



Public Service Commission

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DATE: AUGUST 5, 1999

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

FROM: DIVISION OF WATER AND WASTEWATER (JOHNSON, REDEMANN)
DIVISION OF LEGAL SERVICES (VACCARO)

RE: DOCKET NO. 990489-WS - APPLICATION BY FLORIDA CITIES WATER COMPANY, HOLDER OF CERTIFICATE NOS. 027-W AND 024-S IN LEE COUNTY AND 007-W AND 003-S IN BREVARD COUNTY, AND POINCIANA UTILITIES INC. HOLDER OF CERTIFICATE NOS. 146-W AND 103-S IN POLK AND OSCEOLA COUNTIES, FOR TRANSFER OF FACILITIES TO FLORIDA GOVERNMENTAL UTILITY AUTHORITY AND CANCELLATION OF CERTIFICATE NOS. 027-W, 024-S. 007-W, 146-W AND 103-S.

AGENDA: AUGUST 17, 1999 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\LEG\WP\990489.RCM

CASE BACKGROUND

Florida Cities Water Company (FCWC or utility) and its affiliate, Poinciana Utilities, Inc. (PUI or utility), are Class A water and wastewater utilities. FCWC provides service in Lee County, pursuant to Certificates Nos. 027-W and 024-S, and in Brevard County, pursuant to Certificates Nos. 007-W and 003-S. PUI operates in Polk and Osceola Counties, pursuant to Certificates Nos. 146-W and 103-S. According to FCWC's 1997 annual report, it serves approximately 23,352 water and 13,390 wastewater customers with combined water and wastewater revenues of \$17,330,100 and a combined net operating income of \$4,277,488. PUI's 1997 annual report states that it serves 6,133 water and 5,691 wastewater customers with combined water and wastewater revenues of \$3,623,893

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and a combined net operating income of \$656,891. FCWC and PUI have potable water supplies, treatment and distribution, wastewater collection, transmission treatment, disposal, and reuse systems in Brevard, Collier, Hillsborough, Lee, Osceola, Polk, and Sarasota Counties.

On April 16, 1999, FCWC and PUI filed a joint application to transfer all of their water and wastewater facilities to the Florida Governmental Utility Authority (GUA) and to cancel their certificates, except that FCWC is not transferring certain portions of its facilities and certificated territory within the town of Fort Myers Beach (see Attachment A). The application includes a copy of the "FCWC and PUI Utility System Asset Acquisition Agreement" (Acquisition Agreement). The transfer closing was finalized on April 15, 1999. Because of the gain on sale issue contained herein and because of several related open dockets, staff believes that it would not be appropriate to process this docket administratively.

FCWC is not transferring the portion of its territory within the town of Fort Myers Beach due to a lawsuit filed by the town in the Lee County Circuit Court, Town of Fort Myers Beach v. Lee County, Case No. 99-1753-CA-JBR. There is an addendum to the Acquisition Agreement that separately addresses the deferred closing for the Fort Myers utility system.

As discussed herein, staff recommends that the Commission should issue an order acknowledging the transfer and canceling FCWC's water and wastewater certificates for Brevard County, and PUI's certificates in Polk and Osceola Counties. Since FCWC will continue operating its Fort Myers Beach water system, which serves customers in Lee County, its water certificate for Lee County should not be canceled, but instead amended to reflect that portion of the territory not being transferred. Further, staff recommends that a docket be opened to evaluate sharing propositions due to the gain on sale of the FCWC facilities.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission approve FCWC's and PUI's transfer to a governmental entity, GUA, as a matter of right, pursuant to Section 367.071, Florida Statutes, and cancel PUI's certificates and amend FCWC's certificates?

RECOMMENDATION: Yes, the Commission should approve FCWC's and PUI's transfer to the governmental entity, GUA, as a matter of right, pursuant to Section 367.071, Florida Statutes, with the exception of the Fort Myers Beach system. PUI's Certificate Nos. 146-W and 103-S in Polk and Osceola County should be canceled. FCWC's operating certificates in Brevard County, Certificate Nos. 007-W, and 003-S, and 024-S in Lee County, should be canceled upon conclusion of its pending cases. FCWC's operating Certificate No. 027-W in Lee County should be amended to reflect that portion of the territory that it will continue to operate, minus the territory that is being transferred. (JOHNSON, REDEMANN, VACCARO)

STAFF ANALYSIS: On April 16, 1999, FCWC and PUI filed a joint application to transfer all of their water and wastewater facilities in Polk, Osceola, and Brevard Counties and part of FCWC facilities in Lee County to GUA and to cancel their certificates, except that FCWC is transferring only certain portions of its facilities and certificated territory within the town of Fort Myers Beach. The provisions of Section 367.071, Florida Statutes, require an application for approval of the sale or transfer of a water and/or wastewater utility to a governmental agency. However, pursuant to Subsection 367.071 (4)(a), the sale or transfer is approved as a matter of right. Rule 25-30.037(4)(e), Florida Administrative Code, requires the utility to submit with its application a statement that the governmental authority obtained, from the utility or the Commission, the most recently available income and expense statement, balance sheet, statement of rate base for regulatory purposes, and contributions-in-aid-of-construction. A copy of a GUA internal memorandum dated April 12, 1999, was provided with the application as evidence that GUA had obtained the required information. The memorandum was signed by Mr. Robert E. Sheets, Secretary-Treasurer of GUA.

