

City of Nashua

Petition for Valuation Pursuant to RSA 38:9

DW 04-048

Nashua's Response to Commission Record Request

Date of Request: Sept. 12, 2007

Date of Response: October 5, 2007

Request No.: Trans. Pages 210,211

Respondent: Glenn Walker

Request: Are you aware of any situations in which there has been more than one not-for-profit or governmental entity bidder for the purchase of an investor owned utility?

Response: It is my understanding that Commissioner Below's record request was specifically directed to situations where there were multiple "not-for-profit or governmental bidders"¹ acted as competitors in the market place to purchase an investor owned utility.

I have briefly reviewed the response prepared by Mr. Reilly on September 28, 2007, and the examples he cited. In general, his response lists four examples where more than one not-for-profit or governmental entity "sought to purchase" a water utility, but his response does not state whether more than one entity bid competitively for the same assets.

While I have not had the opportunity to thoroughly investigate the examples cited by Mr. Reilly, my own research suggests that in each of the examples he cited, the public entities involved did not bid competitively against each other, and, in some cases, actually cooperated to acquire the investor owned utility.

1. *Duke Energy Corp. sale to City of Anderson, South Carolina and Anderson County Water Association.*

The South Carolina Public Service Commission order approving the sale (attached) shows that the City acquired the retail system serving the City of Anderson and the Anderson County Joint Municipal Water System acquired the wholesale system as part of the same transaction. As a result, it appears that the two governmental entities did not compete as bidders for the same assets, and even cooperated to purchase the system to "promote

¹ Transcript, September 12, 2007, p 210, 211.

regional water use and efficient aggregation of retail water service.”²

2. *New Haven Water Company sale to City of New Haven and South Central Connecticut Regional Water Authority (“SCCRWA”).*

Mr. Reilly’s response states that these organizations “sought to purchase the system” but does not state that they bid as competitors in the market. In fact, there is evidence indicating that these entities cooperated to acquire the company in order to establish a regional water authority. For example, in *Who Wants To Buy A Water Company?: From Private to Public Control in New Haven*, McCluskey and Bennitt report that in 1977, several years prior to the sale completed in 1980, “an agreement was reached for cooperation among [SCCRWA] and the City to guarantee regional ownership” and the City’s offers were made for that purpose.³

3. *Utilities Inc. of Maryland sale to Washington Suburban Sanitation Commission (“WSSC”).*

It is my understanding that this system, known as Marlboro Meadows, was located within the WSSC and Marlboro sought to have WSSC “connect its system to the water system currently serving Marlboro Meadows.”⁴ WSSC filed a petition to acquire the system by eminent domain after approval by WSSC and local county authorities.⁵

I asked my associate, Ms. Charlene Genest to contact Maryland Environmental Services (MES) regarding its involvement in the project. Ms. Genest contacted MES and was informed that MES acts only as an operator of water systems and does not own them. There is no indication that it ever competitively bid against WSSC.

4. *General Development Utilities Inc. (“GDU”) of Florida to Port St. Lucie County.*

GDU was a building contractor that built homes and had to construct a water system for its various developments. In 1990, the company filed for bankruptcy and the County acquired its water system. The City was growing rapidly and in 1994 the County

² Public Service Commission of South Carolina, Docket No. 2001-305-W, Order No. 2001-1114, December 27, 2001.

³ Rutledge Books, Inc (1996), Page 49 & generally, 43 – 53.

⁴ See Maryland Public Service Commission, *Joint Petition Of Utilities, Inc. Of Maryland And The Washington Suburban Sanitary Commission* in Docket No., 9077, and *Order No. 81,084* (attached).

⁵ *Joint Petition*, paras. 4 & 5.

transferred the water system to the City. There is nothing in this transaction which suggests the County and the City were competitive bidders.

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2001-305-W - ORDER NO. 2001-1144
DECEMBER 27, 2001

IN RE:	Application of Duke Energy Corporation and Duke Water Systems for Approval of Transfer of Water and Transmission Systems.))))	ORDER APPROVING TRANSFER OF WATER AND TRANSMISSION SYSTEM
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This matter comes before the Public Service Commission of South Carolina ("Commission") on the Application of Duke Energy Corporation and its division, Duke Water Systems ("Duke" or "Company") requesting approval of the sale and transfer of Duke's water collection and transmission system located in Anderson County, South Carolina. Duke filed its Application with the Commission pursuant to S.C. Code Ann. Section 58-27-1300 (Supp. 2000) and 26 S.C. Code Regs. 103-704 (Supp. 2000).

