged with BBW&SC being the surviving entity. On July 14, 1999, Sun Life filed an application for transfer of majority organizational control (TMOC) of Buttonwood. The Buyer's application was found to be deficient. The deficiencies were corrected in September, 1999.

It has been Commission practice that rate base is not established in TMOC proceedings, and thus, rate base audits are not conducted in TMOC cases. However, for informational purposes, the 1998 annual report on file with the Commission gives rate base as \$202,870 for water and \$270,056 for wastewater for a total of \$472,926.

This recommendation addresses the petition to transfer majority organizational control of the utility from Buttonwood Bay to Sun Life.

#### **DISCUSSION OF ISSUES**

**ISSUE 1:** Should the application for transfer of majority organizational control of the utility from Buttonwood Investors to Sun Life and subsequent merger with BBW&SC be approved?

**RECOMMENDATION:** Yes, the application for transfer of majority organizational control of the utility from Buttonwood Investors to Sun Life and subsequent merger with BBW&SC should be approved. In addition, Certificates Nos. 431-W and 364-S should be issued in the name of Buttonwood Bay Water & Sewer Company, LLC. (CLAPP, CROSSMAN, REDEMANN)

**STAFF ANALYSIS:** As discussed in the case background, on July 14, 1999, Sun Life filed an application for transfer of majority organizational control of Buttonwood from Buttonwood Investors to the Buyers. The application is in compliance with the governing statute, Section 367.071, Florida Statutes, and other pertinent statutes and administrative rules concerning an application for transfer of majority organizational control. The application contains a check in the amount of \$3,000, which is the correct filing fee pursuant to Rule 25-30.020, Florida Administrative Code.

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In addition, the application contains proof of compliance with the noticing provisions set forth in Rule 25-30.030, Florida Administrative Code, including notice to the customers of the utility to be transferred. No objections to the notice of application have been received and the time for filing such has expired. A description of the territory served by the utility is appended to this memorandum as Attachment A.

The application states that the transfer is in the public interest, as required by Rule 25-30.037(3)(f), Florida Administrative Code, because the transfer of the utility was included as part of the transfer of the mobile home community and R.V. park. Since the mobile home community and R.V. park comprised the customers of the utility, the former owner did not want to retain ownership of the utility, and thus, required the purchase of the utility as a condition to purchasing the community. Although the purchaser has no prior experience in water and wastewater utility operations, it has retained the existing operations personnel and has retained the law firm of Rose, Sundstrom & Bentley, LLP, to assist in regulatory matters. The application also included the statement that the buyer will fulfill the commitments, obligations and representations of the seller with regard to utility matters.

The application states that the Buyers have performed a reasonable investigation of the utility system as required by Rule 25-30.037(3)(h), Florida Administrative Code. The Buyers included a statement that the sanitary sewer collection and transmission systems are in satisfactory condition and in compliance with all applicable standards set by the Florida Department of Environmental Protection (DEP). Staff has contacted the DEP and learned that there are no outstanding notices of violation.

According to the application, Sun Life has the financial and technical ability to provide water and wastewater service. The utility has been certificated in the water and wastewater business since 1984. The utility has a 99 year lease for its water and wastewater systems which provides for the continued use of the land as required by Rule 25-30.036(3)(i), Florida Administrative Code. According to our records, the utility is current on its regulatory assessment fees (RAFs) and has filed an annual report for 1998. The Buyer has accepted the responsibility for filing the 1999 RAFs and annual report.

Section 367.071(1), Florida Statutes, (1999), which became effective on June 11, 1999, states:

No utility shall sell, assign, or transfer its certificate of authorization, facilities or any portion thereof, or majority organizational control without determination and approval of the commission that the proposed sale, assignment, or transfer is in the public interest... However, a sale, assignment, or transfer of its certificate of authorization, facilities or any portion thereof, or majority organizational control may occur prior to commission approval if the contract for sale, assignment, or transfer is made contingent upon commission approval.

