

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for ) DOCKET NO. 941271-WS  
amendment of Certificates Nos. ) ORDER NO. PSC-95-1526-AS-WS  
27-W and 24-S by FLORIDA CITIES ) ISSUED: December 11, 1995  
WATER COMPANY - Lee County )  
Division. )  
\_\_\_\_\_)

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK, Chairman  
J. TERRY DEASON  
JOE GARCIA  
JULIA L. JOHNSON  
DIANE K. KIESLING

ORDER APPROVING SETTLEMENT AGREEMENT

BY THE COMMISSION:

BACKGROUND

Florida Cities Water Company - Lee County Division (Florida Cities or utility) provides water and wastewater service in Lee County and serves approximately 16,911 water and 7,951 wastewater customers in North and South Ft. Myers. The annual report for 1994 shows that the consolidated annual operating revenue for the Lee County system is \$14,035,044 and the net operating income is \$4,155,157. The utility is a Class A utility company under Commission jurisdiction.

On December 6, 1994, the utility applied for an amendment of Water Certificate No. 27-W and Wastewater Certificate No. 24-S in Lee County to include territory that it has been servicing for many years in the South Ft. Myers area. At the time of the application, the utility was serving 93.4 water equivalent residential connections (ERCs), and 61.8 wastewater ERCs outside of its certificated area. The customers included residential, multifamily and commercial.

On January 1, 1995, Lee County filed a formal objection to Florida Cities' application. On May 11, 1995, Lee County and Florida Cities filed a settlement agreement between the parties. By Order No. PSC-95-1363-AS-WS, issued November 3, 1995, in this docket, we approved the Lee County and Florida Cities agreement, granted a partial amendment to Florida Cities' territory and

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determined that no show cause proceedings should be initiated against Florida Cities for serving outside of its certificated area. On December 14, 1994, Gulf Utility Company (Gulf) filed an objection to the notice of application for extension by Florida Cities. Gulf's protest pertained to Florida Cities' provision of water service to the Alico International Trade Center (Alico). On July 18, 1995, Florida Cities and Gulf filed their settlement agreement. On August 10, 1995 Alico filed an objection to the agreement between Florida Cities and Gulf. Subsequently, a new stipulation was entered into by Florida Cities, Gulf and Alico, which resolves both Gulf's and Alico's objection.

#### SETTLEMENT AGREEMENT

As stated earlier, on August 10, 1995 Alico filed an objection to the agreement between Florida Cities and Gulf. The essence of Alico's objection was that Alico would have to pay higher service availability charges for Gulf's water service. On October 2, 1995, a copy of the settlement agreement between Florida Cities, Gulf and Alico was filed with this Commission. The settlement agreement is attached to this Order as Attachment A.

The highlights of the agreement include that Gulf shall connect and provide water service to 8782 Alico Road and 8774 Alico Road, Fort Myers, Florida, as soon as practicable, and in no event later than one year following the effective date of any Commission Order approving the stipulation. Florida Cities shall pay Gulf the appropriate service availability fees. Florida Cities shall continue to provide water service to Alico until Gulf provides water service to Alico. Alico shall remit \$70 to Gulf as the combined deposit for water service. Once connected, Alico shall remain the water service customer of Gulf, subject to Gulf's rules and regulations, including Gulf's service rates and service availability charges, as approved by this Commission or any successor regulatory authority. Florida Cities also agrees to amend its original application, thereby excluding Alico from its requested service area, following the effective date of this Order. Therefore, we find that Florida Cities' application with regard to Alico, is rendered moot by the parties' agreement.

Accordingly, we hereby approve the settlement agreement as a reasonable resolution to the parties' concerns. As stated earlier, the parties have agreed that Florida Cities will continue to temporarily serve the Alico customer until final service can be provided by Gulf. The agreement also states that this transition

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shall occur within one year. If there are subsequent delays in completing the final connection of this customer to Gulf, Florida Cities shall notify us of this change in circumstance and a new docket shall be opened.

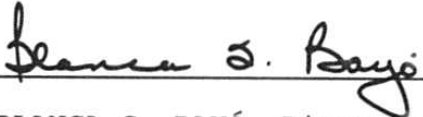
As stated earlier, by Order No. PSC-95-1363-AS-WS, we granted Florida Cities a partial amendment of its service area. Since Florida Cities agrees to amend its application to exclude Alico from its requested service area, there are no remaining issues. No further action is required in this docket and it shall be closed.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the settlement agreement between Florida Cities Water Company - Lee County Division, Gulf Utility Company and Alico International Trade Center, attached hereto as Attachment A, and by reference incorporated herein, is hereby approved. It is further

ORDERED that this docket is hereby closed.

By ORDER of the Florida Public Service Commission, this 11th day of December, 1995.

  
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BLANCA S. BAYÓ, Director  
Division of Records and Reporting

( S E A L )

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), 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 Records and Reporting, 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 Records and Reporting 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.

AMENDED SETTLEMENT AGREEMENT

This Amended Settlement Agreement is made this 29 day of SEPTEMBER, 1995 by and among Florida Cities Water Company (FCWC), Gulf Utility Company (Gulf), and Alico International Trade Center, Inc. (Alico).