By its Application, Duke seeks the Commission's approval for the sale and transfer of the water collection and transmission system and all real and personal property used for the collection, treatment, and transmission of potable water, serving retail customers in the City of Anderson, South Carolina and wholesale customers in Anderson County, South Carolina to the City of Anderson ("City") and the Anderson County Joint Municipal Water System ("ACJMWS") (collectively referred to as "Purchasers"). Duke proposes to sell the retail system to the City for \$15.58 million and to sell the wholesale system to ACJMWS for \$47.92 million dollars, for a total sales price of \$63.5 million dollars. After the sale is consummated, the City intends to increase retail water rates by

37.5% over a period of five years, or 7.5% per year, and ACJMWS intends to increase wholesale water rates by 27.5% over a period of five years, or 5.5% per year. It is further anticipated that all wholesale customers will enter into long term wholesale contracts that will include the wholesale rate increase.

The Commission's Executive Director instructed Duke to publish a prepared Notice of Filing in a newspaper of general circulation in the area affected by the Company's Application and to notify all affected customers of the pending Application. The purpose of the Notice of Filing was to inform interested persons of the manner and time which to file pleadings in order to participate in the docket concerning the instant matter. A Petition to Intervene was filed on behalf of the South Carolina Department of Health and Environmental Control ("SCDHEC").

Subsequent to filing its Petition to Intervene, SCDHEC filed a letter withdrawing its intervention in this docket. Duke then filed the verified testimony of Robert Sean Trauschke, Director of Business Unit Finance of Duke Energy, and requested that the Commission consider the Application on an expedited basis.

S.C. Code Ann. Section 58-27-1300 (Supp. 2000) provides in part

No electrical utility, without the approval of the commission and compliance with all other existing requirements of the laws of the State in relation thereto, may sell, assign, transfer, lease, consolidate, or merge its utility property, powers, franchises, or privileges, or any of them, except that any electrical utility which has utility property, the fair market value of which is one million dollars or less, may sell, assign, transfer, lease, consolidate, or merge this property without prior approval of the commission. The commission may, at its discretion, hold a hearing on the request of an electrical utility to sell, assign,

transfer, lease, consolidate, or merge its utility property, powers, franchises, or privileges, or any of them. ...

26 S.C. Code Regs. 103-704 (Supp. 2000) provides that “no existing public utility supplying water to the public ... shall hereafter sell, acquire, transfer, begin the construction or operation of any utility system, or any extension thereof, by the sale of stock or otherwise, without first obtaining from the Commission a certificate that the sale, transfer, or acquisition is in the public interest, or that public convenience and necessity require or will require construction or operation of any utility system, or extension.” Although 26 S.C. Code Regs. 103-504 (Supp. 2000) also provides for notice and due hearing, 26 S.C. Code Regs. 103-501(3) (1976) provides that “in any case where compliance with any of these rules and regulations introduces unusual difficulty, such rules or regulations may be waived by the Commission upon a finding by the Commission that such waiver is in the public interest.” This Commission notes that it has previously considered applications in the context of its weekly agenda session when the applications have no other parties involved and the application is not contested. The Commission finds that a waiver of the hearing requirement in the instant matter is in the public interest.

On Tuesday, December 11, 2001, the Commission in its regularly scheduled agenda session, with court reporter present, discussed and considered Duke’s Application and the verified testimony submitted by Duke in support of the Application. Based upon the Commission’s consideration of the Application and verified testimony, the Commission makes the following Findings of Fact:

1. Duke is a public utility subject to the jurisdiction of the Commission and is currently operating a water collection, treatment, and transmission system in Anderson County, South Carolina. Duke's retail system serves retail customers in the City of Anderson and serves the following wholesale customers: Powdersville Water Company, Big Creek Water and Sewerage District, Hammond Water and Sewer Company, Broadway Lake and Sewer District, Starr-Iva Water and Sewer Company, Homeland Park Water and Sewer District, West Anderson Sewer Company, Sandy Springs Water Company, Clemson University, U.S. Utilities, and the Towns of Clemson, Pendleton, and Williamston and other customers in the surrounding areas.

