



Public Service Commission  
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**DATE:** NOVEMBER 20, 2003

**TO:** DIRECTOR, DIVISION OF THE COMMISSION CLERK & ADMINISTRATIVE SERVICES (BAYÓ)

**FROM:** DIVISION OF ECONOMIC REGULATION (CLAPP, KAPROTH, WILLIS) OFFICE OF THE GENERAL COUNSEL (HOLLEY) *CLAPP, KAPROTH, WILLIS*

**RE:** DOCKET NO. 030976-WS - JOINT APPLICATION FOR ACKNOWLEDGMENT OF TRANSFER OF LAND AND FACILITIES OF FLORIDA WATER SERVICES CORPORATION IN DUVAL AND ST. JOHNS COUNTIES TO JEA, AND FOR CANCELLATION OF CERTIFICATE NOS. 177-W, 562-W AND 124-S.  
COUNTY: DUVAL AND ST. JOHNS

**AGENDA:** 12/02/03 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE

**CRITICAL DATES:** NONE

**SPECIAL INSTRUCTIONS:** THE TWO FLORIDA WATER SERVICES CORPORATION DOCKETS (030542-WS AND 030976-WS) SHOULD BE PLACED IN ORDER.

**FILE NAME AND LOCATION:** S:\PSC\ECR\WP\030976WS.RCM

CASE BACKGROUND

Florida Water Services Corporation (FWSC or utility) is a Class A utility providing water and wastewater service throughout Florida. Most of its systems are under Commission jurisdiction. FWSC's Duval County systems serve approximately 5,646 water and 5,471 wastewater customers and FWSC's St. Johns County systems serve approximately 317 water customers. The systems are not in a priority water resource caution area of the St. Johns River Water Management District. The utility's 2002 annual report indicates that the Duval systems had gross revenue of \$2,047,086 and \$2,823,210 and net operating income of \$569,132 and \$541,531 for water and wastewater, respectively, and the St. Johns systems had

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gross revenue of \$177,402 and net operating income of \$25,597 for water.

The water and wastewater systems of Duval County were originally issued Certificate Nos. 177-W and 124-S pursuant to Order No. 6213, issued August 8, 1974, in Docket Nos. 74399-W and 74398-S, In Re: Application of Woodmere Utilities Company, Inc., for certificates to operate a water and sewer utility in Duval County, Florida. Florida Water acquired the systems in 1981, pursuant to Order No. 9909, issued March 31, 1981, in Docket No. 810029-WS, In Re: Application of Woodmere Utility Company, Inc. for transfer of Water Certificate No. 177-W and Sewer Certificate No. 124-S in Duval County to Southern States Utilities, Inc. Water Certificate No. 562-W was issued for the St. Johns County systems pursuant to Order No. PSC-94-0519-FOF-WU, issued April 29, 1994, in Docket No. 931113-WU, In Re: Application for Grandfather Certificate to provide water service in St. Johns County by Southern States Utilities, Inc.

On or about October 15, 2003, FWSC entered into an Agreement of Purchase and Sale of Water and Wastewater Assets (Agreement) with JEA to purchase the Beacon Hills and Woodmere water and wastewater systems in Duval County and the Palm Valley and Remington Forest water systems in St. Johns County. For ease of reference within this recommendation, the FWSC's systems will collectively be referred to as the D/St. J County systems.

At issue in this docket is FWSC's application for acknowledgment of the proposed sale of the D/St. J County systems to JEA and for the cancellation of Certificate Nos. 177-W, 562-W, 124-S. This recommendation also addresses whether the Commission should open a docket to examine whether FWSC's sale involves a gain that should be shared with FWSC's remaining customers. The Commission has jurisdiction pursuant to Sections 367.045, 367.071, and 367.081, Florida Statutes.

**DISCUSSION OF ISSUES**

**ISSUE 1:** Should the transfer of Florida Water Services Corporation's Duval and St. Johns County water and wastewater facilities to JEA be approved?