The application states that the parties closed on the transfer on June 17, 1999, prior to receiving Commission approval. However, the Agreement includes the following "unwind" provisions:

The parties acknowledge and agree that the Florida Public Service Commission (the "PSC") has the power and jurisdiction to approve or disapprove the transactions contemplated by this agreement.

In the event that said PSC should fail to approve the transfer of the Stock to Purchaser, then Seller, upon the same terms and conditions hereof, shall sell the Stock to such other entity as chosen by Purchaser in its sole discretion as will be approved by the PSC.

The above language is indication that the stock transfer was made contingent upon Commission approval. In the event that the transfer is not approved by the Commission, ownership of the stock reverts back to the Seller, and any future stock transfers will be subject to Commission approval. Therefore, the transfer agreement accords with Section 367.071, Florida Statutes.

As stated in the Case Background, Sun Life formed BBW&SC on June 15, 1999. On June 21, 1999, Buttonwood and BBW&SC were merged with BBW&SC being the surviving entity.

Based on the above, staff recommends that the Commission find that the TMOC of Buttonwood to Sun Life is in the public interest and, therefore, that it should be approved. Additionally, the merger of Buttonwood into BBW&SC should be approved and Certificates Nos. 431-W and 364-S should be issued in the name of Buttonwood Bay Water & Sewer Company, LLC.

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ATTACHMENT A

BUTTONWOOD BAY WATER & SEWER COMPANY, LLC

HIGHLANDS COUNTY

WATER AND WASTEWATER TERRITORY SERVED

Township 35 South, Range 29 East

Section 27

That portion of the Southwest 1/4 of the Northwest 1/4 of said Section 27 lying West of U.S. Highway No. 27.

Section 28

That Portion of the East 2,233 feet of the North 3,484 feet of said Section 28 lying East of Jackson Creek as it now runs.

A more complete description is listed below:

PARCEL NO. 1 (WASTEWATER TREATMENT PLANT SITE, I-2 CU)

The East 750 feet of the North 2560 feet of Section 28, Township 35 South, Range 29 East, Highlands County, Florida, less the North 2200 feet thereof. Said Parcel No.1 containing 6.2 Acres, more or less.

PARCEL NO. 2 (WASTEWATER PLANT SITE, I-2 CU)

Commence at the Northeast corner of Section 28, Township 35 South, Range 29 East, Highlands County, Florida, and run Southerly along the East boundary of said Section 28, a distance of 1360 feet; thence run Westerly and parallel to the North boundary of said Section 28, a distance of 720 feet to the Point of Beginning; thence continue to run Westerly 200 feet; thence run Southerly 200 feet; thence run Easterly 200 feet; thence run Northerly 200 feet to the Point of Beginning. All parallel to the North and East boundary lines of Section 28, Township 35 South, Range 29 East, Highlands County, Florida. Said Parcel No. 2 containing 0.92 Acres, more or less.

Distribution site together with a right-of-way over and upon all streets, alleyways and utility easements located within the subdivision for the purpose of installing and maintaining water and sewage distribution systems.

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PARCEL NO. 3 (MOBILE HOME PARK SITE, M-2)

The North 2060 feet of Section 28, Township 35 South, Range 29 East, Highlands County, Florida, lying East of Jackson Creek right-of-way, less the North 1040 feet thereof and less; commence at the Northeast corner of Section 28, Township 35 South, Range 29 East, Highlands County, Florida, and run Southerly along the East boundary of said Section 28, a distance of 1330 feet; thence run Westerly and parallel to the North Boundary of said Section 28, a distance of 720 feet to the Point of Beginning; thence continue to run Westerly 200 feet; thence run Southerly 200 feet; thence run Easterly 200 feet; thence run Northerly 200 feet to the Point of Beginning. All parallel to the North and East boundary lines of Section 28, Township 35 South, Range 29 East, Highlands County, Florida. Said Parcel No. 3 containing 35.4 Acres, more or less.

