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February 14, 2001

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RECORDS AND REPORTING

Blanca S. Bayo, Director
Division of Records & Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Betty Easley Building, Room 110
Tallahassee, FL 32399-0850

Via Hand Delivery

Re: Docket No. 950387-SU
Application for a rate increase for North Ft. Myers Division in Lee County by Florida
Cities Water Company – Lee County Division.

Dear Ms. Bayo:

Enclosed for filing and approval, on behalf of Florida Cities Water Company – Lee County
Division, are an original and 7 copies of a Motion to Approve Refund Methodology and Florida
Cities Water Company's Request for Oral Argument on its Motion to Approve Refund Methodology.

Please acknowledge receipt of the foregoing by stamping the enclosed extra copy of this
letter and returning same to my attention. Thank you for your assistance.

Please contact me if you have any questions.

Thank you.

Sincerely,

RUDEN, McCLOSKEY, SMITH,
SCHUSTER & RUSSELL, P.A.

Kathryn G.W. Cowdery
Kathryn G.W. Cowdery
Attorney

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Enclosures

cc:w/encl.: Ralph Jaeger (via hand delivery)
Marshall Willis (via hand delivery)
Harold McLean (via regular mail)

TAL:33134:1

Motion
DOCUMENT NUMBER-DATE
Reg. Oral Argument
DOCUMENT NUMBER-DATE

02114 FEB 14 6
02115 FEB 14 6

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FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for a rate) DOCKET NO. 950387-SU
increase for North Ft. Myers)
Division in Lee County by)
Florida Cities Water Company -) Filed: February 14, 2001
Lee County Division.)

MOTION TO APPROVE REFUND METHODOLOGY

Florida Cities Water Company (FCWC), pursuant to Fla. Admin. Code R. 28-106.204, hereby files this Motion to Approve Refund Methodology, and states:

Procedural History

1. FCWC filed an application for a rate increase on May 19, 1995, in this docket for its North Ft. Myers Division in Lee County, which was processed using the PAA procedure. The PSC issued PAA Order No. PSC-95-1360-FOF-SU on November 2, 1995 granting a rate increase. Timely objections requesting a hearing were filed by certain customers.

2. On December 1, 1995, FCWC filed its notice of intent to implement the PAA rates pursuant to Section 367.081(8), Florida Statutes. The commission acknowledged the implementation of PAA rates on an interim basis subject to refund and sufficient corporate undertaking by Order No. PSC-96-0038-FOF-SU, issued January 10, 1996. The PAA rates were effective December 13, 1995.

3. A hearing was held on April 24-25, 1996, and final order PSC-96-1133-FOF-SU requiring a rate reduction was issued

September 10, 1996. FCWC filed its notice of appeal of that order on October 7, 1996.

4. On November 20, 1996, the commission issued Order No. PSC-96-1390-FOF-SU, entitled, Order Granting Stay of Order No. PSC-96-1133-FOF-SU, Requiring Additional Security, and Placing Additional Revenues Subject to Refund, which modified and increased to \$940,755 the amount of the corporate undertaking as a result of the utility's appeal and request for stay.

5. On January 12, 1998, the First DCA reversed and remanded the Final Order for further proceedings in Florida Cities Water Co. v. State of Florida, FPSC, 705 So. 2d 620 (Fla. 1st DCA 1998). The PSC issued an interlocutory order concerning the remand proceeding which was appealed by FCWC. By Order No. PSC-98-0762-PCO-SU, issued June 6, 1998, and entitled Order Granting Florida Cities Water Company's Amended Motion for Stay of Order No. PSC-98-0509-PCO-SU and Requiring Additional Security, the commission automatically increased FCWC's corporate undertaking every six months to cover the amount subject to refund that was accruing.

6. A remand hearing was held on December 8 - 9, 1998, and final order No. PSC-99-0691-FOF-SU was issued on April 8, 1999. That order was appealed to the First District Court of Appeals by FCWC. The Court affirmed the PSC's final order on October

31, 2000, and issued its mandate on December 22, 2000, remanding the case to the PSC for further proceedings.

7. FCWC's North Ft. Myers Division system was sold to Lee County on April 15, 1999, during the pendency of the appeal proceeding. The transfer was approved by the PSC on December 7, 2000, in Docket No. 990489-WS pursuant to Order No. PSC-00-2351-FOF-WS.

8. Pursuant to Order PSC-99-061-FOF-SU, the commission has retained jurisdiction over this rate docket pending Staff's verification that the refunds have been completed, and for purposes of releasing or terminating FCWC's corporate undertaking upon order of the Commission addressing the refund. The refund is to be made pursuant to Order No. PSC-99-0691-FOF-SU, and Fla. Admin. Code R. 25-30.360, and is required to be made by March 22, 2001, that is, within 90 days of the Commission's Final Order, which in this case would run from the date of the First District Court of Appeal's December 22, 2000 Mandate.

Proposed Refund Methodology

9. A determination of the correct methodology of effectuating the refund in this docket would promote the just speedy, and inexpensive determination of this aspect of the case. There appears to be an inconsistency between the commission Order No. PSC-99-0691-FOF-SU and Fla. Admin. Rule 25-

30.360 with regard to the refund methodology, which could be effectively resolved through commission order. This case is unusual due to the transfer of the system during the pendency of the appeal process. The refund effort in this case appears to involve approximately 4100 former wastewater customers of the utility. The administrative manpower hours and costs associated with determining the refund, mailings, bookkeeping, and report requirements will be a significant cost to Florida Cities. Florida Cities seeks to avoid unnecessary expense and controversy by obtaining authorization to proceed with the refund methodology set forth herein.