**RECOMMENDATION:** Yes. The transfer of the Duval and St. Johns County systems to the JEA should be approved, as a matter of right, pursuant to Section 367.071(4)(a), Florida Statutes, effective October 15, 2003. Regulatory Assessment Fees (RAFs) for January 1 through October 15, 2003, should be submitted within 20 days after the issuance of the order approving the transfer. Certificate Nos. 177-W, 562-W, 124-S should be cancelled administratively at the conclusion of any pending dockets concerning the Duval and St. Johns County facilities. (CLAPP, KAPROTH, HOLLEY)

**STAFF ANALYSIS:** On October 8, 2003, the Commission received an application to transfer FWSC's D/St. J County system facilities to JEA pursuant to Section 367.071(4)(a), Florida Statutes, and Rule 25-30.037(4), Florida Administrative Code. The Agreement of Purchase and Sale of Water and Wastewater Assets states the proposed closing date is on or before October 15, 2003. Staff confirmed that the closing did take place on October 15, 2003, therefore, that is the effective date of the acquisition.

FWSC filed its application pursuant to Section 367.071(4)(a), Florida Statutes, which provides that the sale of facilities, in whole or in part, to a governmental authority shall be approved as a matter of right. JEA, formally known as the Jacksonville Electric Authority, is a governmental authority which was created and passed by a special act of the 1967 Florida Legislature (Chapter 67-1569, Laws of Florida), authorizing it to own, manage and operate electric utility systems in the city of Jacksonville and in any or all counties adjacent thereto. In 1997, the city of Jacksonville, through amendments to its governing charter, transferred the city's Department of Public Utilities water and sewer operations to JEA. The Commission has consistently treated JEA as a governmental authority for the purposes of transfers pursuant to Section 367.071(4)(a), Florida Statutes. See, Order No. PSC-99-0252-FOF-WS, issued February 9, 1999, in Docket No. 981241-WS, In re: Application of Ortega Utility Company for transfer of facilities in Duval County to Jacksonville Electric Authority, and cancellation of Certificate Nos. 223-W and 167-S; Order No. PSC-01-0142-FOF-SU, issued January 18, 2001, in Docket

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No. 000241-SU, In re: Application for transfer of facilities of J. Strauss Utility to JEA and cancellation of Certificate No. 244-S in Duval County; and Order No. PSC-02-0060-FOF-WS, issued January 8, 2002, in Docket No. 010986-WS, In re: Notice of sale of assets of Regency Utilities, Inc. in Duval County to Jacksonville Electric Authority, and request for cancellation of Certificate Nos. 197-W and 143-S.

Pursuant to Section 367.071(4)(a), Florida Statutes, the transfer of facilities to a governmental authority shall be approved as a matter of right. As such, no notice of the transfer is required and no filing fees apply. The application had no deficiencies and is in compliance with Section 367.071(4)(a), Florida Statutes, and Rule 25-30.037(4), Florida Administrative Code.

The application contains a statement that JEA obtained FWSC's most recent income and expense statement, balance sheet, statement of rate base for regulatory purposes, and contributions-in-aid-of-construction pursuant to Rule 25-30.037(4)(e), Florida Administrative Code. Also included in the application was a statement that the customer deposits and interest earned, less any unpaid balances, will be refunded to the customers as required by Rule 25-30.037(4)(g), Florida Administrative Code.

Pursuant to Rule 25-30.037(4)(f), Florida Administrative Code, the application is to contain the date on which the governmental authority proposes to take official action to acquire the utility. According to the agreement, the closing took place on October 15, 2003. Additionally, pursuant to the requirements of Rule 25-30.037(4)(h), Florida Administrative Code, a statement was included that FWSC has no outstanding RAFs and no fines or refunds are owed. Staff has verified that the utility has filed its 2002 annual report and paid its 2002 RAFs and that there are no outstanding penalties and interest. For the period of January 1 through October 15, 2003, FWSC has agreed to file a RAF return and remit RAF payment for the D/St. J County systems within 20 days of the issuance of the order approving the transfer.

