



# Public Service Commission

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

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**DATE:** MARCH 16, 2000

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

**FROM:** DIVISION OF WATER AND WASTEWATER (REHWINKEL, REDEMANN)  
DIVISION OF LEGAL SERVICES (CROSSMAN, CROSBY)

*Bsm Cse RPR JMW  
Bl*

**RE:** DOCKET NO. 990253-WU - APPLICATION FOR APPROVAL OF SALE OF  
INGLEWOOD WATER SYSTEM IN LEVY COUNTY AND TRANSFER OF  
CERTIFICATE NO. 428-W TO LONNIE AND ROYANNA PARNELL

COUNTY: LEVY

**AGENDA:** 03/28/00 - REGULAR AGENDA - PROPOSED AGENCY ACTION FOR  
ISSUES 3 AND 4 - INTERESTED PERSONS MAY PARTICIPATE

**CRITICAL DATES:** NONE

**SPECIAL INSTRUCTIONS:** NONE

**FILE NAME AND LOCATION:** S:\PSC\WAW\WP\990253WU.RCM

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

**CASE BACKGROUND**

Inglewood Water System (Inglewood or utility) is a Class C utility serving approximately 56 water customers in Levy County. On January 4, 1983, the Levy County Commission transferred jurisdiction of its water and wastewater utilities to this Commission. On January 23, 1984, Inglewood applied to this Commission for a certificate to operate its existing water system. Pursuant to Order No. 13961, issued January 3, 1985, in Docket No. 840031-WU, the utility was granted Certificate No. 428-W and initial rates were established.

The utility's 1998 annual report lists annual revenues of \$12,510. The annual report also includes annual operating expenses of \$17,579 resulting in a net operating loss of \$5,069.

On March 4, 1999, Inglewood filed an application for approval of sale of the utility and transfer of Certificate No. 428-W to Lonnie and Royanna Parnell. Inglewood closed on the transfer June 3, 1998, prior to obtaining Commission approval. Staff addresses this matter in Issue 1. The initial filing contained numerous deficiencies due in part to the Parnells receiving incomplete books and records from the prior owner. The Parnells had considerable difficulty meeting filing requirements. Among other things, they had to renotice several times. However, deficiencies were complete in January 2000.

**DISCUSSION OF ISSUES**

**ISSUE 1:** Should Inglewood Water System be ordered to show cause, in writing within 21 days, why it should not be fined for its apparent violation of Section 367.071, Florida Statutes?

**RECOMMENDATION:** No. A show cause proceeding should not be initiated. (CROSSMAN)

**STAFF ANALYSIS:** As stated previously, Inglewood closed on the transfer June 3, 1998, prior to obtaining Commission approval. Section 367.071, Florida Statutes (1998), states:

No utility shall sell, assign, or transfer its certificate of authorization, facilities or any portion thereof ... without determination and approval of the commission that the proposed sale, assignment, or transfer is in the public interest ...

This statute was subsequently revised, effective June 11, 1999, to allow closing prior to Commission approval provided that it is made contingent upon Commission approval.

Section 367.161(1), Florida Statutes, authorizes the Commission to assess a penalty of not more than \$5,000 for each offense, if a utility is found to have knowingly refused to comply with, or have willfully violated any Commission rule, order, or provision of Chapter 367, Florida Statutes. In closing on the transfer prior to Commission approval, the utility's act was "willful" in the sense intended by Section 367.161, Florida Statutes. In Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL, titled In Re: Investigation Into The Proper Application of Rule 25-14.003, Florida Administrative Code, Relating To Tax Savings Refund For 1988 and 1989 For GTE Florida, Inc., the Commission having found that the company had not intended to violate the rule, nevertheless found it appropriate to order it to show cause why it should not be fined, stating that "[i]n our view, 'willful' implies an intent to do an act, and this is distinct from an intent to violate a statute or rule." Additionally, "[i]t is a common maxim, familiar to all minds that 'ignorance of the law' will not excuse any person, either civilly or criminally." Barlow v. United States, 32 U.S. 404, 411 (1833).

Although Inglewood's failure to obtain Commission approval prior to transferring its facilities to Lonnie and Royanna Parnell

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constitutes an apparent violation of Section 367.071, Florida Statutes, there are circumstances that appear to mitigate the utility's apparent violation. Mr. and Mrs. Parnell purchased the water system on June 3, 1998, by paying the previous owner, Mr. J.D. Ditullio, \$15,000 in cash. Further, the Parnells had considerable difficulty meeting the filing requirements due to the fact that the utility's books and records were incomplete. In the application, Mr. and Mrs. Parnell state that they were unaware of the requirement to obtain Commission approval prior to the transfer. As soon as they became aware, they filed an application with the Commission. In addition, the transferor, Mr. Ditullio, wanted to get out of the utility business.

For the foregoing reasons, staff does not believe that the utility's apparent violation of Section 367.071, Florida Statutes, rises under these circumstances to the level that warrants the initiation of a show cause proceeding. Therefore, staff recommends that the Commission not order the utility to show cause for its apparent violation.

