

State of Florida



# Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FLORIDA 32399-0850

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

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**DATE:** June 6, 2024

**TO:** Office of Commission Clerk (Teitzman)

**FROM:** Division of Accounting and Finance (Przygocki, Swards) *ALM*  
Office of the General Counsel (Farooqi) *AET*

**RE:** Docket No. 20240085-WS – Joint motion requesting approval of settlement agreement, by Office of Public Counsel and North Florida Community Water Systems, Inc.

**AGENDA:** 06/18/24 – Regular Agenda – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** *All Commissioners*

**PREHEARING OFFICER:** *Graham* *AT 6/6/24*  
~~Unassigned~~

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** None

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## Case Background

North Florida Community Water Systems, Inc. (NFCWS or Utility) owns six water and three wastewater systems in Duval, Alachua, Leon, Okaloosa, Franklin, and Washington counties. The Utility provides service to approximately 2,471 water and 243 wastewater customers. The Utility's water and wastewater system in Duval County, formerly known as Duval Waterworks, Inc. (DWI), serves approximately 51 water customers and 33 wastewater customers. In February of 2023, the Commission acknowledged the corporate reorganization and name change of several systems, including DWI, to NFCWS.<sup>1</sup> The corporate reorganization resulted in no

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<sup>1</sup> Order No. PSC-2023-0097-FOF-WS, issued February 22, 2023 in Docket No. 20220199-WS, *In re: Joint application for acknowledgement of corporate reorganization and approval of name changes on Certificate Nos. 641-W and 551-S in Duval County, Certificate No. 555-W in Alachua County, Certificate Nos. 678-W and 672-W in Leon County, Certificate No. 676-W in Okaloosa County, and Certificate Nos. 501-W and 435-S in Washington County from Duval Waterworks, Inc., Gator Waterworks, Inc., Lake Talquin Waterworks, Inc., Seminole*

change in ownership or control of the utilities, and each FCWS system continued to charge its own Commission-approved rates and charges.

Based on staff's review of DWI's 2021 and 2022 Annual Reports, the Utility was identified as potentially overearning. By letter dated July 22, 2022, NFCWS acknowledged the Commission's jurisdiction over revenues in excess of the maximum of the allowed Return on Equity (ROE) for 2022. NFCWS has worked with both the staff of the Florida Public Service Commission as well as with the Office of Public Counsel (OPC) to discuss the potential disposition of any portion of such earned return above the maximum allowed ROE ("overearnings"). On May 7, 2024, NFCWS and OPC filed a Joint Motion requesting Commission approval of a Settlement Agreement to resolve the disposition of the 2022 and 2023 overearnings.<sup>2</sup> The Settlement Agreement only addresses customers of the Utility's water and wastewater systems in Duval County.

The purpose of this recommendation is to present the Settlement Agreement proposal to the Commission for approval. The Joint Motion and Settlement Agreement have been attached as Attachment A to this recommendation. The Commission has jurisdiction pursuant to Sections 367.081, 367.082, and 367.121, Florida Statutes.

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*Waterworks, Inc., Okaloosa Waterworks, Inc., and Sunny Hills Utility Company to North Florida Community Water Services, Inc.*

<sup>2</sup> Document No. 02926-2024, dated May 7, 2024.

## Discussion of Issues

**Issue 1:** Should the Commission approve the Joint Motion and Settlement Agreement by the Parties?

**Recommendation:** Yes. The proposed Settlement Agreement adequately addresses the potential overearnings staff had identified during its ongoing earnings surveillance activities. As outlined in the proposed Settlement Agreement, NFCWS should refund customers of its Duval County system, formerly DWI customers, 14.18 percent of water revenues and 32.38 percent of wastewater revenues billed those customers for the calendar year 2022. NFCWS should also refund 12.68 percent of water revenues and 15.27 percent of wastewater revenues billed those customers for the calendar year 2023. This refund credit should be based upon each individual customer's billed amounts for the respective calendar year. The refunds should be made in accordance with Rule 25-30.360, Florida Administrative Code (F.A.C.) (Przygocki)

**Staff Analysis:** As part of its ongoing surveillance activities, staff identified possible overearnings based upon its review of DWI's 2021 and 2022 Annual Reports, filed in 2022 and 2023, respectively. In further examining possible overearnings, staff requests and obtains updated data over several months to evaluate a utility's financial position to evaluate the likelihood of continued overearnings and to examine the level of operating revenues necessary to support ongoing utility operations. Staff's analysis also incorporates the utility's needs for continuing capital improvements and operating expenses.

In addition to working with staff, NFCWS also worked with OPC to discuss the potential disposition of any overearnings. On May 7, 2024, NFCWS and OPC filed a Joint Motion requesting Commission approval of a Settlement Agreement to resolve the disposition of the 2022 and 2023 overearnings. NFCWS should refund customers of its Duval County system, formerly DWI customers, 14.18 percent of water revenues and 32.38 percent of wastewater revenues billed for the calendar year 2022. NFCWS should also refund 12.68 percent of water revenues and 15.27 percent of wastewater revenues billed for the calendar year 2023. The refunds shall be made to customers of record as of the date of the Order approving this Settlement pursuant to Rule 25-30,360(3), F.A.C. This refund credit shall be based upon each individual customer's billed amounts for the respective calendar year.