Staff recommends that the Commission find that the application is in compliance with the provisions of Rule 25-30.037, Florida Administrative Code. Pursuant to Section 367.071(4)(a), Florida Statutes, the transfer of facilities to a governmental authority shall be approved as a matter of right. Staff believes that the

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JEA should be treated as a governmental authority as defined in Section 367.021(7), Florida Statutes, for the purposes of this transfer. Therefore, staff recommends that the transfer of the D/St. J County systems to the JEA should be approved, as a matter of right, pursuant to Section 367.071(4)(a), Florida Statutes, effective October 15, 2003. Regulatory assessment fees for January 1 through October 15, 2003, should be submitted within 20 days after the issuance of the order approving the transfer. Certificate Nos. 177-W, 562-W, 124-S should be cancelled administratively at the conclusion of any pending dockets concerning Duval and St. Johns County.

**ISSUE 2:** Should the Commission open a docket to examine whether FWSC's sale of the Duval and St. Johns County systems to JEA involves a gain that should be shared with FWSC's remaining customers?

**RECOMMENDATION:** Yes. The Commission should open a docket to examine whether FWSC's sale of the D/St. J County systems involves a gain that should be shared with FWSC's remaining customers. (WILLIS, CLAPP, HOLLEY)

**STAFF ANALYSIS:** Per the acquisition agreement entered into on October 15, 2003, FWSC received a total of \$25,000,000 from JEA for the Beacon Hills and Woodmere water and wastewater systems in Duval County and the Palm Valley and Remington Forest water systems in St. Johns County. That sum appears to exceed the rate base values that the Commission has approved for those facilities. In Order No. PSC-96-1320-FOF-WS, issued October 30, 1996, in Docket No. 950495-WS, In Re: Application for rate increase and increase in service availability charges in Southern States Utilities, Inc. for Orange-Osceola Utilities, Inc. in Osceola County, and in Bradford, Brevard, Charlotte, Citrus, Clay, Collier, Duval, Highlands, Lake, Lee, Marion, Martin, Nassau, Orange, Osceola, Pasco, Putnam, Seminole, St. Johns, St. Lucie, Volusia, and Washington Counties, the most recent rate proceeding for FWSC, the approved rate base value for the combined D/St. J County systems was \$9,207,676 for the projected test year ending December 31, 1996. Restoring used and useful adjustments, the aggregate rate base balance was \$9,215,858. In its 2002 Annual Report, FWSC reported a rate base of \$9,653,718 for the D/St. J County systems. As the sale is planned to occur in 2003, an updated rate base calculation will be needed to determine the gain, if any, due to sale of these facilities. Initial review indicates that FWSC will record a gain on this transaction. Therefore, staff recommends that the Commission should decide whether to open a separate docket to determine if the gain should be allocated among the remaining water and wastewater customers.

#### Utility's Position

By letter to staff dated August 29, 2003, the attorney for FWSC provided the utility's position with respect to whether the Commission should initiate a gain on sale issue in this docket. In that letter, FWSC cites the Commission's decision concerning gain on sale in Order No. PSC-93-0423-FOF-WS, issued March 22, 1993, in

Docket No. 920199-WS, In Re: Application for rate increase in Brevard, Charlotte/Lee, Citrus, Clay, Duval, Highlands, Lake, Marion, Martin, Nassau, Orange, Osceola, Pasco, Putnam, Seminole, Volusia, and Washington Counties by Southern States Utilities, Inc.; Collier County by Marco Shores Utilities (Deltona); Hernando County by Spring Hill Utilities (Deltona); and Volusia County by Deltona Lakes Utilities (Deltona) (SSU Order). In the SSU Order, FWSC argues that the Commission concluded that there should be no sharing in the gain arising from the condemnation of water and wastewater systems previously operated by FWSC. Because that decision concerning gain on sale was affirmed by the First District Court of Appeal in Citrus County v. Southern States Utilities, Inc., 656 So. 2d 1307 (Fla. 1st DCA 1995), FWSC argues that the Commission is bound by the "Citrus County precedent."

Moreover, FWSC notes that "the Citrus County appellate court decision is consistent with" Order Nos. PSC-93-1821-FOF-WS, issued December 22, 1993, in Docket No. 930373-WS, In Re: Application for amendment of Certificate No. 247-S by North Fort Myers Utility, Inc., and cancellation of Certificate No. 240-S issued to Lake Arrowhead Village, Inc., in Lee County, and 930379-SU, In Re: Application for a limited proceeding concerning the rates and charges for customers of Lake Arrowhead Village, Inc., in Lee County, by North Fort Myers Utility (North Fort Myers Order). In the North Fort Myers Order, FWSC points to the paragraph where the Commission stated:

[C]ustomers of utilities do not have any proprietary claim to utility assets. Although customers pay a return on utility investment through rates for service, they do not have any ownership rights to the assets, whether contributed or paid for by utility investment.

