

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Application for acknowledgment of sale of land and facilities of Little Sumter Utility Company to Village Center Community Development District, and for cancellation of Certificate Nos. 580-W and 500-S in Marion and Sumter Counties.

DOCKET NO. 030986-WS

In re: Investigation of rate structure and conservation initiative of Little Sumter Utility Company in Sumter County, pursuant to Order PSC-00-0582-TRF-SU.

DOCKET NO. 021238-WS

ORDER NO. PSC-04-0398-FOF-WS

ISSUED: April 16, 2004

The following Commissioners participated in the disposition of this matter:

BRAULIO L. BAEZ, Chairman
J. TERRY DEASON
LILA A. JABER
RUDOLPH "RUDY" BRADLEY
CHARLES M. DAVIDSON

ORDER APPROVING TRANSFER, CANCELING CERTIFICATES NOS. 580-W AND 500-S, AUTHORIZING CLOSURE OF ESCROW ACCOUNT, AND CLOSING DOCKETS

BY THE COMMISSION:

BACKGROUND

Little Sumter Utility Company (Little Sumter, LSU, or utility) is a Class A utility serving 8,812 water and 8,436 wastewater connections. The utility's 2002 annual report shows total operating revenue of \$3,787,005 and net operating income of \$1,247,641. Little Sumter was granted Certificates Nos. 580-W and 500-S by Order No. PSC-96-1132-FOF-WS, issued September 10, 1996, in Docket No. 960305-WS, Application for water and wastewater certificates in Sumter County by Little Sumter Utility Company. The area served is called The Villages, near Leesburg. Since 1996, the growth that has occurred in this area has exceeded the expectations projected in the original certificate application.

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FPSC-COMMISSION CLERK

This Order addresses two dockets. Docket No. 030986-WS involves the utility's transfer application. The water and wastewater systems have been acquired by the Village Center Community Development District (District). The District assumed operation of the systems on October 1, 2003, when the sale was closed. Docket No. 021238-WS involves an investigation of rate structure and conservation issues, which also includes an escrow account that contained funds that had accrued from the current inclining-block rate structure. Funds have been withdrawn in the past and spent on conservation and reuse items, with the consent of this Commission. We have jurisdiction pursuant to Sections 367.045, 367.071(4)(a), and 376.081, Florida Statutes.

TRANSFER APPLICATION

On October 14, 2003, Little Sumter filed an application requesting approval of the transfer of the water and wastewater facilities to the District pursuant to Section 367.071(4)(a), Florida Statutes, and Rule 25-30.037(4), Florida Administrative Code.

In the application, the utility states that the District is a governmental authority, making the application subject to approval as a matter of right pursuant to Section 367.071(4)(a), Florida Statutes. The utility cites to Order No. PSC-94-0274-FOF-WS, issued March 9, 1994, in Docket No. 931206-WS, In Re: Request for acknowledgment of sale of Sunbelt Utilities, Inc. to Village Center Community Development District and cancellation of Certificates Nos. 280-W and 227-S in Lake/Sumter Counties to show that the Commission acknowledged that the District was entitled to a transfer as a matter of right in a prior docket. However, since that Order does not indicate how the District meets the requirements of Section 367.071(4)(a), Florida Statutes, such that it should be considered a governmental authority, the utility provided clarification on the matter.

By letter dated and filed December 15, 2003, counsel for Little Sumter clarified that the District was created pursuant to Chapter 190, Florida Statutes, as a Community Development District. Section 367.021(7), Florida Statutes, defines a governmental authority as, *inter alia*, a political subdivision, as defined by Section 1.01(8), Florida Statutes. Section 1.01(8), Florida Statutes, defines political subdivision to include "counties, cities, towns, villages, special tax school districts, special road and bridge districts, bridge districts, and all other districts in this state." (emphasis supplied) A Community Development District is defined in Section 190.003(6), Florida Statutes, as a local unit of special-purpose government, exercising specialized functions. It is created as a method to manage and finance basic services for community development. Section 190.002(3), Florida Statutes. The powers of a Community Development District resemble those of local governments and specifically include the provision of water and wastewater service. Sections 190.011 and 190.012, Florida Statutes.

