



Public Service Commission

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RECORDS AND REPORTING

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DATE: MAY 4, 2000

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BA) *Dmc ps*

FROM: DIVISION OF LEGAL SERVICES (CLEMONS) *Dmc ps*
DIVISION OF WATER AND WASTEWATER (TIFFANY DAVIS, TED DAVIS, CASEY) *TD*

RE: DOCKET NO. 981663-WU - APPLICATION FOR STAFF-ASSISTED RATE CASE BY TANGERINE WATER COMPANY, INC.
COUNTY: ORANGE

AGENDA: MAY 16, 2000 - REGULAR AGENDA - PROPOSED AGENCY ACTION FOR ISSUE 3 - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\LEG\WP\981663R2.RCM

CASE BACKGROUND

Tangerine Water Company Inc. (Tangerine or utility) is a Class C utility located in Orange County, which provided water service to an average 225 connections estimated to be 234 equivalent residential connections (ERCs) during the test year ending December 31, 1998. By Order No. 5446, issued June 8, 1972, in Docket No. C-71559-W, the Commission issued Certificate No. 96-W to Tangerine. Tangerine has had three previous staff assisted rate cases (Order No. 6529, issued February 21, 1975, in Docket No. 74645-WS; Order No. 8271, issued April 19, 1978, in Docket No. 770846-W; and Order No. 14376, issued May 16, 1985, in Docket No. 840377-WU) and no price index or pass-through rate adjustments.

On November 20, 1998, the utility submitted an application for a staff assisted rate case. By Order No. PSC-99-1399-PAA-WU, issued July 21, 1999 in this docket, the Commission granted the utility temporary rates in the event of protest, and approved an

DOCUMENT NUMBER-DATE

05601 MAY-48

FPSC-RECORDS/REPORTING

increase in rates and charges, among other things. The Commission also ordered the utility to complete certain pro forma plant improvements within 180 days from the effective date of the Order, or by March 7, 2000.

On February 23, 2000, staff received, by facsimile, a letter from Florida Water Services Corporation (Florida Water), stating that it had acquired Tangerine as of January 7, 2000, and requesting an extension of time to complete the ordered pro forma improvements. At staff's request, on March 10, 2000, Florida Water filed a Motion for Extension of Time to Comply with Commission Order (Motion). In its Motion, Florida Water states that it acquired the utility assets of Tangerine, subject to Commission approval, and that an application for transfer would be filed within a few days of the Motion. On March 21, 2000, Florida Water and Tangerine filed a joint transfer application in Docket No. 000333-WU.

Florida Water's Motion was the subject of staff's recommendation filed on April 6, 2000, in this docket, for consideration at the April 18, 2000, Agenda Conference. The item, however, was deferred at the Commission's request that staff consider what action, if any, should be taken with regard to the portion of the rate increase associated with the pro forma plant in light of the utility's failure to timely complete all of the required pro forma plant improvements. This revised recommendation addresses Florida Water's Motion and the Commission's concerns.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission grant Florida Water's Motion for Extension of Time to Comply with Commission Order?

RECOMMENDATION: Yes, the Commission should grant Florida Water's Motion for Extension of Time to Comply with Order No. PSC-99-1399-PAA-WU. The extension should be granted through September 7, 2000, or six months from the date the improvements should have been completed. (CLEMONS, TIFFANY DAVIS, TED DAVIS, CASEY)

STAFF ANALYSIS: As stated previously, in its February 23, 2000, letter and its March 10, 2000, Motion for Extension of Time to Comply with Commission Order, Florida Water states that it acquired the utility assets of Tangerine, subject to Commission approval of its transfer application. Florida Water also states that Order No. PSC-99-1399-PAA-WU required Tangerine to complete the following improvements within 180 days from the date of the Order:

- (a) Install a DEP required chlorine alarm;
- (b) Install a DEP required transfer switch;
- (c) Complete all DEP required electrical work;
- (d) Repair the number one pump;
- (e) Acquire a hand held computer for meter reading; and
- (f) Investigate customer deposits to determine who has established a satisfactory payment record.

