

MEMORANDUM

February 23, 1998

RECEIVED

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FPSC - Records/Reporting

TO: DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (VACCARO) *OV AS*

RE: DOCKET NO. 970027-WS - COMPLAINT OF THE CHRISTIAN AND MISSIONARY ALLIANCE FOUNDATION, INC., D/B/A SHELL POINT VILLAGE AGAINST FLORIDA CITIES WATER COMPANY - LEE COUNTY DIVISION, REGARDING SERVICE AVAILABILITY CHARGES.

98-0321-AS-WS

Attached is a NOTICE OF PROPOSED AGENCY ACTION ORDER APPROVING SETTLEMENT STIPULATION to be issued in the above-referenced docket.

(Number of pages in order - 10)

TV/der

Attachment

cc: Division of Water and Wastewater (Washington, Rendell)

I:970027or.tv

Attachment Not On-line

5- KAR MAILED

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of the
Christian and Missionary
Alliance Foundation, Inc., d/b/a
Shell Point Village against
Florida Cities Water Company -
Lee County Division, regarding
service availability charges.

DOCKET NO. 970027-WS
ORDER NO. PSC-98-0321-AS-WS
ISSUED: February 23, 1998

The following Commissioners participated in the disposition of this matter:

JULIA L. JOHNSON, Chairman
J. TERRY DEASON
SUSAN F. CLARK
JOE GARCIA
E. LEON JACOBS, JR.

NOTICE OF PROPOSED AGENCY ACTION
ORDER APPROVING SETTLEMENT STIPULATION

BY THE COMMISSION:

NOTICE IS HEREBY GIVEN by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

BACKGROUND

Florida Cities Water Company, Lee County Division (FCWC or utility) is a Class A utility that provides water service to approximately 17,000 customers in Ft. Myers, Florida. In 1996, FCWC's reported revenues for water service were \$8,542,616 and the corresponding income amount was \$2,330,909. The utility's service area has been designated a critical use area by the South Florida Water Management District.

On January 6, 1997, we received a complaint from the Christian and Missionary Alliance Foundation, Inc., d/b/a Shell Point Village (Shell Point Village or Foundation) against FCWC. Shell Point

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FPSC PUBLIC SERVICE BOARD

Village is a continuing care retirement community located on a 75-acre island in the mouth of the Caloosahatchee River in Lee County, Florida. Shell Point Village provides all levels of care, including independent living, assisted living, and skilled nursing. Water is delivered through a central water meter at the entry gate to Shell Point Village, and all internal distribution lines throughout the Village are owned and maintained by Shell Point Village.

COMPLAINT

As discussed earlier in this Order, the Foundation filed a complaint on January 6, 1997, against FCWC. The Foundation alleges that FCWC has attempted to collect service availability and allowance for funds prudently invested (AFPI) charges which the Foundation does not owe. The Foundation states that to date it has paid for 692 units at the multi-family rate which equates to 250 gallons per day each, for total paid connection fees for 173,000 gallons per day of demand.

The Foundation contends that it is a general service customer and has always been billed for monthly service as a general service customer. The Foundation states that its highest water usage is 118,545 gallons per day. Thus, FCWC is not entitled to any additional service availability or AFPI charges at this time.

In its response dated January 30, 1997, FCWC states that the Foundation is not billed for monthly use on a bulk basis as a general service customer. FCWC states that the Foundation is billed as a multiple-dwelling service customer. FCWC states that the Foundation has paid fees for 392 ERCs leaving a balance of 161.6 ERCs for existing facilities plus 77.6 ERCs for new facilities at \$855.73 per ERC, resulting in a total unpaid balance of \$204,690.62. According to FCWC, the Foundation has not been billed for plant service capacity charges on the basis of gallonage per day, but on the basis of ERCs.

FCWC states that the Foundation's complaint should be dismissed on the basis that this matter was resolved by us in Order No. 8468, issued September 6, 1978, and no change in circumstances are alleged by the Foundation. By that Order, we required the Foundation to pay FCWC \$52,500 for 210 units in controversy. FCWC requests that we order that the Foundation pay FCWC a total of additional \$204,690.62, which includes 239.2 ERCs for which the Foundation has not paid.