10. FCWC proposes the following refund methodology:

a. Final Order No. PSC-99-0691-FOF-SU states in the ordering paragraph on page 25 that "Florida Cities Water Company, North Ft. Myers Division, shall make the refund to customers of record as of the date of this Order pursuant to Rule 25-30.360(3), Florida Administrative Code." (Emphasis added.) If the April 8, 1999 date certain is used as the basis for refund, only those customers still on the system as of that date would be issued refund checks, which could result in dissatisfaction and controversy by approximately 1500 customers who were on the system during the refund period but who had left the system before April 8, 1999.

b. Rule 25-30.360 requires that:

Where the refund is the result of a specific rate change, including interim rate increases, and the refund can be computed on a per customer basis, that will be the basis of the refund. However, where the refund is not related to specific rate changes, such as a refund for overearnings, the refund shall be made to customers of record as of a date specified by the Commission. In such case, refunds shall be made on the basis of usage. Per customer refund refers to a refund to every customer receiving service during the refund period. Customer of record refund refers to a refund to every customer receiving service as of a date specified by the Commission.

In this case, although Order No. PSC-99-0691-FOF-SU ordered a refund as of a date certain, FCWC has the capability to compute the refund based on a per customer basis. FCWC believes that the per customer basis would be in the best interest of the customers. FCWC proposes computing the refund on a per customer basis so that all customers who had received service during the time period in which the PAA rates were in effect would have refunds computed based upon the amounts billed to them during the refund period multiplied by 10.6%. The 10.6% multiplier represents a weighted average of the 10.92% and 10.5% percentages as set forth in Order No. PSC-99-0691-FOF-SU.

c. However, of the approximately 4100 total customers, approximately 1500 have left the system, leaving approximately 2600 customers as of April 8, 2001. Because these approximately 1500 customers left the system almost two years ago, the U.S. Postal Service will no longer forward their mail to their new addresses. A mailing to these customers would be

ineffective, because all the refund checks would be returned to Florida Cities. For this reason, FCWC proposes that refund checks would be issued and mailed only to the customers of record on April 8, 1999. But in addition, FCWC will publish a newspaper notice for the purpose of informing the remaining approximately 1500 prior customers of the refund. Those customers who reply within 60 days of the date of publication and provide a current address will be issued and mailed refund checks. Checks will not be issued to prior customers who do not respond and for whom, therefore, FCWC has no mailing address.

d. Interest will be calculated pursuant to Fla. Admin. Code R. 25-30.360(4).

e. Refund reports will be submitted pursuant to the requirements of Fla. Admin. Code R. 25-30.360 (7).

f. As required by both the Order and Fla. Admin. Code Rule 25-30.360(8), FCWC shall treat any unclaimed refunds as contributions-in-aid-of-construction.

g. Treatment of unclaimed refunds as CIAC is consistent with the Utility System Asset Acquisition Agreement document dated April 1, 1999, between FCWC and the FGUA ("Agreement"), which contains terms and conditions of the sale of the system from FCWC to Lee County. Pursuant to the terms of that Agreement, any unclaimed refunds would remain the property of FCWC. See Agreement Sections 3.02, 4.10, 5.05, 5.09,

Appendix N (A), and Section 367.171(5), Fla. Stat. (any financial responsibility that may result from Docket No. 950387-SU remains with FCWC after the transfer.).

h. FCWC estimates that it will incur \$6.00 per customer in costs to effectuate the refund, which will involve refund calculation, including interest, check preparation, mailing and handling, return address research, re-mailing efforts, administration of the process and any accounting required for the FPSC, plus an undetermined amount for newspaper advertising and legal expenses. FCWC requests that the Commission allow FCWC the ability to offset these costs against any unclaimed refund checks.

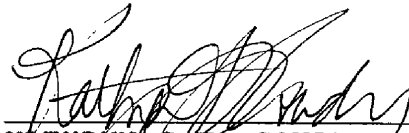
i. Because there may be unclaimed refund checks, even after exhaustive efforts, FCWC requests that the Commission concur with this methodology, advising them that because the utility has sold its utility assets and that it no longer operates any utility assets that any cash from the unclaimed refund checks will be used to resolve any matters that FCWC might have open, pay Federal and state income taxes related to these unclaimed checks, and finally disburse any remaining funds to its parent company. FCWC believes that this final accounting would be no different than if FCWC had made the refunds prior to the sale of its utility assets and would have been left with a credit on its balance sheet for cash CIAC. From the selling

utility's perspective, when it disposes of all its assets it closes its books of any cash CIAC which is part of the gain or loss on the disposal of the utility assets. If there is a gain, it effectively pays Federal and state taxes on cash CIAC. The utility is then allowed to take any proceeds and distribute them to its owners. This is the same case here; only the refund period has extended past the sale date of the utility assets, April 15, 1999. When FCWC sold its assets to the FGUA and Lee County it was allowed to treat any cash CIAC as part of the proceeds it could disburse to its owners, after payment of debts and taxes.

11. Counsel for FCWC has notified counsel of record for the Florida Public Service Commission, and the Office of Public Counsel regarding the filing of this motion. Neither party is able to take a position on this motion at this time.

Wherefore, FCWC respectfully requests that the commission grant FCWC's Motion to Approve Refund Methodology for use in this docket as specified herein.

DATED this 14th day of February 2001.



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Phone: (850) 681-9027

Attorneys for Florida Cities
Water Company

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion to Approve Refund Methodology has been furnished by hand delivery to Ralph Jaeger, Esquire, Division of Legal Services, Gunter Building, Room 370H, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, and by U.S. Mail to Harold McLean, Associate Public Counsel, Office of Public Counsel, c/o The Florida Legislature, Claude Pepper Building, Room 812, 111 W. Madison Street Tallahassee, Florida 32399-1400, this 14th day of February 2001.



KATHRYN G.W. COWDERY