Rules 25-30.037(4)(g) and (h), Florida Administrative Code, require the utility to submit with its application a statement describing the disposition of customer deposits and a statement regarding the disposition of any outstanding regulatory assessment fees, fines, or refunds owed. The application states that GUA will

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assume liability for the customer deposits, and any interest due thereon, through the date of closing, and that FCWC and PUI will provide the GUA with a listing of current customers by account, customer deposits, and an aggregate total, fifteen days prior to closing. Further, FCWC and PUI are current with regulatory assessment fees and annual report information. FCWC and PUI are responsible for the regulatory assessment fees through the date of the transfer.

The application to transfer facilities to a governmental authority requires a statement regarding disposition of any outstanding refunds. FCWC has four dockets pending final disposition. Each docket relates to a FCWC system included in the transfer to GUA. FCWC is being investigated by the Commission in Docket No. 970991-SU, for potential overearnings. In this overearnings investigation, the Commission determined that the overearnings in the wastewater system was caused by a temporary contract with Lee County for the utility to treat wastewater of the county. By Proposed Agency Action Order (PAA) Order No. PSC-98-1384-FOF-SU, issued October 14, 1998, the Commission accepted the utility's offer of settlement. Also, that PAA Order set the utility's return on equity and decided that any overearnings would be offset against any future underearnings. In that order, the Commission ordered that it would address overearnings for 1998 in 1999, and that any deferred revenues as of December 31, 2000, would be added to contributions-in-aid-of-construction. No protests of the Order was filed and the order became final and effective. However, the docket remains open until all overearnings have been addressed. Therefore, FCWC shall continue to be responsible for the overearnings.

Docket No. 990100-WU involves a complaint by a homebuilder against the utility regarding a dispute over the payment of guaranteed revenue charges prior to the connection of service. As a result of FCWC's sale to GUA, the homebuilder's lot now falls within GUA's service area. The homebuilder did not pay guaranteed revenues to FCWC prior to the utility's transfer to GUA. Therefore, the complaint is now moot. The homebuilder has indicated that she will withdraw her complaint following the Commission's acknowledgment of FCWC's transfer to GUA.

Docket No. 971663-WS involves FCWC's petition for a limited proceeding to recover environmental litigation costs. By Order No. PSC-98-1583-FOF-WS, issued November 25, 1998, the Commission denied the petition and the rate case expenses associated therewith. On December 23, 1998, FCWC filed a timely notice of appeal of the

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Commission's order in the First District Court of Appeal (First DCA), and accordingly, the docket remains open.

By correspondence dated July 12, 1999, FCWC indicated that it intends to voluntarily dismiss the First DCA case (First DCA case No. 98-4773), after the appeal time has run, following the issuance of the Commission's final order approving this transfer application. This intent assumes that the final order does not contain any unforeseen conditions or provisions which are objectionable to FCWC. Therefore, if FCWC voluntarily dismisses First DCA Case No. 98-4773, Docket No. 971663-WS will be closed. However, if the appeal is not dismissed, it will have no bearing on FCWC & PUI's transfer in this docket.

Finally, Docket No. 950387-SU concerns the utility's application for a rate increase for its North Fort Myers division in Lee County. By Order No. PSC-99-0691-FOF-SU, issued April 8, 1999 in Docket No. 950387-SU, FCWC's request for increased wastewater rates was granted to the extent set forth in the Order; however, the utility was ordered to refund, with interest, all wastewater revenues it had collected, subject to refund, over and above the allotted increase. The docket was kept open pending staff's verification that the utility had completed the required refunds. Therefore, FCWC shall continue to be responsible for making the required refunds. Docket No. 950387-SU is presently on appeal in the First DCA (DCA Case No. 99-1666. Because of the nature of the issues in this appeal, FCWC has not decided whether it will pursue the appeal following the approval of this transfer application. The determination will depend upon the exact language and provisions of the final order approving the transfer. Therefore, the decision to continue with the appeal will be made after the issuance of the final order in this transfer application.

Since all of the filing requirements have been met, the staff recommends that the Commission should issue an order that acknowledges that GUA has acquired PUI's and FCWC's facilities, effective as of April 15, 1999, with the exception of the Fort Myers Beach water system. Since PUI's facilities were sold in their entirety, Certificate Nos. 146-W and 103-S in Polk and Osceola County should be canceled. FCWC's operating certificates in Brevard County, Certificate Nos. 007-W, and 003-S, and 024-S in Lee County should be canceled upon conclusion of the above mentioned pending cases. FCWC's operating Certificate No. 027-W in Lee County should be amended to reflect that portion of the territory that it will continue to operate, minus the territory that is being transferred. Accordingly, FCWC will continue to

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provide the Commission with annual report information and regulatory assessment fees for the Fort Myers Beach facilities.