According to Florida Water, only items (d), (e), and (f) were timely completed. It states that Items (d) and (f) were completed by Tangerine and (e) by Florida Water. Items (a), (b), and (c) have not been completed.

Florida Water explains that had Tangerine continued to own the facilities, it would have complied with the Order, but that due to the anticipated sale of the utility to Florida Water, it was expected that Florida Water would complete the required items.¹ Florida Water states that it intends to complete the remaining pro forma improvement items by the end of August, 2000, as reflected in the schedule attached to its Motion and letter. (Attachment A).

¹ Tangerine did not join in Florida Water's Motion. However, on April 18, 2000, staff contacted Tangerine's Treasurer, Ms. Connie Hurlburt, who stated that she was the only remaining officer of Tangerine and that she was aware of Florida Water's Motion and fully supported it.

DATE: MAY 4, 2000

Therefore, Florida Water requests that the Commission grant the additional time to complete the ordered requirements.

On May 3, 2000, staff received by facsimile a letter from Florida Water detailing the reasons why the required improvements were not completed between the time it acquired the utility on January 7, 2000, and the March 7, 2000, completion deadline. Florida Water states that it experienced some unexpected permitting delays for the electrical work necessary at the water plant controls, which is now 80% complete and is expected to be fully complete by May 10, 2000. Florida Water further states that it chose to address the chlorine alarm issue by converting from gas to a liquid chlorine system, which it considers a preferable resolution. It also states that the Florida Department of Environmental Protection (DEP) permit for the conversion was issued April 27, 2000, that the conversion is scheduled to be completed by May 19, 2000, and that clearance is expected by mid June, 2000. Florida Water maintains that, although it did not experience any permitting problems with the chlorine alarm, the conversion process is more time consuming.

In evaluating Florida Water's request, staff considered the following factors: 1) the reason provided for the failure to timely complete the pro forma plant improvements required by Order No. PSC-99-1399-PAA-WU; 2) the reasonableness of the length of the requested extension; 3) any public health and safety concerns regarding the failure to implement the DEP requirements; and 4) the impact of the extension upon the ratepayers. For the following reasons, staff believes that a six-month extension of time through September 7, 2000, to complete the required improvements, is reasonable.

Staff believes that Tangerine's anticipated sale of the utility to Florida Water is no excuse for Tangerine's failure to timely complete all of the pro forma plant improvements ordered by Order No. PSC-99-1399-PAA-WU. However, staff notes that the time had not completely run to complete the required improvements until March 7, 2000. On February 23, 2000, Florida Water provided staff with a letter requesting an extension of time, and filed its Motion on March 10, 2000.

Staff recognizes that with early planning and proper preparation for the completion of the remaining items, Tangerine perhaps could have prevented the delay. Notwithstanding, staff believes that both utilities could have addressed the matter during negotiations for the sale of the utility, and to make the necessary arrangements for the timely completion of all of the improvements.

DATE: MAY 4, 2000

Staff is persuaded, however, by Florida Water's willingness and cooperation to fulfill the obligations of Tangerine and its asserted reasons for the delay. Additionally, extensions of time are routinely granted where the utility shows good cause for such a request. See In Re: Application for staff assisted rate case in Martin County by Laniger Enterprises of America, Inc., Order No. 97-0105-FOF-WS, issued January 27, 1997 in Docket No. 950515-WS.

With regard to the length of the requested extension, staff has reviewed Florida Water's completion schedule, Attachment A, and believes it to be reasonable. Additionally, staff believes that the electrical wiring required by DEP will be a complex and time intensive matter, which will require the additional time requested by Florida Water. Further, the utility will need the additional time to complete the chlorine system conversion. As for any public health and safety concerns, despite the need for upgrades to comply with DEP rules, the deficiencies are plant-in-service issues and are not health related. Therefore, staff believes that the delay caused by the extension will have no impact on the quality of the product being served to customers. Further, the utility has been submitting its required test samples to DEP, and it continues to receive satisfactory inspection reports.

Based upon the foregoing, staff recommends that the Commission grant Florida Water's Motion for Extension of Time to Comply with Commission Order. The extension should be granted until September 7, 2000, or six months from March 7, 2000, the date the improvements should have been completed pursuant to Order No. PSC-99-1399-PAA-WU.

