

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application by Florida
Water Services Corporation for
amendment of Certificates Nos.
171-W and 122-S to add territory
in Nassau County.

DOCKET NO. 990817-WS
ORDER NO. PSC-02-1025-AS-WS
ISSUED: July 29, 2002

The following Commissioners participated in the disposition of
this matter:

LILA A. JABER, Chairman
J. TERRY DEASON
BRAULIO L. BAEZ
MICHAEL A. PALECKI
RUDOLPH "RUDY" BRADLEY

ORDER APPROVING SETTLEMENT AGREEMENT

BY THE COMMISSION:

BACKGROUND

Florida Water Services Corporation (Florida Water or utility)
is a Class A utility that provides water and wastewater service to
approximately 84,645 water customers and 42,159 wastewater
customers in Florida. The utility's 2001 annual report shows a
total annual operating revenue of \$94,628,152 and a net operating
income of \$11,950,624.

On June 24, 1999, the utility applied for an amendment to
Water Certificate No. 171-W and Wastewater Certificate No. 122-S in
Nassau County, Florida, pursuant to Rule 25-30.036(3), Florida
Administrative Code. The purpose of the amendment was to provide
water and wastewater service to a proposed development on Crane
Island which will be developed into 260 single family homes, a 360-
room inn, a 2,000 square foot civic center, a 4,500 square foot
yacht club with 90 slips, and a 100-seat restaurant.

On July 21, 1999, Florida Public Utility Corporation (FPUC)
timely filed an objection to the application. Pursuant to Order

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ORDER NO. PSC-02-1025-AS-WS
DOCKET NO. 990817-WS
PAGE 2

No. PSC-99-1708-PCO-WS, issued September 1, 1999, this matter was scheduled for an administrative hearing to be held on May 23 and May 24, 2000.

On November 9, 1999, Florida Water filed a Stipulated Motion for Stay of Case Schedule requesting that all hearing and filing dates be suspended. By Order No. PSC-99-2235-PCO-WS, issued November 12, 1999, the motion was granted in part and denied in part. Pursuant to Order No. PSC-99-2235-PCO-WS, the filing dates were suspended for a period of 45 days from the issuance date of the Order, but the prehearing and hearing dates remained scheduled. By close of business on the 45th day, the parties were required to file either a written settlement agreement or a report that outlined dates certain for any other actions which would resolve the protest. On January 6, 2000, the parties filed a written settlement agreement. The Prehearing and Hearing dates scheduled in this matter were canceled.

As discussed in more detail in the next section, upon reviewing the settlement agreement, our staff requested that the parties clarify and/or modify certain aspects of the agreement. On April 19, 2000, FPUC filed an Amendment of Settlement Agreement entered into by the parties. Further, in FPUC's letter accompanying the Amendment of Settlement Agreement, FPUC states that upon acceptance of the parties settlement, FPUC's protest may be considered withdrawn.

Also, on July 12, 1999, a copy of the application was sent to the Department of Community Affairs (DCA) for comment, pursuant to the Memorandum of Understanding entered into between this Commission and DCA on June 5, 1998. A response was received on August 12, 1999. In its initial response, the DCA stated that there is no need for service in the proposed area and that development as proposed in the certificate application appeared to be inconsistent with the Nassau County Comprehensive Plan, allowing a maximum of one dwelling unit per 5 acres. DCA also stated that the site is located in the Coastal High Hazard Area.

Following the filing of the negotiated settlement between the parties in April 2000, our staff contacted Florida Water to request its analysis and response to the DCA comments. The utility responded to the DCA's comments by letter dated August 3, 2000.

Since so much time had elapsed from the initial filing of the amendment, our staff also recontacted the DCA and requested it review the utility's comments. The DCA provided a follow-up response on September 12, 2000, in which the DCA concluded that its earlier comments were still valid. DCA asserts that according to the Future Land Use Map (FLUM), Crane Island is designated a Conservation wetlands; however, the developer contends that the island is uplands.

Due to this disagreement, an inspection of Crane Island was conducted. On November 15, 2000, a joint on-site inspection was made with the developer's attorney (Jacobs and Associates, Inc.), the developer (CIVITAS), the DCA, the Florida Department of Environmental Protection (DEP), the Nassau County Planning Department, the Northeast Florida Regional Planning Counsel, and the PSC.

On November 29, 2000, the DCA wrote a letter to the developer's attorney still indicating a concern for the development, but indicating that there was a proposal to change the land use. Nassau County had submitted a change to its comprehensive plan regarding Crane Island.

On November 28, 2001, Florida Water sent a letter indicating that an agreement had been reached with DCA regarding its objections, but that the City's right of way issue was outstanding. Florida Water stated that a mediation had been set for December 2001 and a trial was scheduled on the right of way issue for January of 2002.

On May 15, 2002, Florida Water sent another letter regarding the status of the development. In its letter, Florida Water indicated that development approval for the territory requested by the application submitted in this docket had been delayed. Further, Florida Water stated that DCA indicated that it would be November 2002 at the earliest before the development obtained the necessary approvals.

It is our understanding that the developer and Nassau County are still in negotiations with DCA regarding the land use of Crane Island. However, the DCA, Nassau County, and the developer have not agreed to the number of units to be developed at this time.

It has become clear that the development issues will take until at least November of 2002 to be resolved. However, we believe that it is appropriate at this time to address the outstanding Settlement Agreement as amended. The Settlement Agreement and the Amendment of Settlement Agreement constitute Attachment A which is appended to this Order. We have jurisdiction pursuant to Section 367.045, Florida Statutes.