Whereas, FCWC and Gulf provide water and wastewater service to the public in Lee County subject to the jurisdiction of the Florida Public Service Commission (FPSC); and

Whereas, on December 7, 1994, FCWC filed with the FPSC an Application for Extension of Service Area (Amendment of Certificates Nos. 27-W and 24-S) in Lee County, requesting FPSC approval to extend FCWC's certificated water and wastewater territory to include certain service areas to which FCWC is currently providing service as well as certain prospective customers adjacent to such areas; and

Whereas, on December 14, 1994, Gulf filed an objection to the said application by FCWC, insofar as it seeks to add to FCWC's certificated water territory any part of Section 9, Township 46 South, Range 25 East, on the grounds that such section is located within Gulf's certificated water territory; and

Whereas, FCWC is currently providing water service to two adjacent buildings through one 1/2" meter in said Section 9, Township 46 South, Range 25 East, to-wit, 8782 Alico Road and 8774 Alico Road, Fort Myers, Florida 33912-5117; and

Whereas, FCWC and Gulf entered into a Settlement Agreement dated July 14, 1995 seeking to resolve their differences with respect to this matter; and

Whereas, Alico is the fee owner of the buildings and land located at 8782 Alico Road and 8774 Alico Road; and

Whereas, on August 10, 1995, Alico filed an objection to said Settlement Agreement with the FPSC; and

Whereas, FCWC, Gulf, and Alico in consideration of the foregoing, and for other good and valuable consideration, including the terms and covenants as set out further herein, agree to abide by the terms of this Amended Settlement Agreement as follows.

1. The foregoing recitals are incorporated herein as if further set out at length.
2. This Agreement shall become binding upon the Parties, and their successors and assigns, upon its execution by duly authorized representatives of the respective entities and upon formal approval by the FPSC.
3. a) Gulf shall connect and provide water service to 8782 Alico Road and 8774 Alico Road, Fort Myers, Florida 33912-5117, as soon as practicable, and in no event later than one year following the effective date of any FPSC Order approving this

Amended Settlement Agreement.

b) Once connected, said service locations shall remain the water service customers of Gulf, subject to Gulf's rules and regulations, including Gulf's service rates and service availability charges, as approved by the FPSC or any successor regulatory authority.

c) Gulf's current rates and charges, to which said service locations are subject, are set forth in the attached letter.

d) In 1982, FCWC collected \$1300 in service availability charges for water service to 8782 Alico Road. No additional service availability charges have been collected by FCWC for water service to 8774 Alico Road, since the two service locations are served by FCWC through one meter. FCWC would not oppose remitting to Gulf the sum of \$1657.67 as payment of the service availability charges (exclusive of water deposit) required by Gulf for service to 8782 Alico Road, and the sum of \$1627.67 as payment of the service availability charges (exclusive of water deposit) required by Gulf for service to 8774 Alico Road. Such remittance would be made following the effective date of any FPSC Order approving this Amended Settlement Agreement and requiring such remittance, and upon connection of 8782 Alico Road and 8774 Alico Road to Gulf's water system.

4. Following the effective date of any FPSC Order approving this Amended Settlement Agreement, FCWC agrees to amend its original Application for Extension of Service Area to reflect the intent, terms and conditions of this Amended Settlement Agreement, for further consideration by the FPSC.
5. Following the effective date of any FPSC Order approving this Amended Settlement Agreement, Gulf and Alico respectively agree to withdraw their objections to FCWC's Application for Extension of Service Area, once amended by FCWC as contemplated by paragraph 4 hereinabove, and shall make no further objections to the amended application so long as the same conforms to the intent, terms and conditions of this Amended Settlement Agreement as approved by the FPSC.
6. FCWC shall continue to provide water service to 8782 Alico Road and 8774 Alico Road, until Gulf connects Alico in accordance with paragraph 3 hereinabove. This interim service by FCWC shall be subject to FCWC's rules and regulations, as approved by the FPSC, or any successor regulatory authority.
7. Upon connection of 8782 Alico Road and 8774 Alico Road to Gulf's water system, Alico agrees to remit \$70 to Gulf as payment of the applicable combined deposit for water service to said two service locations. After connection to Gulf's water system, Alico agrees to be bound by Gulf's water service rate schedules and rules and regulations, as approved by the FPSC.

- 8. FCWC, Gulf and Alico will assist and cooperate with each other regarding any matters related to the transition of water service in order to complete such transition in an orderly and efficient manner.
- 9. This Agreement may be signed in counterparts by the respective parties hereto.

Wherefore, the Parties have executed this Amended Settlement Agreement on the date first set out hereinabove, by the signature of their duly authorized representatives.

Florida Cities Water Company

by: Michael West

Corporate Seal

Vice President, Engineering & Operations  
Title

Gulf Utility Company

by: James W. Moore  
James W. Moore

Corporate Seal

President  
Title

Alico International Trade  
Center, Inc.

by: \_\_\_\_\_

Corporate Seal

\_\_\_\_\_  
Title

9. FCWC, Gulf and Alico will assist and cooperate with each other regarding any matters related to the transition of water service in order to complete such transition in an orderly and efficient manner.
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Florida Cities Water Company

Corporate Seal

by: \_\_\_\_\_

\_\_\_\_\_  
Title

Gulf Utility Company

Corporate Seal

by: \_\_\_\_\_

\_\_\_\_\_  
Title

Alico International Trade  
Center, Inc.

Corporate Seal

by: *[Signature]*

*[Signature]*  
Title