2. Duke desires to sell and transfer the water collection and transmission system serving retail and wholesale customers and all real and personal property used for the collection, treatment, and transmission of potable water, not limited to all raw intake; all accessories and appurtenant fixtures to water transmission and distribution service lines and water service equipment; in and to all permanent and temporary easements for constructing and maintaining water lines; all easements, leases, permits, contract rights and/or rights-of-way for service lines, connections and equipment located in or connecting to the Water System; all apparatus, real property equipment and water maintenance supplies and all other property, equipment, rights, franchises, territories, and privileges of the Water System.

3. ACJMWS is the purchaser of the wholesale system, which lies outside the City but within Anderson County. ACJMWS was created pursuant to Title 6, Chapter 25,

Code of Laws of South Carolina, and is authorized to provide water collection, treatment, and transmission services as contemplated within Duke's Application.

4. The City is the purchaser of the retail system, which is located both within and without the municipal limits of the City.

5. Duke will sell the retail system to the City for \$15.58 million dollars and will sell the wholesale system to ACJMWS for \$47.92 million dollars, for a total sale price of \$63.5 million dollars.

6. As Purchasers of the system, ACJMWS and the City, have represented to Duke that they are able to provide water services and maintain the Water System. Duke is informed and believes that the Purchasers will retain certain experienced operators who are familiar with the Water System and the treatment and distribution of water and who are presently employed by Duke.

7. The Purchasers have the ability to provide continued adequate and affordable water service to the residents of Anderson County. The Purchasers have filed detailed and comprehensive business plans with SCDHEC, and those business plans reveal that the Purchasers have the expertise, planning, personnel, financial ability, and experience to operate the Water System.

Based upon the above Findings of Fact, the Commission concludes that the requested sale and transfer should be approved. Duke has developed a highly efficient and reliable water system that it has successfully operated for a number of years in Anderson County. However, the sale and transfer of the system as proposed by Duke will promote regional water use and efficient aggregation of retail water service.

IT IS THEREFORE ORDERED THAT:

1. The Application of Duke to sell and transfer its water collection, treatment, and transmission systems, and associated properties, rights, and privileges to The City of Anderson and ACJMWS is approved. However, the herein authorized approval for the sale and transfer of the Water System is contingent upon Duke filing signed contracts of sale between Duke and The City and Duke and ACJMWS.

2. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

Chairman

ATTEST:

Executive Director

(SEAL)



WASHINGTON SUBURBAN SANITARY COMMISSION

14501 Sweitzer Lane • Laurel, Maryland 20707-5902

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September 27, 2006

FILED

SEP 28 2006

PUBLIC SERVICE COMM.
OF MARYLAND

O. Ray Bourland
Executive Secretary
Maryland Public Service Commission
6 St. Paul Place
Baltimore, MD 21202

Re: Joint Petition of UIM and WSSC for Approval of the Utility Asset Acquisition Agreement
and the Abandonment of Service

Dear Mr. Bourland:

Enclosed please find for filing an original and 14 copies of a Joint Petition of UIM and WSSC for approval of the Utility Asset Acquisition Agreement and the Abandonment of Service. As we set forth in the Joint Petition, WSSC and UIM have entered into a Utility Asset Acquisition Agreement whereby UIM will sell all of its utilities assets used to provide water and sewer service to the residents of Marlboro Meadows to WSSC. We have a scheduled closing date for this transfer of December 12, 2006.

It is my understanding that the Commission will waive its filing fees since WSSC is an agency of the State of Maryland. We have also attached an electronic version of the Joint Petition in pdf format on the enclosed compact disk.

If you need any further information in order to process this Joint Petition, please do not hesitate to contact me directly.

Sincerely,

A handwritten signature in cursive script, reading "Robert H. Drummer".

Robert H. Drummer
Senior Counsel
(301) 206-8161



O. Ray Bourland
September 27, 2006
Page 2

RHD/egs

Enclosures

cc: Ronald A. Decker, Esq.
Patricia A. Smith, Esq.
Andrew N. Beach, Esq.