On March 11, 1997, our staff met with representatives for both parties to discuss the details of the Foundation's complaint and possibility of a settlement. The Foundation filed supplemental information in response to FCWC's January 30 response on April 16, 1997. On May 9, 1997, a letter from FCWC legal counsel was submitted indicating that the parties were attempting to settle the controversy. FCWC filed a response to the Foundation's supplemental information on May 15, 1997. Staff met with representatives of both parties again on July 31, 1997, and a settlement seemed possible. On October 20, 1997, a settlement agreement was filed by the Foundation.

SETTLEMENT AGREEMENT

The parties entered into a settlement agreement on October 17, 1997. This settlement agreement, which is attached to this Order and incorporated herein by reference, was filed on October 20, 1997. The settlement agreement basically provides the following:

FCWC relies on such representation, that a net of 137 units have been added to Shell Point Village since the additions of the 210 units referenced in FPSC Order No. 8468. Of these 210 units, the service availability charge has been paid for 40 units, leaving a net of 97 units for which the service availability charges have not been paid, and further, with the construction of the 137 units Shell Point Village is build out and no additional units will be placed into service under current zoning;

There is \$47,587.15 owed to FCWC by the Foundation for the 97 units, which shall be paid to FCWC within thirty (30) days of approval by the Florida Public Service Commission of this Settlement Agreement. The \$47,587.15 for the payment of service availability and AFPI charges is calculated as follows:

97 units at 172 gallons per day (gpd) = 16,684 gpd
16,684 gpd divided by 300 gpd/ERC = 55.61 ERCs
55.61 ERCs (\$625.00+230.73 per ERC) = \$47,587.15;

Based on the representations of Shell Point Village, the predominant water consumption use is for multi-family residential. Other uses traditionally classified as general service or commercial exist throughout the development and are a significant contributor to the

total water consumed by Shell Point Village. FCWC has no similar development within its service area. It is unlikely that a similar situation will ever exist again, because if the property were developed today the internal infrastructure that serves Shell Point Village would be owned and maintained by FCWC eliminating the master meter at the entrance to the facility and inserting meters at individual buildings or groups of buildings; and

This Settlement Agreement is subject to the approval of the FPSC without change. If the Settlement Agreement is not approved by the FPSC exactly as written, then this Settlement Agreement shall become null and void.

We find it appropriate to approve the parties' settlement agreement as a reasonable resolution of this complaint.

CLOSING OF DOCKET

Upon expiration of the protest period, this docket shall be closed administratively if a timely protest is not received from a substantially affected person.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the October 17, 1997 settlement agreement between the Christian and Missionary Alliance Foundation, Inc., d/b/a Shell Point Village and Florida Cities Water Company, Lee County Division, attached hereto as Attachment A and incorporated herein by reference, is hereby approved. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective unless an appropriate petition, in the form provided by Rule 25-22.036, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings or Judicial Review" attached hereto. It is further

ORDERED that this docket shall be closed administratively in the event that no timely protest is received from a substantially affected person.

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By ORDER of the Florida Public Service Commission this 23rd
day of February, 1998.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(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.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on March 16, 1998.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

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Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If this order becomes final and effective on the date described above, any party substantially affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water 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 of the effective date 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.

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT is made and entered into this 17th day of October, 1997, by and between the Christian and Missionary Alliance Foundation, Inc. d/b/a Shell Point Village ("Foundation") and Florida Cities Water Company ("FCWC").

WHEREAS, the Foundation owns and operates Shell Point Village in Lee County, Florida, which receives potable water service from FCWC; and

WHEREAS, the Foundation represents that: Shell Point Village is a continuing care retirement community located on a 75-acre island in the mouth of the Caloosahatchee River in Lee County, Florida; Shell Point Village provides all levels of care, including independent living, assisted living, and skilled nursing; there is a central kitchen and dining facility provided for assisted living, skilled nursing and independent living residents; there is also a medical center on site with four physicians employed by the Foundation; Shell Point Village also includes an administrative building, welcome center, maintenance building, conference center, marina, residents activities center, and social center; towels and linen are furnished and centrally laundered for all residents; most of the independent living apartment complexes have central laundry facilities for residents to do their personal laundry and there are not laundry facilities within the individual apartments; the residents, regardless of the level of care, pay an initial fee and a monthly maintenance fee; no separate charge is imposed on

residents for water service; all of the dwelling units are owned by the Foundation; Shell Point Village is built out and no additional residential development can occur under current zoning; and

