

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: 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, 003-S, 146-W, and 103-S.

DOCKET NO. 990489-WS  
ORDER NO. PSC-00-2351-FOF-WS  
ISSUED: December 7, 2000

ORDER APPROVING TRANSFER OF FACILITIES

BY THE COMMISSION:

On April 15, 1999, Florida Cities Water Company (FCWC) and Poinciana Utilities Inc. (PUI), filed a Joint Application for Transfer of Facilities to Governmental Authority (Application). FCWC and PUI are Class A water and wastewater utilities in Brevard, Collier, Hillsborough, Lee, Osceola, Polk, and Sarasota Counties. The systems located in Collier, Hillsborough, Osceola and Sarasota Counties are not within our jurisdiction.

FCWC provides service in Lee County pursuant to Certificate No. 027-W issued June 8, 1970, by Order No. 4901, in Docket No. 70167-W, and Certificate No. 024-S, issued May 20, 1970, by Order No. 4890, in Docket No. 70168-S. FCWC provides service in Brevard County pursuant to Certificates Nos. 007-W and 003-S, issued December 30, 1970, by Order No. 5016, in Docket No. 70394-WS. 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 operates in Polk and Osceola Counties pursuant to Certificates Nos. 146-W and 103-S, issued June 22, 1973, by Order

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

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No. 5787, in Docket Nos. 71580-W and 71581-S. 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 and a combined net operating income of \$656,891.

The application is for transfer all of FCWC and PUI's water and wastewater facilities to the Florida Governmental Utility Authority (GUA) and to cancel the utilities' certificates, with the exception of certain portions of FCWC's facilities and certificated territory within the Town of Fort Myers Beach. The application includes a copy of the "FCWC and PUI Utility System Asset Acquisition Agreement" (Acquisition Agreement). This portion of the transfer was finalized on April 15, 1999.

According to the application, FCWC and PUI had no intention of selling the utilities' assets until there was the threat of condemnation by the GUA. In lieu of condemnation, the utilities entered into an agreement for the sale and purchase of the facilities for the aggregate price of \$226,000,000.

As stated above, FCWC's filing initially excluded the portion of its territory within the Town of Fort Myers Beach. To proceed with the closing for the remaining systems, the parties entered into an Assignment, dated April 15, 1999, wherein GUA assigned its right to purchase the Ft. Myers System within the Town of Ft. Myers Beach (Town System) to Lee County.

Lee County filed a complaint in Circuit Court for validation of water and sewer revenue bonds not exceeding \$3.5 million. Raymond J. Murphy, Mayor of the Town of Fort Myers Beach, intervened and filed a motion to dismiss. An addendum to the agreement deferred the closing date for the Town System until the pending litigation was resolved.

In Raymond J. Murphy v. Lee County, 763 So. 2d 300, 302 (Fla. 2000), the Florida Supreme Court affirmed the final judgment of the Circuit Court authorizing the issuance of the bonds. Therefore, the Town System was conveyed to Lee County on September 29, 2000.

On October 4, 2000, FCWC and PUI filed an Amended Application for Transfer of Facilities to the GUA and to Lee County to include the Town of Fort Myers Beach.

APPLICATION

Included with the application is a copy of the transfer agreement. Pursuant to Rule 25-30.037(4)(e), Florida Administrative Code, the application contains a copy of a GUA internal memorandum dated April 12, 1999, stating that it has obtained the utilities' most recently available income and expense statements, balance sheets, statements of rate base for regulatory purposes, and contributions-in-aid-of-construction.

Rules 25-30.037(4)(g) and (h), Florida Administrative Code, require the utilities to submit with their application a statement describing the disposition of customer deposits and a statement regarding the disposition of any outstanding regulatory assessment fees (RAFs), fines, or refunds owed. The application states that customer deposits and the interest due thereon were credited to GUA and Lee County. On March 20, 2000, FCWC and PUI paid RAFs through the date of the transfer. RAFs from January 1, 2000 through September 29, 2000 for the Town System will be paid when due in accordance with Rule 25-30.120, Florida Administrative Code, which is March 30, 2001. FCWC and PUI has satisfied all annual report requirements.

Based on the foregoing, we find that the application as amended is in compliance with Section 367.071(4), Florida Statutes, and Rule 25-30.037(4), Florida Administrative Code. Pursuant to Section 367.071(4)(a), Florida Statutes, the sale or transfer of facilities to a governmental authority is approved as a matter of right. Accordingly, we hereby approve the transfer of facilities from FCWC and PUI to the GUA.

By Order No. PSC-99-0691-FOF-SU, issued April 8, 1999, in Docket No. 950387-SU, we required refunds and granted in part and denied in part FCWC's motion to make rates permanent. Pursuant to Section 367.171(5), Florida Statutes, any financial responsibility or regulatory rate relief that may result from Docket No. 950387-SU will remain with FCWC after the transfer. FCWC appealed this Order, on other grounds, to the First District Court of Appeal. The court affirmed our calculation of the used and useful portion of FCWC's wastewater treatment plant. Florida Cities Water Co. v. FPSC, 25 Fla. L Weekly D 2599 (Fla. 1st DCA October 31, 2000). However, the decision has not become final.

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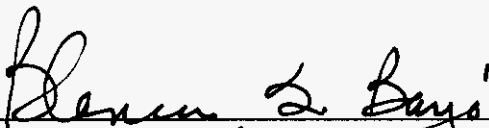
Consequently, this docket shall remain open until Docket No. 950387-SU is closed. Upon Docket No. 950387-SU being closed, Certificates Nos. 027-W, 024-S (Lee County), 007-W, 003-S (Brevard County), and 146-W, 103-S (Polk and Osceola Counties) shall be canceled and this docket shall be closed administratively.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the transfer of facilities from Florida Cities Water Company and Poinciana Utilities Inc. to the Florida Governmental Utility Authority and to Lee County is hereby approved. It is further

ORDERED that this docket shall remain open pending resolution of Docket No. 950387-SU.

By ORDER of the Florida Public Service Commission this 7th day of December, 2000.

  
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BLANCA S. BAYÓ, Director  
Division of Records and Reporting

( S E A L )  
JKF

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.

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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 Records and Reporting, 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 the Director, Division of Records and Reporting 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.