#### Staff's Position

Staff notes that the sale to JEA does not involve a condemnation proceeding. Moreover, staff believes that FWSC has misinterpreted each of the above-noted Orders and court decision. In the SSU Order, the Commission, in addressing whether a sharing of the gain on sale was appropriate, specifically said, "Since SSU's remaining customers never subsidized the investment in the SAS [St. Augustine Shores] system, they are no more entitled to share in the gain from that sale than they would be required to absorb a loss from it." Therefore, the Commission's determination

that a sharing of the gain on sale was not appropriate was limited to the specific facts of that case and was not a "blanket" legal determination that a gain on sale would never be appropriate. The Citrus County case merely confirmed this factual interpretation.

As to the North Fort Myers Order, the language quoted by FWSC was merely addressing whether there should be a refund to the customers of the former utility, Lake Arrowhead Village, Inc. (LAVI). As to consideration of the gain on sale, the Commission said:

We first examined whether any gain on sale should be passed on to the customers. The costs to dismantle the plant would range from \$20,000 to \$50,000, depending on the public health and other sanitary requirements for the intended use of the land where the treatment and disposal facilities are located. Therefore, even if the few lots which might be created by clearing the former plant site were sold, a significant portion of the gain would be greatly offset by the cost of clearing the site and preparing the lots for sale.

Therefore, the Commission again, on a factual basis, determined that a gain on sale adjustment was not appropriate. Staff believes that a review of the appropriate disposition of any gain on sale is appropriate, and to do so, the Commission is merely carrying out its jurisdictional duty to "fix rates which are just, reasonable, compensatory, and not unfairly discriminatory" to the remaining customers of FWSC, as required by Section 367.081(2)(a)1., Florida Statutes.

Before the D/St. J County systems were purchased by JEA, the facilities were subject to this Commission's jurisdiction. Their service rates were established in FWSC's 1995 rate proceedings in Docket No. 950495-WS. According to FWSC's 2002 annual report the D/St. J County systems had combined net operating income of \$594,729 and \$541,531 for water and wastewater, respectively. Whether the D/St. J County systems were subsidized by other systems has yet to be determined.

Further study to examine sharing considerations for the D/St. J County systems gain on sale is recommended to permit timely examination of this topic. Staff recommends that the Commission open a docket to examine whether FWSC's sale of its D/St. J County



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systems involves a gain that should be shared with FWSC's remaining customers. This is consistent with prior Commission decisions in the following Orders: Order No. PSC-98-0688-FOF-WS, issued May 19, 1998, in Docket No. 971667-WS, In Re: Application for approval of transfer of facilities of Florida Water Services Corporation to Orange County and cancellation of Certificate Nos. 84-W and 73-S in Orange County; Order No. PSC-99-2171-FOF-WU, issued November 8, 1999, in Docket No. 981589-WU, In re: Application for approval of transfer of a portion of the facilities operated under Certificate No. 40-W in Orange County from Utilities, Inc. of Florida to the City of Maitland; and Order No. PSC-99-2373-FOF-WS, issued December 6, 1999, in Docket No. 991288-WS, In re: Application for transfer of a portion of Certificates Nos. 278-W and 225-S in Seminole County from Utilities, Inc. of Florida to the City of Altamonte Springs. In each of the above-three Orders, the Commission acknowledged the transfer to the respective governmental authority and opened another docket to evaluate the gain on sale.

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**ISSUE 3:** Should this docket be closed?

**RECOMMENDATION:** This docket should remain open until the conclusion of any pending dockets concerning the D/St. J County systems, and until Certificate Nos. 177-W, 562-W, and 124-S are cancelled administratively. (HOLLEY)

**STAFF ANALYSIS:** This docket should remain open until the conclusion of any pending dockets concerning the D/St. J County systems, and until Certificate Nos. 177-W, 562-W, and 124-S are cancelled administratively.