SETTLEMENT AGREEMENT

As stated in the Background, pursuant to Order No. PSC-99-2235-PCO-WS, Florida Water's Stipulated Motion for Stay of Case Schedule was granted, in part, suspending the filing dates for a period of 45 days from the issuance date of the Order. The parties were required to file either a written settlement agreement or report that outlined dates certain for any other actions which would resolve the protest by the close of business on the 45th day. Pursuant to this Order, an order reestablishing the key activities dates would be issued if no written settlement agreement or report was received. The 45 day period concluded on December 27, 1999. No written settlement or report had been received by the 45th day. Therefore, we were in the process of establishing the key activities dates.

However, shortly thereafter, FPUC informed our staff that an agreement had been written and was in the process of being signed. FPUC stated that due to the holidays, the parties were having difficulties obtaining the necessary signatures in a timely fashion. On January 6, 2000, the parties filed a Settlement Agreement. Subsequently, the Prehearing and Hearing dates were canceled by the Chairman's Office.

The settlement agreement, filed January 6, 2000, provides, in pertinent part, the following:

- 1) The Parties agree that the boundary between Florida Public Utilities Company and Florida Water Services Corporation is the southerly city limits of the City of Fernandina Beach as said boundary exists as of the date of this agreement.

2) FPUC does not object to the extension requested by Florida Water to add Crane Island to its certificated territory as that area is described in attachment A hereto.

3) With the exception of Crane Island, Florida Water will not add service territory nor provide service to customers north of the southerly boundary of the City of Fernandina Beach and FPUC will not add areas or serve customers south of that boundary or in the area described as Crane Island.

4) Neither Party believes that it has customers in the other party's service area as agreed to herein but in the event there are, then those customers would continue to receive service from the current provider of service.

There were concerns with certain aspects of the settlement agreement as written. FPUC had no metes and bounds description of its territory. Pursuant to Order No. 3798, issued April 28, 1965, in Docket No. 7848-W, FPUC was granted a certificate which included "[a]ll of the territory encompassed by the corporate limits of the City of Fernandina Beach . . . and any additions thereto as may be legally annexed from time to time."¹ Due to the above described circumstance, our staff requested that the parties include a metes and bounds description of the current southerly city limits of the City of Fernandina Beach as said boundary exists as of the date of this agreement.

The second concern regarded paragraph 4 of the Settlement Agreement which would allow customers to remain with their current providers once they were discovered to be residing outside that utility's certificated territory. Section 367.045(2)(a), Florida Statutes, states that "[a] utility may not delete or extend its

¹We note that by Order No. PSC-02-0555-PAA-WS, issued April 23, 2002, in Docket No. 011344-WS, we acknowledged that Nassau County is no longer within our jurisdiction. That Order was consummated by Order No. PSC-02-0691-CO-WS, issued May 21, 2002. Since FPUC is no longer under our jurisdiction, there is no need to correct FPUC's territory description. Further, since we are approving the Settlement agreement as amended, FPUC will no longer have any pending matters before us.

service outside the area described in its certificate of authorization until it has obtained an amended certificate of authorization from the [C]ommission." Our staff requested that the parties clarify or modify this provision of the settlement agreement since it appeared to be in conflict with Section 367.045(2)(a), Florida Statutes.

On April 19, 2000, the parties filed an Amendment to the Settlement Agreement which states, in pertinent part, the following:

1) The Parties agree that the legal description of the southerly city limits of the City of Fernandina Beach which the parties agree is the boundary between the companies is as set forth in Attachment A hereto, which is a metes and bounds description.

2) The parties agree to delete paragraph 4 of the Settlement agreement, with which our staff was concerned because it appeared to be in conflict with Section 367.045(2), Florida Statutes.

3) All other provisions of the Settlement Agreement included in Attachment B are herewith reaffirmed.

The Amendment of Settlement Agreement, filed April 19, 2000, resolves our concerns with the original Settlement Agreement. Even though we are unable complete the processing of this application due to the outstanding development issues, we find it is beneficial to approve the settlement agreement at this time to resolve the outstanding protest by FPUC. Upon approval of the settlement agreement, FPUC will no longer have any pending matters before us. Further, we find that the settlement agreement as amended is a reasonable resolution of FPUC's protest which benefits all participants in this proceeding by alleviating the time and expense of a hearing in this matter.

For the foregoing reasons, we approve the Settlement Agreement, filed January 6, 2000, and the Amendment of Settlement Agreement, filed April 6, 2000, by Florida Water and FPUC. Further, we acknowledge the withdrawal of FPUC's protest upon our approval of the settlement agreement as amended.

Based on the foregoing, it is

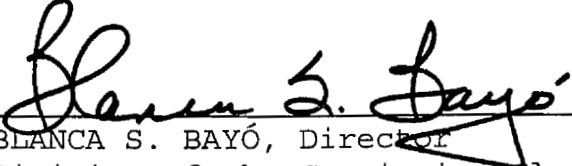
ORDER NO. PSC-02-1025-AS-WS
DOCKET NO. 990817-WS
PAGE 7

ORDERED by the Florida Public Service Commission that the Settlement Agreement, filed January 6, 2000, and the Amendment of Settlement Agreement, filed April 6, 2000, by Florida Water Services Corporation and Florida Public Utility Corporation is hereby approved. It is further

ORDERED that Florida Public Utility Corporation voluntary withdrawal of its protest to Florida Water Services Corporation's application for amendment of Certificates Nos. 171-W and 122-S to add territory in Nassau County is hereby acknowledged. It is further

ORDERED that this docket shall remain open pending the processing of the amendment application.

By ORDER of the Florida Public Service Commission this 29th day of July, 2002.



BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

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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.

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 the Commission Clerk and Administrative Services, 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 the Commission Clerk and Administrative Services 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.