ISSUE 2: Should the Commission open a docket to examine whether FCWC's sale of its facilities involves a gain that should be shared with FCWC's Fort Myers Beach customers?

RECOMMENDATION: Yes. The Commission should open a docket to examine whether FCWC's sale of its facilities involves a gain that should be shared with FCWC's Fort Myers Beach customers. (JOHNSON, VACCARO)

STAFF ANALYSIS: Per the purchase agreement, the sales price for the FCWC's and PUI's facilities is \$226,000,000, subject to adjustments and prorations permitted by the agreement. According to the application, the purchase price for all the systems in Lee County is \$135,885,000. This includes an allocated amount of \$3,330,255 for the Fort Myers Beach system, even though it is not being acquired at this time. FCWC has a North Fort Myers system and a South Fort Myers system. The North Fort Myers system provides water and wastewater. The South Fort Myers system provides water-only. The Fort Myers Beach system is part of the South Fort Myers system. For rate setting purposes, the North and South systems have been combined for the development of water rates. The last established rate base by the Commission for the FCWC Lee County water systems was \$18,264,079, for the historical year end period of September 30, 1985, in Order No. 16768, Docket No. 851007-WU. The Commission last established the wastewater rate base of the North Fort Myers system at \$7,784,770, for the historical period ending December 31, 1995, in Order No. PSC-95-1360-FOF-SU, Docket No. 950387-SU.

Although the utility has provided an estimated sale amount specific to the Fort Myers Beach system, there is no way to determine a separate rate base amount to compare with the sales price, since the Fort Myers Beach system was combined with the rest of the South Fort Myers system for ratemaking purposes. The only comparison that can be made is that of the total purchase price for the Lee county systems of \$135,885,000 to a total rate base amount of \$26,048,849 (\$18,264,079 + \$7,784,770). Based on this analysis, it would appear that FCWC will experience a gain on sale of \$109,836,151.

Staff believes that since the Commission will continue to regulate the Fort Myers Beach water system, it is appropriate to evaluate whether the gain on sale of the Lee County water systems should be allocated among the remaining customers and stockholders. Because the sale occurred April 15, 1999, an updated rate base

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calculation will be needed to determine the gain, if any, due to sale of these facilities. Therefore, Staff recommends that such an investigation be initiated by the Commission. The investigation would attempt to determine whether the remaining customers at the Fort Myers Beach water system subsidized the investment in the overall FCWC Fort Myers Water Systems during the years that the system was combined for ratemaking purposes.

The proposition that gains on sales should be shared with customers has been considered in other dockets. In each case, the Commission evaluated whether or not ratepayers contributed to the utility's overall recovery of investment. See Order No. PSC-93-0301-FOF-WS, issued on February 25, 1993, in Docket No. 911188-WS; in Order No. PSC-93-0423-FOF-WS, issued March 22, 1993, in Docket No. 920199-WS; and in Order No. PSC-96-1320-FOF-WS, issued on October 30, 1996, in Docket No. 950495-WS.

Further study to examine sharing considerations for the gain on sale is recommended to permit timely examination of this topic. We recommend that a separate docket be opened to determine the actual gain on sale for FCWC and PUI to evaluate whether a gain should be shared with customers.

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ISSUE 3: Should this docket be closed?

RECOMMENDATION: No. This docket should remain open pending a final determination of all issues in the Dockets Nos. 990100-WS, 970991-SU, 971663-WS, and 950387-WS, which are discussed in Issue 1. Once those dockets have been closed, Certificate Nos. 007-W, 003-S, 146-W, 103-S and 024-S should be canceled and this docket should be administratively closed. (VACCARO)

STAFF ANALYSIS: This docket should remain open pending a final determination of all issues in the Dockets Nos. 990100-WS, 970991-SU, 971663-WS, and 950387-WS, which are discussed in Issue 1. Once those dockets have been closed, Certificate Nos. 007-W, 003-S, 146-W, 103-S and 024-S should be canceled and this docket should be administratively closed.

Florida Cities Water Company

South Lee County

Town of Ft. Myers Beach

Township 46 South, Range 24 East

Section 19

All that part on Estero Island

Section 20

All that part on Estero Island

Section 28

All that part on Estero Island

Section 29

All that part on Estero Island

Section 30

All that part on Estero Island

Section 33

All that part on Estero Island

Section 34

All that part on Estero Island

Township 47 South, Range 24 East

Section 3

All that part on Estero Island

Township 46 South, Range 23 East

Section 24

All that part on Estero Island