**ISSUE 2:** Should the request for approval of sale of the utility and transfer of Water Certificate 428-W from Inglewood Water System to Lonnie and Royanna Parnell be approved?

**RECOMMENDATION:** Yes, the request for approval of sale of the utility and the transfer of Water Certificate No. 428-W from Inglewood Water System to Lonnie and Royanna Parnell should be approved. (REHWINKEL, REDEMANN)

**STAFF ANALYSIS:** As stated in the case background, Inglewood applied for a transfer of its water facilities and Water Certificate No. 428-W in Levy County to Lonnie and Royanna Parnell. The application is in compliance with the governing statute, Section 367.071, Florida Statutes, and other pertinent statutes and administrative rules concerning an application for transfer. The application contains a check in the amount of \$750, which is the correct filing fee pursuant to Rule 25-30.020, Florida Administrative Code. The applicant has provided evidence, in the form of a warranty deed, that the utility owns the land upon which the utility's facilities are located as required by Rule 25-30.037(2)(q), Florida Administrative Code.

In addition, the application contains proof of compliance with the noticing provisions set forth in Rule 25-30.030, Florida Administrative Code. No objections to the application were received, and the time for the filing of such objections has expired. A description of the territory served by the utility is appended to this memorandum as Attachment A. The service area described in Attachment A is the service area granted to Inglewood initially through Order No. 13961, issued January 3, 1985. No amendments to territory have been filed or approved since the initial certification docket.

With regard to the purchaser's technical ability, Mr. Parnell has indicated that he will maintain and operate the system in compliance with the appropriate laws and rules. Mr. Parnell has been providing operation, maintenance and management services for municipal and private water utilities since 1980. He is a licensed operator and has been self-employed as a water utility operator for the last 11 years. According to the Department of Environmental Protection, the utility does not have any current violations or consent orders.

In addition to 20 years of experience in operating water utilities, staff believes Mr. Parnell has the financial resources to ensure consistent compliance with environmental regulations. Regarding the financial ability of the buyer, financial statements were supplied to staff, along with additional information regarding

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the sources of annual income. According to Mr. Parnell, he currently intends to continue to make necessary investments in the utility with a goal of providing the financial stability required to maintain the utility in accordance with Commission standards.

This application contains a copy of Sales Contract which includes the purchase price, terms of payment, a list of the assets purchased and liabilities assumed and not assumed. Based on the application, there are no guaranteed revenue contracts, developer agreements, customer advances, debt of the utility, and leases that must be disposed of in association with the transfer of the utility.

According to our records, the utility is current on its regulatory assessment fees through December 1998 and has filed an annual report for 1998 and all prior years. According to conversations with the Buyer, Mr. Parnell will be responsible for the 1999 regulatory assessment fees along with filing the 1999 Annual Report, neither of which are due to the Commission until March 31, 2000.

Based on the above, staff recommends that the transfer of facilities and certificates from Inglewood to Lonnie and Royanna Parnell should be approved.

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ATTACHMENT A

INGLEWOOD WATER SYSTEM

TERRITORY DESCRIPTION

WATER SERVICE AREA

LEVY COUNTY

Docket No. 840031-WU, Order No. 13961, issued January 3, 1985

TOWNSHIP 16 SOUTH, RANGE 16 EAST

Section 34

That portion of the North 950 feet of the South 3,100 feet of the East 1/2 of said Section 34, lying South of State Road 40-A.

**ISSUE 3:** What is the rate base of Inglewood at the time of transfer?

**RECOMMENDATION:** The rate base of Inglewood, which for transfer purposes reflects the net book value, is \$25,238. (REHWINKEL)

**STAFF ANALYSIS:** According to the application, and based on past records, rate base was previously established by this Commission in Docket No. 861263-WU, which was a staff-assisted rate case. According to Order No. 17558, issued on May 14, 1987 in that docket, rate base was \$19,665.

Staff conducted an audit of the utility's books and records to determine rate base at the time of transfer. The audit reveals that the utility did not maintain a general ledger. Consequently, the utility did not reconcile its books and records with Order No. 17558. Therefore, the audited additions and adjustments were made to the balances included in Order No. 17558.

The audited additions to plant since the last rate case were added to the utility plant balances from the above Order resulting in an ending test period plant balance of \$51,531. The utility's recorded balance for plant in service account was overstated by \$2,586. Staff adjusted this account by that amount to reflect the reconciliation to the above-referenced order and to reflect the proper amount of plant additions.

Similarly, to reconcile the land value with the last rate case order, staff has decreased land by \$1,000. The utility misclassified a major repair to the plant structure to land. Staff reduced this account by \$1,000 to reflect the misclassification which results in an appropriate land value of \$3,307.

Order No. 17558 established the CIAC balance to be \$14,464 as of December 31, 1986. The amortization of CIAC balance was established at \$5,207. According to the audit, there have been no customer additions since 1986. Therefore, an adjustment to CIAC in the amount of \$164 is necessary to reconcile the CIAC account to that balance established by the Order. An adjustment is also necessary for the amortization of CIAC account in the amount of \$11,548. According to the audit, staff calculated accumulated amortization at the time of transfer using the composite depreciation rate from the Order. This calculation resulted in an ending balance of \$12,193 for amortization of CIAC.