PARCEL NO. 4 (RECREATIONAL VEHICLE SITE, CG-1)

The North 3524 feet of Section 28, Township 35 South, Range 29 East, Highlands County, Florida, lying East of Jackson Creek right-of-way, less the North 2060 feet of said Section 28. Said Parcel No. 4 containing 49.0 Acres, more or less.

PARCEL NO. 5 (BUSINESS, B-3)

The South 600 feet of Southwest 1/4, of Northwest 1/4, West of Highway No. 27 right-of-way, of Section 27, Township 35 South, Range 29 East, Highlands County, Florida. Said Parcel No. 5 containing 4.0 Acres, more or less.

PARCEL NO. 6 (MOBILE HOME SUBDIVISION, M-1)

The North 1040 feet of Section 28, Township 35 South, Range 29 East, Highlands County, Florida, lying East of Jackson Creek right-of-way, less the right of way for Skipper Road. Said Parcel No. 6 containing 40.0 Acres, more or less.

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**ISSUE 2:** Should rate base be established?

**RECOMMENDATION:** No, different ownership of stock does not affect the rate base balance. (CLAPP)

**STAFF ANALYSIS:** It is Commission practice that rate base is not established in TMOC proceedings. The reason behind this approach is the philosophy that stock is traded and has no regulatory relationship to rate base. Thus, different ownership of stock does not affect a utility's rate base balance. Consequently, stock purchase price and rate base are not considered in making a public interest determination of a TMOC. This approach is followed if the stock is privately held or publicly traded.

Because rate base is not considered in TMOC proceedings, rate base audits have historically not been conducted in TMOC proceedings. Further, staff believes that establishment of rate base in this docket would result in an unnecessary deviation from Commission practice. Staff does not believe the facts of this particular case warrant a deviation from past practice. The sale of the stock of Buttonwood from Buttonwood Investors to Sun Life will not alter the utility's asset and liability accounts. Accordingly, the transfer of stock ownership will not change the rate base balance. In consideration of the above, staff recommends that rate base not be established in this docket.

**ISSUE 3:** Should an acquisition adjustment be approved?

**RECOMMENDATION:** No, an acquisition adjustment should not be included in the calculation of rate base for transfer purposes.  
(CLAPP)

**STAFF ANALYSIS:** An acquisition adjustment results when the purchase price differs from the original cost calculation. The Commission routinely makes determinations regarding acquisition adjustments in cases involving the transfer of certificates, assets, or facilities because the purchase price is considered when determining whether the transfer is in the public interest. Conversely, it is Commission practice that acquisition adjustments are generally not considered in stock transfers because the price of stock has no regulatory relationship to a utility's established rate base.

Because the assets are not actually being sold and the value will remain the same after the transfer, staff believes that an acquisition adjustment does not result from this transfer. Therefore, staff recommends that an acquisition adjustment should not be included in the calculation of rate base.



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**ISSUE 4:** Should the rates and charges approved for this utility be continued?

**RECOMMENDATION:** Yes, the rates and charges approved for this utility should be continued. The tariff filing reflecting the TMOC should be effective for services provided or connections made on or after the stamped approval date. (CLAPP)

**STAFF ANALYSIS:** The utility's rates and charges were established most recently by Order No. 13672, issued September 11, 1984, in Docket No. 840177-WS, as the result of an original certificates application.

Rule 25-9.044(1), FAC, provides that:

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

The Buyer has not requested a change in the rates and charges of the utility and staff sees no reason to change them at this time. Accordingly, staff recommends that the utility continue operations under the existing tariff and apply the approved rates and charges. The utility has filed a revised tariff since there is a utility name change requested as part of the transfer of majority organizational control. Staff will approve the tariff filing effective for services rendered or connections made on or after the stamped approval date.

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**ISSUE 5:** Should this docket be closed?

**RECOMMENDATION:** Yes, because no further action is required, this docket should be closed. (CROSSMAN)

**STAFF ANALYSIS:** No further action is required in this docket. Therefore, staff recommends that this docket be closed.