ISSUE 2: Should Tangerine be ordered to show cause, in writing within 21 days, why it should not be fined up to \$5,000 per day for failure to complete all of the pro forma plant improvements in apparent violation of Order No. PSC-99-1399-PAA-WU, issued July 21, 1999?

RECOMMENDATION: No, a show cause proceeding should not be initiated. (CLEMONS, TIFFANY DAVIS, CASEY)

STAFF ANALYSIS: By Order No. PSC-99-1399-PAA-WU, the Commission ordered Tangerine to complete six pro forma plant improvement items within 180 days of the effective date of the Order, or by March 7, 2000. As discussed in Issue No. 1, only three of the six items were timely completed.

Utilities are charged with the knowledge of the Commission's rules and statutes. 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). Thus, the utility's failure to complete the pro forma improvements in accordance with Order No. PSC-99-1399-PAA-WU would meet the standard for a "willful violation." 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, F.A.C., 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 "'willful' implies an intent to do an act, and this is distinct from an intent to violate a statute or rule." Id. at 6.

Section 367.161, Florida Statutes, authorizes the Commission to assess a penalty of not more than \$5,000 per day for each offense, if a utility is found to have knowingly refused to comply with, or to have willfully violated any Commission rule, order, or provision of Chapter 367, Florida Statutes.

Tangerine did not join in Florida Water's Motion for Extension of Time to Comply with Commission Order, and thus, did not provide an explanation as to why it did not complete all of the required pro forma plant improvements by the time of the sale of the utility. However, as previously stated, on April 18, 2000, staff contacted Tangerine's Treasurer, Ms. Connie Hurlburt, who stated that she was the only remaining officer of Tangerine and that she was aware of Florida Water's Motion and fully supported it. Florida Water states that Tangerine did not complete the remaining required

DATE: MAY 4, 2000

improvements due to the anticipated sale of the utility. As stated previously, staff does not believe that the pending sale of the utility justifies Tangerine's failure to complete all of the ordered improvements.

Florida Water states that it encountered delays in completing the required plant improvements due to permitting delays and due to the time intensive nature of the chlorine system conversion. Staff believes that the delays experienced by Florida Water could have been averted by early planning and proper preparation on the part of Tangerine. Nevertheless, as discussed in Issue 1, Florida Water has provided us with reasonable assurances that it will make every effort to complete the improvements on behalf of Tangerine by September 7, 2000. Typically, show cause proceedings are initiated in order to prompt a utility to come into compliance with the law or with a Commission directive.

Based upon the foregoing, staff does not believe that Tangerine's conduct rises to the level to warrant the initiation of a show cause proceeding.

ISSUE 3: In light of the utility's failure to timely complete the required pro forma plant improvements, what action, if any, should the Commission take with regard to the portion of the rate increase associated with the pro forma plant improvements?

RECOMMENDATION: No action should be taken at this time. However, the utility should be required to file monthly reports detailing its progress in completing the required pro forma plant improvements until all construction is completed. (TIFFANY DAVIS, CASEY, CLEMONS)

STAFF ANALYSIS: By Order No. PSC-99-1399-PAA-WU, the Commission ordered Tangerine to complete six pro forma plant improvement items within 180 days of the effective date of the Order, or by March 7, 2000. As discussed in Issue No. 1, only three of the six items were timely completed. The three pro forma plant improvements which have not been completed represent \$222 per month in utility revenue (\$.95/month per ERC), as shown below:

<u>Revenue Impact of</u>	
<u>Pro Forma Plant not completed</u>	<u>Amount</u>
a) DEP required chlorine alarm	\$ 1,345
(Retire existing chlorine alarm)	(637)
b) DEP required transfer switch	2,405
c) DEP required electrical work	<u>14,159</u>
Total pro forma	\$17,272
Accumulated Depreciation	(416)
Net Effect on Rate Base	\$16,856
Approved Overall Rate of Return	<u>. 0908</u>
Annual Rate Base Revenue impact for pro forma	1,531
Annual Depreciation	<u>\$ 1,016</u>
Net annual revenue impact	\$ 2,547
Gross-up for RAFs	<u>.955</u>
Total annual revenue impact	<u>\$ 2,667</u>
Total monthly Revenue impact	\$ 222
Monthly revenue impact per ERC	\$.95