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BEFORE THE PUBLIC SERVICE COMMISSION OF MARYLAND

JOINT PETITION OF UTILITIES, INC. OF MARYLAND :
 AND THE WASHINGTON SUBURBAN SANITARY :
 COMMISSION FOR APPROVAL OF THE UTILITY : CASE NO.
 ASSET ACQUISITION AGREEMENT AND THE :
 ABANDONMENT OF SERVICE :

JOINT PETITION

Utilities Inc. of Maryland, a Maryland Corporation (UIM), by its counsel, Ronald A. Decker, and the Washington Suburban Sanitary Commission (WSSC), an agency of the State of Maryland, by its counsel, Robert H. Drummer, jointly request that the Public Service Commission approve the Utility Asset Acquisition Agreement dated May 1, 2006 between UIM and WSSC and grant UIM permission to abandon service. In support of their request, the Petitioners state:

1. In 1985, the Public Service Commission (Commission) approved the transfer to UIM of the Certificate of Public Convenience and Necessity for provision of water and sewer service to the residents of Marlboro Meadows in Case No. 7866. UIM is currently operating the water and sewer system in compliance with applicable laws and regulations.

2. WSSC is an agency of the State of Maryland created by Chapter 122 of the 1918 Laws of Maryland to provide public water and sewer service to the residents of the Washington Suburban Sanitary District within Prince George's and Montgomery Counties.

3. The service area currently being served by UIM in Marlboro Meadows is within the Washington Suburban Sanitary District.

4. The County Council of Prince Georges County, Maryland and the County Council for Montgomery County, Maryland have approved the inclusion of the project to

serve the Marlboro Meadows community in Project No. W-123.16 of the WSSC Capital Improvements Program, and the WSSC Commissioners have approved acquisition of UIM's water and sewer systems.

5. After WSSC determined that it was interested in acquiring the subject property through condemnation, UIM and WSSC entered into a Utility Asset Acquisition Agreement on May 1, 2006, a copy of which is attached hereto as Exhibit A. Pursuant to this Utility Asset Acquisition Agreement, UIM agreed to sell its utilities assets used to provide water and sewer service to the residents of Marlboro Meadows to WSSC. The parties have a scheduled closing date for this sale of December 12, 2006.

6. UIM and WSSC have been working together since May 1, 2006 to ensure that the transfer of these utility assets will not result in an interruption of water and sewer service to UIM's customers.

7. WSSC is currently designing an extension to its water distribution system to connect its system to the water system currently serving Marlboro Meadows. The construction of this water main is scheduled for completion in December 2007. Pursuant to the Utility Asset Acquisition Agreement, WSSC and UIM have agreed that UIM will operate and maintain the water plant and the wastewater plant for a one year period under contract with WSSC while WSSC completes the construction of this water main in order to facilitate the transition of service from UIM to WSSC. WSSC intends to operate the wastewater plant currently serving UIM's customers after the one year operating contract with UIM is completed.

8. All of the customers of UIM within the Marlboro Meadows service area will become WSSC customers on the scheduled closing date of December 12, 2006. Water and

sewer service rates charged to these customers will be the same water and sewer service rates charged to all WSSC customers within the Washington Suburban Sanitary District. These rates are set by the WSSC pursuant to Md. Ann. Code art. 29, § 6-101 *et seq.*

9. After the water and sewer systems are acquired, they will continue to be operated in full compliance with all applicable state and federal laws and regulations.

10. The financial condition of UIM is disclosed in the most recent annual report filed with the Commission.

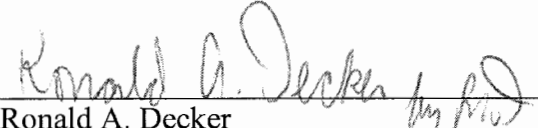
11. Articles of Incorporation for UIM are on file with the Commission.