Moreover, counsel for the utility points out that in Sun 'N Lake of Sebring Improvement District v. McIntyre, 800 So. 2d 715, 717 (Fla. 2d DCA 2001), review denied, 821 So. 2d 302 (Fla. 2002), the Second District Court of Appeal found that the special district in that case was a political subdivision pursuant to Section 1.01(8), Florida Statutes, and noted that the district was subject to the provisions of Chapter 190, Florida Statutes. Finally, in addition to acknowledging the sale of Sunbelt Utilities, Inc. to the District as a matter of right by Order No. PSC-94-0274-FOF-WS, the Commission has indicated the governmental authority exemption status of two other Community Development Districts pursuant to Section 367.022(2), Florida Statutes. Order No. PSC-96-0110-FOF-WS, issued January 19, 1996, In Re: Resolution of the Board of County Commissioners of Charlotte County declaring Charlotte County subject to the provisions of Chapter 367, Florida Statutes - Request for exemption for provision of water and wastewater service by Riverwood; and Order No. 18503, issued December 7, 1987, in Docket No. 871238-SU, In Re: Request by Dunes Community Development District for determination of FPSC regulation of a sewer facility in Flagler County.¹

For the foregoing reasons, we agree with the utility that the District is exempt from Commission regulation pursuant to Section 367.022(2), Florida Statutes, because it is a governmental authority.

The application is in compliance with Section 367.071(4)(a), Florida Statutes, and Rule 25-30.037(4), Florida Administrative Code. No notice of the transfer is required and no filing fees apply.

Pursuant to Rule 25-30.037(4)(c), the utility entered into a contract for sale, and a copy of that contract was included in the filing. All assets involved in providing utility service are being transferred to the District. The District has considered the most recent income and expense statement, balance sheet, statement of rate base, and contributions-in-aid-of-construction as required by Rule 25-30.037(4)(e). Official action was taken on September 17, 2003, when the Agreement for Purchase and Sale (Agreement) was signed, and the closing occurred on October 1, 2003. The Agreement included a paragraph stating that the sale was contingent upon the approval of the Commission. As required by Rule 25-30.037(4)(g), no customer deposits are to be refunded since Little Sumter collected none. Paragraph 4 of the Agreement states that the purchase price for the assets shall not be greater than \$86,400,000.

¹Prior to July 1, 1996, utilities subject to Commission jurisdiction were required to file an application for a certificate of authorization or exemption from Commission regulation. However, the 1996 Legislature amended Section 367.031, Florida Statutes, to make exemptions self-executing. Therefore, utilities meeting the requirements of Section 367.022, Florida Statutes, are no longer required to apply for exemption status.

We have verified that the appropriate regulatory assessment fees (RAFs) have been paid by Little Sumter through the transfer date of October 1, 2003, and no penalties, interest, or refunds are due. We have also verified that Little Sumter is current with its annual reports through 2002. Rule 25-30.110(3) requires that an annual report must be filed for any utility that is jurisdictional as of December 31st. Since the sale and transfer of assets occurred in October, the utility does not need to file an annual report for 2003. Accordingly, there are no further requirements for Little Sumter regarding RAFs or annual reports.

We find that the application is in compliance with the provisions of Rule 25-30.037, Florida Administrative Code. Therefore, the transfer to the District shall be approved as a matter of right, pursuant to Section 367.071(4)(a), Florida Statutes, and Certificates Nos. 580-W and 500-S shall be canceled.

DISPOSITION OF ESCROW ACCOUNT

In LSU's original certificate case, this Commission ordered LSU to escrow the difference between the first and second tier of its inclining-block rates to fund conservation programs approved by the Southwest Florida Water Management District (SWFWMD). It was anticipated that by using the funds collected from usage in the second tier, the customers responsible for the excess consumption would be paying for the conservation programs targeted to encourage them to reduce their usage. In addition, the SWFWMD had asked the utility to design conservation measures to help reduce the expected consumption in Little Sumter's golf course community. (See Order No. PSC-96-1132-FOF-WS, issued September 10, 1996 in Docket No. 960305-WS, In re: Application for rate increase in Sumter County by Little Sumter Utility Company, at 8.)

In LSU's subsequent request to implement reuse service, we ordered LSU to continue to escrow gallonage revenues collected from the second tier rate of its inclining-block rate structure in excess of the gallonage revenue requirement. This requirement was extended through the year 2002, unless a determination was made to discontinue the escrow requirement. (See Order No. PSC-00-0582-TRF-SU, issued March 22, 2000, in Docket No. 990684-SU, In re: Notice of Filing Tariff Sheet No. 13.1 to implement reuse service in Sumter County by Little Sumter Utility Company, at 7.) In February 2003, we again ordered LSU to continue escrowing the gallonage revenues collected from the second tier to allow our staff time to complete its evaluation of the efficacy of both the utility's escrow expenditures and rate structure. (See Order No. PSC-03-0266-PCO-WS, issued February 24, 2003 in Docket No. 021238-WS, In re: Investigation of rate structure and conservation initiative of Little Sumter Utility Company in Sumter County, pursuant to Order PSC-00-0582-TRF-SU, at 2-3.)