The last adjustment to rate base that staff recommends is to accumulated depreciation in the amount of \$9,855. The utility's recorded balance was \$37,184 which is overstated. According to the audit, the accumulated depreciation balance should be \$27,329.



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Therefore, the adjustment reducing accumulated depreciation is necessary to reflect an appropriate balance at the time of transfer.

Staff's calculation of rate base is shown on Schedule No. 1. Staff recommends that rate base for Inglewood be established as \$25,238. This rate base calculation is used solely to establish the net book value of the property being purchased and does not include the normal ratemaking adjustments of working capital calculations and used and useful adjustments.

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SCHEDULE NO. 1

INGLEWOOD WATER SYSTEM

SCHEDULE OF WATER RATE BASE

As of June 30, 1998

<u>DESCRIPTION</u>	<u>BALANCE PER UTILITY</u>	<u>STAFF ADJUSTMENTS</u>	<u>BALANCE PER STAFF</u>
Utility Plant in Service	\$ 54,117	\$ (2,586)	\$ 51,531
Land	\$ 4,307	\$ (1,000)	\$ 3,307
Accumulated Depreciation	\$ ( 37,184)	\$ (9,855)	\$ ( 27,329)
Contributions-in-aid-of-Construction	\$ ( 14,628)	\$ 164	\$ ( 14,464)
CIAC Amortization	<u>\$ 645</u>	<u>\$ 11,548</u>	<u>\$ 12,193</u>
TOTAL	\$ 7,257	\$ 17,981	\$ 25,238

**ISSUE 4:** Should an acquisition adjustment be approved?

**RECOMMENDATION:** No. An acquisition adjustment should not be included in the calculation of rate base for transfer purposes. (REHWINKEL)

**STAFF ANALYSIS:** An acquisition adjustment results when the purchase price differs from the original cost calculation adjusted to the time of the acquisition. The acquisition adjustment resulting from the transfer of Inglewood would be calculated as follows:

Purchase Price:	\$ 17,234.00
Staff Calculated Rate Base:	\$ 25,238.00
Negative Acquisition Adjustment:	\$ 8,004.00

In the absence of extraordinary circumstances, it has been Commission policy that a subsequent purchase of a utility system at a premium or discount should not affect the rate base calculation. The circumstances in this exchange do not appear to be extraordinary; therefore, a negative acquisition adjustment should not be included in the calculation of rate base.

**ISSUE 5:** Should the rates and charges approved for Inglewood be continued?

**RECOMMENDATION:** Yes, the rates and charges approved for Inglewood should be continued. The tariff should be effective for services rendered or connections made on or after the stamped approval date, in accordance with Rule 25-30.475, Florida Administrative Code. (REHWINKEL)

**STAFF ANALYSIS:** Rates and charges were approved in the utility's last rate proceeding by Order No. 17558, issued on May 14, 1987, in Docket No. 861263-WU. The utility's rates and charges have been increased once since the staff-assisted rate case through a 1990 price index/pass-through filing effective March 30, 1991.

Rule 25-9.044(1), Florida Administrative Code, provides that:

In cases of change of ownership or control of a utility which places the operation under a different or new utility... the company which will thereafter operate the utility business must adopt and use the rates, classification and regulations of the former operating company (unless authorized to change by the Commission)...

The rates are reflected below:

**WATER MONTHLY RATES**

Residential and General Service

<u>Meter Size</u>	<u>Base Facility Charge</u>
All sizes	\$ 16.08
Gallonage Charge per 1,000 gallons	\$ 2.64

**CUSTOMER DEPOSITS**

Residential and General Service

5/8" x 3/4"	\$ 50.00
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**METER INSTALLATION FEES**

5/8" x 3/4"	\$ 190.00
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MISCELLANEOUS SERVICE CHARGES

	<u>Normal Business Hours</u>	<u>After Normal Business Hours</u>
Initial Connection	\$ 10.00	\$ 15.00
Normal Reconnection	\$ 15.00	\$ 20.00
Violation Reconnection	\$ 20.00	\$ 25.00
Premises Visit Charge (in lieu of disconnection)	\$ 10.00	-----

Based on the above, staff recommends that the rates and charges approved for Inglewood should be continued. The tariff should be effective for services rendered or connections made on or after the stamped approval date, in accordance with Rule 25-30.475, Florida Administrative Code.

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**ISSUE 6:** Should this docket be closed?

**RECOMMENDATION:** Yes. If no timely protest is received to the proposed agency action issues upon the expiration of the protest period, the order should become final and effective upon the issuance of a Consummating Order and the docket should be closed administratively.  
(CROSSMAN, CROSBY)

**STAFF ANALYSIS:** If no timely protest is received to the proposed agency action issues upon the expiration of the protest period, the order should become final and effective upon the issuance of a Consummating Order, and the docket should be closed administratively.