WHEREFORE, the joint applicants request that the Commission:

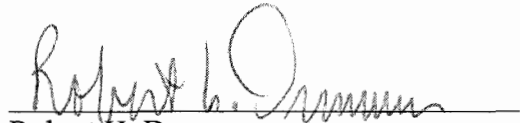
A. Find that the Utility Asset Acquisition Agreement dated May 1, 2006 between UIM and WSSC is consistent with the public convenience and necessity; and

B. Authorize UIM to abandon service under its franchise on the closing date, currently scheduled for December 12, 2006, and that the present and future public convenience and necessity allows the abandonment; and

C. Grant such other and further relief as may be necessary.


Ronald A. Decker
Moore, Carney, Ryan and Lattanzi, L.L.C.
4111 E. Joppa Road, Suite 201
Baltimore, MD 21236
410-529-4600

Attorney for Utilities Inc. of Maryland

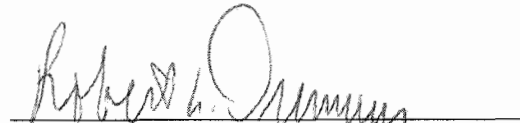


Robert H. Drummer
Senior Counsel
General Counsel's Office
14501 Sweitzer Lane
Laurel, MD 20707
301-206-8161

Attorney for Washington Suburban
Sanitary Commission

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this 27 day of September, 2006, a copy of the foregoing Joint Petition of Utilities, Inc. of Maryland and the Washington Suburban Sanitary Commission for Approval of the Utility Asset Acquisition Agreement and the Abandonment of Service was mailed, first class mail, to Patricia A. Smith, Esq., Office of the People's Counsel, 6 St. Paul Place, Baltimore, MD 21202 and to Andrew N. Beach, Esq., Staff Counsel, 6 St. Paul Place, Baltimore, MD 21202.



Robert H. Drummer

ORDER NO. 81084

IN THE MATTER OF THE JOINT	*	BEFORE THE
APPLICATION OF UTILITIES, INC. OF		PUBLIC SERVICE COMMISSION
MARYLAND AND WASHINGTON	*	OF MARYLAND
SUBURBAN SANITARY COMMISSION		
FOR AN ORDER AUTHORIZING	*	
UTILITIES, INC. OF MARYLAND TO		_____
ABANDON THE EXERCISE OF ITS	*	
FRANCHISE AND TO SELL AND		
TRANSFER ITS PHYSICAL EQUIPMENT	*	CASE NO. 9077
AND ASSETS TO THE WASHINGTON		
SUBURBAN SANITARY COMMISSION.	*	_____

On September 28, 2006, Utilities, Inc. of Maryland ("UIM") and Washington Suburban Sanitary Commission ("WSSC") filed with the Public Service Commission ("Commission") a joint application requesting authority for UIM to abandon the exercise of its franchise and to sell and transfer its physical equipment and assets to WSSC.

The Commission's Technical Staff reviewed the application and, by memorandum dated October 17, 2006, stated that WSSC is an experienced operator charged with providing water and sewer services to residence within the Sanitary District and it has the means to raise capital to improve and maintain its water and sewer systems. Staff also noted that as a State agency, WSSC is accountable to its customers pursuant to Article 29, and that WSSC's rates currently are lower than UIM's. Accordingly, the Technical Staff recommended to the Commission that the joint application be granted.

Public Utility Companies Article, §§5-103 and 5-202, *Annotated Code of Maryland*, requires a public service company to obtain authorization from the Commission before abandoning the exercise of any franchise.

After review of the joint application and considering Technical Staff's recommendations, and after considering comments at the regularly scheduled and advertised Administrative Meeting on October, 25, 2006, the Commission finds that the sale and transfer of physical equipment and assets to Washington Suburban Sanitary Commission and the abandonment of franchise by Utilities, Inc. of Maryland is consistent with the public convenience and necessity and accordingly should be authorized.

IT IS, THEREFORE, this 25th day of October in the year Two Thousand and Six, by the Public Service Commission of Maryland,

ORDERED: (1) That Utilities, Inc. of Maryland is authorized to abandon the exercise of its franchise and to sell and transfer its physical equipment and assets to the Washington Suburban Sanitary Commission.

(2) That Utilities, Inc. of Maryland report to the Commission the date of the disposition of the physical equipment and the abandonment of its franchise.

By Direction of the Commission,

O. Ray Bourland
Executive Secretary

ORB/gjd