WHEREAS, Water is delivered to Shell Point Village through one master water meter at the entry gate to Shell Point Village, and all internal distribution lines throughout the Village are owned and maintained by Shell Point Village. The Foundation does not use water purchased from FCWC for irrigation purposes as it purchases effluent from Lee County for that purpose; and

WHEREAS, a dispute has arisen between the Foundation and FCWC as to whether additional service availability charges, and allowance of funds prudently invested ("AFPI") charges are due to FCWC by the Foundation; and

WHEREAS, considering the time and expense of litigation, the parties desire to settle their differences.

NOW, THEREFORE, for and in consideration of the mutual covenants set forth herein, the Foundation and FCWC agree as follows:

1. The foregoing recitations are true and correct and incorporated herein by reference.

2. On September 6, 1978 the Florida Public Service Commission (FPSC) entered Order No. 8468 in Docket No. 770236-W. By Order No. 8468 the Commission ruled that the Foundation was required to pay FCWC \$52,500 in capacity charges for the 210 units in controversy. The \$52,500 has been paid to FCWC by the Foundation. By letter dated October 9, 1997 addressed to FCWC from the Foundation and

signed by Dennis Bayes, Vice President of Finance, Shell Point Village, the Foundation represents, and FCWC relies on such representation, that a net of 137 units have been added to Shell Point Village since the additions of the 210 units referenced in FPSC Order No. 8468 for which the service availability charge has been paid for 40 units leaving a net of 97 units for which the service availability charges have not been paid, and further, with the construction of the 137 units Shell Point Village is build out and no additional units will be placed into service under current zoning. The letter from the Foundation to FCWC dated October 9, 1997 and signed by Dennis Bayes, is attached hereto as Exhibit A and made a part hereof. There is \$47,587.15 owed to FCWC by the Foundation for the 97 units which shall be paid to FCWC within thirty (30) days of approval by the Florida Public Service Commission of this Settlement Agreement. The \$47,587.15 is for the payment of service availability and AFPI charges calculated as follows:

97 units at 172 gallons per day (gpd) = 16,684 gpd

16,684 gpd divided by 300 gpd/ERC = 55.61 ERCs.

55.61 ERCs (\$625.00+230.73 per ERC) = \$47,587.15

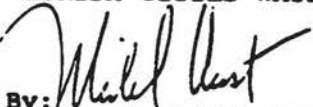
3. Based on the representations of Shell Point Village, the predominant water consumption use is for multi-family residential. Other uses traditionally classified as general service or commercial exist throughout the development and are a significant contributor to the total water consumed by Shell Point Village. FCWC has no similar development within its service area. It is

unlikely that a similar situation will ever exist again because if the property were developed today the internal infrastructure that serves Shell Point Village would be owned and maintained by FCWC eliminating the master meter at the entrance to the facility and inserting meters at individual buildings or groups of buildings. Shell Point Village is an anomalous and unique customer. Therefore, the parties believe that a combination of the commercial and multi-family tariffs would best suit the calculation of service availability and AFPI charges

4. Upon approval by the FPSC as set forth herein, this Settlement Agreement shall operate as a full and complete resolution regarding service availability and AFPI charges due to FCWC by the Foundation in connection with Shell Point Village as it has been developed as of the date of this Agreement.

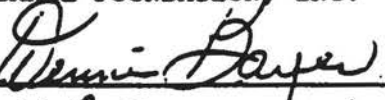
5. This Settlement Agreement is subject to the approval of the FPSC without change. If the Settlement Agreement is not approved by the FPSC exactly as written, then this Settlement Agreement shall become null and void.

FLORIDA CITIES WATER COMPANY

By: 
Its: Vice President

(Corp. Seal)

THE CHRISTIAN AND MISSIONARY
ALLIANCE FOUNDATION, INC.

By: 
Its: V. P. FINANCE & ASST. TREAS

(Corp. Seal)