

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

RECEIVED-FPSC
MAY -6 AM 9:26
COMMISSION CLERK

DATE: May 6, 2004

TO: Director, Division of the Commission Clerk & Administrative Services (Bayó)

FROM: Division of Economic Regulation (Johnson, Kaproth)
Office of the General Counsel (Gervasi) *PP KK JS*
PS MGT JDT *TS*

RE: Docket No. 040257-WS – Application for transfer of Certificates 617-W and 531-S in Duval and St. Johns Counties from Nocatee Utility Corporation to JEA. Counties: Duval and St. Johns

AGENDA: 05/18/04 – Regular Agenda – Interested Persons May Participate

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\ECR\WP\040257.RCM.DOC

Case Background

Nocatee Utility Corporation (NUC or utility) is a Class C water and wastewater utility providing service to a development located in Duval and St. Johns Counties. The utility is not in a priority water resource caution area of the St. Johns River Water Management District. NUC was granted Certificates Nos. 617-W and 531-S pursuant to Order No. PSC-01-1916-FOF-WS, issued September 24, 2001, in Docket No. 990696-WS, In Re: Application for original certificates to operate a water and wastewater utility in Duval and St. Johns Counties by Nocatee Utility Corporation. The utility's 2003 annual report indicates gross revenue and net operating income of \$0 for water and wastewater.

Jacksonville Electric Authority (JEA) and NUC have entered into a Conveyance Agreement in which NUC will assign all of its right, title and interest in Certificates Nos. 617-W and 531-S. On March 16, 2004, the JEA Board approved the acquisition of NUC for a purchase price of \$2,250,000. However, the closing will not take place until after the Commission approves the transfer. On March 24, 2004, an application was filed for the transfer of the utility to JEA and for the cancellation of Certificates Nos. 617-W and 531-S.

DOCUMENT NUMBER-DATE

05284 MAY-6 04

FPSC-COMMISSION CLERK

Docket No. 040257-WS
Date: May 6, 2004

At issue in this docket is NUC's application for approval of the proposed sale of the utility to JEA and the cancellation of Certificates Nos. 617-W and 531-S. The Commission has jurisdiction pursuant to Sections 367.045 and 367.071, Florida Statutes.

Discussion of Issues

Issue 1: Should the transfer of Certificates Nos. 617-W and 531-S from Nocatee Utility Corporation to the Jacksonville Electric Authority be approved?

Recommendation: Yes. The transfer of certificates from Nocatee Utility Corporation to JEA should be approved as a matter of right, pursuant to Section 367.071(4)(a), Florida Statutes. Certificates Nos. 617-W and 531-S should be cancelled administratively upon receipt of the executed purchase agreement confirming the date of closing, which is anticipated to be December 31, 2004. (Johnson, Gervasi, Kaproth)

Staff Analysis: On March 24, 2004, NUC filed an application for the transfer of the utility facilities to JEA. The application had no deficiencies.

Pursuant to Section 367.071(4)(a), Florida Statutes, the sale of facilities, in whole or in part, to a governmental authority shall be approved as a matter of right. JEA is a governmental authority which was created and passed by a special act of the 1967 Florida Legislature (Chapter 67-1569, Laws of Florida), authorizing it to own, manage and operate electric utility systems in the City of Jacksonville and in any or all counties adjacent thereto. In 1997, the City of Jacksonville, through amendments to its governing charter, transferred the City's Department of Public Utilities water and wastewater operations to JEA. The Commission has consistently treated JEA as a governmental authority for the purposes of transfers pursuant to Section 367.071(4)(a), Florida Statutes. See, e.g., Order No. PSC-01-0142-FOF-SU, issued January 18, 2001, in Docket No. 000241-SU, In re: Application for transfer of facilities of J. Strauss Utility to JEA and cancellation of Certificate No. 244-S in Duval County; and Order No. PSC-02-0060-FOF-WS, issued January 8, 2002, in Docket No. 010986-WS, In re: Notice of sale of assets of Regency Utilities, Inc. in Duval County to Jacksonville Electric Authority, and request for cancellation of Certificate Nos. 197-W and 143-S.

Since JEA is a governmental authority, it is exempt from the Commission's regulation pursuant to Section 367.022(2), Florida Statutes. The transfer of facilities to a governmental authority shall be approved as a matter of right. As such, no notice of the transfer is required and no filing fees apply.

The application contains a statement that JEA obtained NUC's most recent income and expense statement, balance sheet, statement of rate base for regulatory purposes, and contributions-in-aid-of-construction pursuant to Rule 25-30.037(4)(e), Florida Administrative Code. Also included in the application was a statement that there are no customer deposits or interest to refund, as required by Rule 25-30.037(4)(g), Florida Administrative Code.

Pursuant to Rule 25-30.037(4)(f), Florida Administrative Code, the application is to contain the date on which the governmental authority proposes to take official action to acquire the utility. According to the application, JEA's Board approved the NUC acquisition on March 16, 2004. The closing is scheduled to take place fifteen days after the last to occur of issuance of the Commission consent, issuance of St. Johns County consent, and conclusion of the Chapter 180, Florida Statutes, public hearing process and expiration of all applicable appeal periods

Docket No. 040257-WS

Date: May 6, 2004

without appeal, but no later than December 31, 2004. Additionally, pursuant to the requirements of Rule 25-30.037(4)(h), Florida Administrative Code, the utility has filed its 2003 annual report and is current with RAFs for 2003. Since the utility plant was not operational for the period January 1, through December 31, 2004 Nocatee paid the minimum RAF of \$25 each for water and wastewater systems on April 30, 2004. The corresponding RAF return was submitted on May 4, 2004. Lastly, JEA is an exempt utility from the Commission jurisdiction; therefore, the 2004 annual report does not need to be filed. The utility has no open dockets pending before the Commission.

Staff recommends that the application is in compliance with the provisions of Rule 25-30.037, Florida Administrative Code. Pursuant to Section 367.071(4)(a), Florida Statutes, the transfer of facilities to a governmental authority shall be approved as a matter of right. Therefore, staff recommends that the transfer of certificates from Nocatee Utility Corporation to the JEA should be approved as a matter of right, pursuant to Section 367.071(4)(a), Florida Statutes. Certificates Nos. 617-W and 531-S should be cancelled administratively upon receipt of the executed purchase agreement confirming the date of closing, which is anticipated to be December 31, 2004.

Docket No. 040257-WS
Date: May 6, 2004

Issue 2: Should this docket be closed?

Recommendation: Yes. Because no further action is necessary, this docket should be closed administratively upon receipt of the executed purchase agreement confirming the closing.
(Gervasi)

Staff Analysis: Because no further action is necessary, this docket should be closed administratively upon receipt of the executed purchase agreement confirming the closing.