In keeping with the Commission's long-standing policy and practice of encouraging parties to settle issues whenever possible, staff recommends that the Commission approve the Joint Motion and Settlement Agreement by the Parties. Staff notes that this recommendation is consistent with other Commission decisions regarding possible overearnings.<sup>3</sup> The proposed Settlement Agreement adequately addresses the potential overearnings identified in 2022 and 2023. The refunds should be made in accordance with Rule 25-30.360, F.A.C.

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<sup>3</sup> Order Nos. PSC-2015-0173-PAA-WS, issued May 5, 2015, in Docket No. 20150069, *In re: Settlement proposal for possible overearnings by Southlake Utilities, Inc. in Lake County*; PSC-11-0012-PAA-SU, issued January 4, 2011, in Docket No. 100446-SU, *In re: Settlement proposal for possible overearnings by Tierra Verde Utilities, Inc. in Pinellas County*; PSC-10-0680-PAA-SU, issued November 15, 2010 in Docket No. 100379-SU, *In re: Settlement proposal for possible overearnings by Mid-County Services, Inc. in Pinellas County*; and PSC-05-0956-PAA-SU, issued October 7, 2005, in Docket No. 050540-SU, *In re: Settlement offer for possible overearnings in Marion County by BFF Corp.*

**Issue 2:** Should this docket be closed?

**Recommendation:** No. If no timely protest is received from a substantially affected person upon expiration of the protest period, the PAA Order will become final upon the issuance of a Consummating Order. However, this docket should remain open to allow staff to verify completion of the refunds discussed in Issue 1. Once staff has verified that the refunds have been made in accordance with Rule 25-30.360, F.A.C., the docket should be closed administratively. (Farooqi, Przygocki)

**Staff Analysis:** If no timely protest is received from a substantially affected person upon expiration of the protest period, the PAA Order will become final upon the issuance of a Consummating Order. However, this docket should remain open to allow staff to verify completion of the refunds discussed in Issue 1. Once staff has verified that the refunds have been made in accordance with Rule 25-30.360, F.A.C., the docket should be closed administratively.

DOCKET NO. 20240085-WS  
FILED 5/10/2024  
DOCUMENT NO. 02926-2024  
FPSC - COMMISSION CLERK

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Disposition of 2022 and 2023  
Overearnings for:

North Florida Community Water Systems:  
Duval Water & Wastewater System

Docket No. 2024 \_\_\_\_\_ -WS  
Filed: May 7, 2024

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**JOINT MOTION REQUESTING COMMISSION APPROVAL OF  
SETTLEMENT AGREEMENT**

The Office of Public Counsel (“OPC”), on behalf of the Citizens of the State of Florida (“Citizens”) and North Florida Community Water Systems, Inc. (hereafter referred to as “Utility”), pursuant to Section 367.081 and Section 120.57(4), Florida Statutes, and Rule 28-106.301, Florida Administrative Code, file this Joint Motion respectfully requesting the Florida Public Service Commission (“Commission”) to approve the Settlement Agreement, attached as Exhibit “A”, as provided in this motion. In support of the Joint Motion, OPC and the Utility (the “Parties”) state:

1. The staff of the Commission identified potential 2022 overearnings based upon the review of the 2021 Annual Report of the respective Utility for its Duval water and wastewater systems.
2. The Parties exchanged data regarding Utility’s potential earnings above the maximum allowed returned on equity (ROE), and conducted discussions related to earnings data provided by Utility to OPC.
3. To avoid the time, expense and uncertainty associated with adversarial litigation, and in keeping with the Commission’s long-standing policy and practice of encouraging parties to settle issues whenever possible, OPC and the Utility have entered into a Settlement Agreement.
4. This Settlement Agreement resolves the disposition of the 2022 and 2023 overearnings for North Florida Community Water Systems’ water and wastewater systems in Duval County.

5. The Parties agree that this Settlement Agreement is in the public interest. The provisions of this Settlement Agreement are contingent on approval of this Settlement Agreement in its entirety by the Commission without modification.

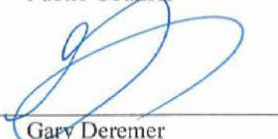
6. The Parties request expedited review and approval of this Settlement Agreement at the earliest scheduled Commission Agenda Conference.

WHEREFORE, OPC and the Utility respectfully request the Commission approve this Settlement Agreement.

Respectfully submitted this 7<sup>th</sup> day of May 2024.



Walt Trierweiler  
Public Counsel



Gary Deremer  
President

North Florida Community Water Systems, Inc.