During the escrow period of March 1997 through September 2003, the utility provided our staff with monthly information regarding the number of bills, gallons billed and revenue billed, separated by customer class and usage block. In addition, in response to a Staff Data

Request dated January 9, 2004, LSU provided information which reduced the number of gallons sold in the second tier to reflect a misclassification of construction-related water sales. Appropriately reclassifying these gallons as construction-related gallons reduced the second tier residential sales by \$270,300, while increasing the gallons sold to its general service customers during the years 2000 - 2003.

During the escrow period, the utility made numerous withdrawals from the escrow account to fund certain water conservation items. A summary of the escrow monies, disbursements and adjustments is as follows:

Total monies to escrow per reports before adjs:	\$1,400,897
Adjustment to remove general service sales (2):	(270,300)
Misc adjustments to residential sales:	(4,098)
Adjusted revenues to disburse:	\$1,126,499
Actual disbursements from account:	(1,180,457)
Disbursements greater than required:	\$ (53,958)

(2): Response to Staff Data Request dated January 9, 2004.

Based on the summary above, LSU deposited and spent approximately \$54,000 more than was required.

Upon review of the utility's conservation-related expenditures from the escrow account, each disbursement from that account was applied either to media advertising to promote water conservation or to the upgrade of the utility's wastewater facilities to provide reuse to a nearby golf course. The following is a chart summarizing LSU's conservation-related expenditures:

**LITTLE SUMTER UTILITY COMPANY
 CONSERVATION EXPENDITURES: 1997 - 2003**

<u>Year</u>	<u>Conservation Advertisements</u>	<u>Reuse Project</u>	<u>Total Expenditures</u>
1997	\$0	\$0	\$0
1998	\$0	\$0	\$0
1999	\$47,874	\$0	\$47,874
2000	\$2,946	\$0	\$2,946
2001	\$2,772	\$555,300	\$558,072
2002	\$2,965	\$0	\$2,965
2003	\$509	\$568,091	\$568,600
TOTALS	\$57,066	\$1,123,391	\$1,180,457

As shown in the above chart, the utility spent \$57,066 on conservation-related advertising and \$1,123,391 to upgrade its wastewater facilities for installation of a reuse system. Disbursements related to conservation advertising have long been recognized by the SWFWMD as part of an overall conservation program. Disbursements related to the reuse project have been found by the District to be consistent with its overall water conservation plan, and found by this Commission to be consistent with the original order to encourage conservation. (See Order No. PSC-03-0266-PCO-WS, issued February 24, 2003, in Docket No. 021238-WS, In re: Investigation of rate structure and conservation initiative of Little Sumter Utility Company in Sumter County, pursuant to Order PSC-00-0582-TRF-SU, at 2.)

Finally, we have analyzed the appropriate current balance in the escrow account. As indicated in a statement from LSU's bank, the balance in the escrow account at September 30, 2003 was \$29,860.02. In October 2003, this Commission authorized a final withdrawal from the escrow account, to be applied to its reuse system, in the amount of \$29,860.02. This brought the escrow balance down to zero.

Based on the foregoing, we find that the utility has complied with prior Commission Orders regarding its escrow account and conservation-related expenditures. The appropriate current balance of the escrow account is zero. Therefore, the escrow account established pursuant to Order No. PSC-96-1132-FOF-WS shall be closed.

RATE STRUCTURE INVESTIGATION

As discussed above, LSU was ordered to continue escrowing revenues. This was, in part, to allow staff time to evaluate whether changes needed to be made to the utility's rate structure. (See Order No. PSC-03-0266-PCO-WS, issued February 24, 2003 in Docket No. 021238-WS, In re: Investigation of rate structure and conservation initiative of Little Sumter Utility Company in Sumter County, pursuant to Order PSC-00-0582-TRF-SU, at 2.) However, because we hereby approve the utility's sale to the District as a matter of right, there is no longer a need to evaluate the utility's rate structure.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the transfer of Little Sumter Utility Company, 1100 Main Street, The Villages, FL 32159, to Village Center Community Development District, 3231 Wedgewood Lane, The Villages, FL 32162, is hereby approved as a matter of right. It is further

ORDERED that Certificates Nos. 580-W and 500-S, held by Little Sumter Utility Company, are hereby canceled. It is further

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ORDERED that the escrow account established pursuant to Order No. PSC-96-1132-FOF-WS shall be closed. It is further

ORDERED that Dockets Nos. 030986-WS and 021238-WS are hereby closed.

By ORDER of the Florida Public Service Commission this 16th day of April, 2004.

BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records

(S E A L)

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

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

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the Director, Division of the Commission Clerk and Administrative Services 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.