At the April 18, 2000, Agenda Conference, the Commission requested that staff consider what action, if any, should be taken with regard to the portion of the rate increase associated with the pro forma plant in light of the failure to timely complete all of the required pro forma plant improvements. In response, by letter dated April 24, 2000, Florida Water states that it believes that "the Commission was operating under the misapprehension that the Commission had conditioned the increase in rates on completion of

DATE: MAY 4, 2000

the improvements. No such condition is reflected in the order." The letter goes on to state that:

As in prior rate case orders, in the Tangerine Order, the Commission granted a rate increase and required that specific improvements be made and that completion of the improvements be verified by the Commission staff without conditioning any portion of the increase or holding any of the increase revenue subject to refund based on completion of the improvements. Florida Water maintains that it would be inconsistent with the terms and conditions of the Order to reduce the Commission approved revenue requirement, intended to allow Tangerine the opportunity to earn a reasonable rate of return, due to the failure of Tangerine to timely complete all of the improvements. Florida Water understands and recognizes that it now stands in the shoes of Tangerine with respect to these requirements and has confirmed its commitment to timely complete the improvements.

Staff agrees with Florida Water's assertion that the rate increase associated with the pro forma plant improvements was not conditioned upon the completion of all of the required improvements within the specified time frame. Nevertheless, the utility was given a deadline by which to complete these improvements. However, staff believes that in the interest of rate stability for the ratepayers, the Commission should not reduce the utility's rates to reflect the incomplete pro forma improvements at this time.

Staff also considered whether \$222 per month, or the amount of the increase in rates associated with the incomplete pro forma plant improvements, should be debited from revenue and credited to contributions-in-aid-of-construction (CIAC). This would remove the amount of the incomplete plant improvements from the utility's rate base. Staff is unaware of any cases in which, as a result of an apparent violation of a Commission order related to pro forma improvements, the utility's revenue or CIAC was adjusted. In order to accomplish such an adjustment, the Commission could revisit Order No. PSC-99-1399-PAA-WU, if it were to determine that the Order was based on erroneous or fraudulent facts. However, that is not the situation in this case. Alternatively, the Commission could initiate an investigation with monies held subject to refund pending the outcome of the investigation. Any action taken by the Commission to address the revenue impact of the pro forma plant not yet installed should be done prospectively.

DATE: MAY 4, 2000

That said, staff believes that it is in the best interests of the ratepayers to have larger, more efficiently managed utilities acquire smaller, financially troubled systems, such as Tangerine. Staff does not recommend either of the two options discussed above, as it believes such action would provide a disincentive for the acquisition of smaller systems. Moreover, as discussed in Issue 1, staff believes that Florida Water has provided us with reasonable assurance that it is making every effort to complete the improvements.

Accordingly, staff recommends that no action should be taken at this time with regard to the portion of the rate increase associated with the pro forma plant improvements. The utility should be required to file monthly reports detailing its progress in completing the required pro forma plant improvements until all construction is completed.

DOCKET NO. 981663-WU
DATE: MAY 4, 2000

ISSUE 4: Should this docket be closed?

RECOMMENDATION: No, this docket should remain open to allow staff to verify that the utility has completed the required pro forma plant improvements. Once staff has verified that this work has been completed, the docket should be closed administratively.
(CLEMONS)

Tangerine Water System

Completion Schedule for FPSC Required Improvements

Item	Proposed Correction	2000										
		Jan	Feb	Mar	Apr	May	June	July	Aug	Sept		
Automatic Transfer Switch, plus Required Electrical Work	Install ATS, plus electrical system rewiring and code required upgrades			Bid/Award	Permit	Construct						
Chlorine Alarm	Convert to Hypochlorination			Design	Permit	Construct		Clear				
Looping of 1" Water Main	2" Loop, tying to 2" at each end			Survey	Design	Permit	Bid/Award	Construct		Clear		