**Exhibit "A"**

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Disposition of 2022 and 2023  
Overearnings for:  
North Florida Community Water Systems -  
Duval Water & Wastewater System  
\_\_\_\_\_ /

Docket No. 2024 \_\_\_\_\_

Filed: May 6, 2024

**SETTLEMENT AGREEMENT**

THIS SETTLEMENT AGREEMENT is made and entered into this 6<sup>th</sup> day of May, 2024,  
by and between the following utility:

North Florida Community Water Systems, Inc.  
(Duval Water and Wastewater Systems)

(hereafter referred to as "Utility" or "NFCWS"), and the Office of Public Counsel ("OPC"), on  
behalf of the Citizens of the State of Florida ("Citizens") and customers of each respective Utilities  
(hereafter, "Parties").

**WITNESSETH**

WHEREAS, the staff of the Florida Public Service Commission ("Commission" or  
"FPSC") identified potential 2021 overearnings based upon the review of the 2021 Annual Report  
of formerly Duval Waterworks, Inc. Now a water and wastewater system part of NFCWS;

WHEREAS, the Utility submitted a letter dated July 22, 2022 to the FPSC as  
acknowledgement of and consent to the FPSC's jurisdiction over the extent to which the earned  
return on common equity (ROE) for the year ending December 31, 2021 exceeds the maximum of  
the allowed ROE. This letter consented jurisdiction over the 2022 revenues to the PSC;

WHEREAS, it was the Utility's understanding that any decision regarding the disposition  
of any portion of such earned return above the maximum allowed ROE will be subject for  
disposition after the nature and extent of any such amount above the approved ROE ranges are

known;

WHEREAS, NFCWS has met with both the Staff of the Florida Public Service Commission as well as with the Office of Public Counsel to discuss the potential disposition of any portion of such earned return above the maximum allowed ROE (“overearnings”);

WHEREAS, the Parties conducted further discussions and evaluation of additional data provided by NFCWS to OPC on such overearnings;

WHEREAS, the Parties to this Agreement have undertaken to resolve the issues raised in this proceeding so as to maintain a degree of stability and predictability with respect to customer bills;

WHEREAS, the Parties have entered into this Settlement Agreement in compromise of positions taken in accord with their rights and interests under Chapters 350 and 367, Florida Statutes, as applicable, and as a part of the negotiated exchange of consideration among the parties to this agreement each has agreed to concessions to the others with the expectation that all provisions of this Settlement Agreement will be enforced by the Commission as to all matters addressed herein with respect to all parties regardless of whether a court ultimately determines such matters to reflect Commission policy, upon acceptance of the agreement as provided herein and upon approval in the public interest; and

NOW THEREFORE, for and in consideration of the mutual covenants set forth below, the sufficiency of which is hereby acknowledged the parties agree to the following:

1. **Duval Water and Wastewater Systems.** NFCWS (Duval water and wastewater systems) agrees to refund via credit on its customers’ accounts as follows: for calendar year 2022; 14.18% of the water revenues and 32.38% of the wastewater revenues billed for the calendar year 2022; and for calendar year 2023; 12.68% of the water revenues and 15.27% of the wastewater revenues



billed for the calendar year 2023. The refunds shall be made to customers of record as of a date of the Order approving this Settlement pursuant to Rule 25-30.360(3), Florida Administrative Code. This refund credit shall be based upon each individual customer's billed amounts for the respective calendar year. NFCWS acknowledges that although the Utility did not provide consent of revenues for 2023, and the 2023 Annual Report has not been reviewed by the Commission, Utility agrees to make refunds for 2023 as part of this Settlement Agreement.

2. In keeping with the Commission's long-standing policy and practice of encouraging parties to settle issues whenever possible, the Parties submit this Settlement Agreement for review and approval. The Parties agree that this Settlement Agreement is in the public interest. The provisions of this Settlement Agreement are contingent on approval of this Settlement Agreement in its entirety by the Commission without modification. The Parties further agree that they will support this Settlement Agreement and will not request or support any order, relief, outcome, or result in conflict with the terms of this Settlement Agreement in any administrative or judicial proceeding relating to, reviewing, or challenging the establishment, approval, adoption, or implementation of this Settlement Agreement or the subject matter hereof. No Party will assert in any proceeding before the Commission that this Settlement Agreement nor any of the terms herein shall have any precedential value nor may it be used in any other proceeding. To the extent a dispute arises among the parties about the provisions, interpretation, or application of this agreement, the parties agree to meet and confer in an effort to resolve the dispute. To the extent that the Parties cannot resolve any dispute, the matter may be submitted to the Commission for resolution. Approval of this Settlement Agreement in its entirety will resolve all matters and issues discussed herein pursuant to and in accordance with Section 120.57(4), Florida Statutes. This docket should be closed administratively after Commission staff verifies the revised tariff sheets, customer notices have

been mailed, and refunds have been made.

IN WITNESS WHEREOF, the Parties evidence their acceptance and agreement with the provisions of this Settlement Agreement by their signature.

**OFFICE OF PUBLIC COUNSEL**

Date: May 6, 2024

By: Walt Trierweiler

Walt Trierweiler  
Public Counsel

Attorney for the Citizens  
of the State of Florida

**UTILITY**

Date: May 7, 2024

By: Gary Deremer

Gary Deremer  
President

North Florida Community Water Systems