

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for staff-assisted rate case in Orange County by Tangerine Water Company, Inc.

DOCKET NO. 981663-WU  
ORDER NO. PSC-00-1091-PAA-WU  
ISSUED: June 6, 2000

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON  
SUSAN F. CLARK  
E. LEON JACOBS, JR.

ORDER GRANTING MOTION FOR EXTENSION OF TIME TO COMPLY WITH  
COMMISSION ORDER, DECLINING TO SHOW CAUSE, AND  
NOTICE OF PROPOSED AGENCY ACTION  
REQUIRING UTILITY TO FILE MONTHLY REPORTS

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the proposed agency action discussed herein, requiring that the utility file monthly reports, is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

Background

Tangerine Water Company Inc. (Tangerine or utility) is a Class C utility located in Orange County, which provided water service to an average 225 connections estimated to be 234 equivalent residential connections (ERCs) during the test year ending December 31, 1998. By Order No. 5446, issued June 8, 1972, in Docket No. C-71559-W, the Commission issued Certificate No. 96-W to Tangerine. Tangerine has had three previous staff assisted rate cases (Order No. 6529, issued February 21, 1975, in Docket No. 74645-WS; Order No. 8271, issued April 19, 1978, in Docket No. 770846-W; and Order No. 14376, issued May 16, 1985, in Docket No. 840377-WU) and no price index or pass-through rate adjustments.

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

On November 20, 1998, the utility submitted an application for a staff assisted rate case. By Order No. PSC-99-1399-PAA-WU, issued July 21, 1999 in this docket, we granted the utility temporary rates in the event of protest, and approved an increase in rates and charges, among other things. We also ordered the utility to complete certain pro forma plant improvements within 180 days from the effective date of the Order, or by March 7, 2000.

On February 23, 2000, our staff received, by facsimile, a letter from Florida Water Services Corporation (Florida Water), stating that it had acquired Tangerine as of January 7, 2000, and requesting an extension of time to complete the ordered pro forma improvements. At our staff's request, on March 10, 2000, Florida Water filed a Motion for Extension of Time to Comply with Commission Order (Motion). In its Motion, Florida Water states that it acquired the utility assets of Tangerine, subject to Commission approval, and that an application for transfer would be filed within a few days of the Motion. On March 21, 2000, Florida Water and Tangerine filed a joint transfer application in Docket No. 000333-WU.

Motion for Extension of Time

As stated previously, in its February 23, 2000, letter and its March 10, 2000, Motion, Florida Water states that it acquired the utility assets of Tangerine, subject to Commission approval of its transfer application. Florida Water also states that Order No. PSC-99-1399-PAA-WU required Tangerine to complete the following improvements within 180 days from the date of the Order:

- (a) Install a DEP required chlorine alarm;
- (b) Install a DEP required transfer switch;
- (c) Complete all DEP required electrical work;
- (d) Repair the number one pump;
- (e) Acquire a hand held computer for meter reading; and
- (f) Investigate customer deposits to determine who has established a satisfactory payment record.

According to Florida Water, only items (d), (e), and (f) were timely completed. It states that Items (d) and (f) were completed by Tangerine and (e) by Florida Water. Items (a), (b), and (c) have not been completed.

Florida Water explains that had Tangerine continued to own the facilities, it would have complied with the Order, but that due to

the anticipated sale of the utility to Florida Water, it was expected that Florida Water would complete the required items.<sup>1</sup> Florida Water states that it intends to complete the remaining pro forma improvement items by the end of August, 2000.

On May 3, 2000, our staff received by facsimile a letter from Florida Water detailing the reasons why the required improvements were not completed between the time it acquired the utility on January 7, 2000, and the March 7, 2000, completion deadline. Florida Water states that it experienced some unexpected permitting delays for the electrical work necessary at the water plant controls, which is now 80% complete and is expected to be fully complete by May 10, 2000. Florida Water further states that it chose to address the chlorine alarm issue by converting from gas to a liquid chlorine system, which it considers a preferable resolution. It also states that the Florida Department of Environmental Protection (DEP) permit for the conversion was issued April 27, 2000, that the conversion is scheduled to be completed by May 19, 2000, and that clearance is expected by mid June, 2000. Florida Water maintains that, although it did not experience any permitting problems with the chlorine alarm, the conversion process is more time consuming.

In evaluating Florida Water's request, we considered the following factors: 1) the reason provided for the failure to timely complete the pro forma plant improvements required by Order No. PSC-99-1399-PAA-WU; 2) the reasonableness of the length of the requested extension; 3) any public health and safety concerns regarding the failure to implement the DEP requirements; and 4) the impact of the extension upon the ratepayers. For the following reasons, we find that a six-month extension of time through September 7, 2000, to complete the required improvements, is reasonable.

Tangerine's anticipated sale of the utility to Florida Water is no excuse for Tangerine's failure to timely complete all of the pro forma plant improvements ordered by Order No. PSC-99-1399-PAA-WU. However, we note that the time had not completely run to complete the required improvements until March 7, 2000. On February 23, 2000, Florida Water provided our staff with a letter

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<sup>1</sup> Tangerine did not join in Florida Water's Motion. However, on April 18, 2000, our staff contacted Tangerine's Treasurer, Ms. Connie Hurlburt, who stated that she was the only remaining officer of Tangerine and that she was aware of Florida Water's Motion and fully supported it.

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requesting an extension of time, and filed its Motion on March 10, 2000.

Tangerine perhaps could have prevented the delay with early planning and proper preparation for the completion of the remaining items. Notwithstanding, both utilities could have addressed the matter during negotiations for the sale of the utility, and, therefore, could have made the necessary arrangements for the timely completion of all of the improvements. We are persuaded, however, by Florida Water's willingness and cooperation to fulfill the obligations of Tangerine and its asserted reasons for the delay. Additionally, extensions of time are routinely granted when the utility shows good cause for such a request. See In Re: Application for staff assisted rate case in Martin County by Laniger Enterprises of America, Inc., Order No. 97-0105-FOF-WS, issued January 27, 1997 in Docket No. 950515-WS.

With regard to the length of the requested extension, we have reviewed Florida Water's completion schedule, and find it to be reasonable. Additionally, the electrical wiring required by DEP will be a complex and time intensive matter, which will require the additional time requested by Florida Water. Further, the utility will need the additional time to complete the chlorine system conversion. As for any public health and safety concerns, despite the need for upgrades to comply with DEP rules, the deficiencies are plant-in-service issues and are not health related. Therefore, we find that the delay caused by the extension will have no impact on the quality of the product being served to customers. Further, the utility has been submitting its required test samples to DEP, and it continues to receive satisfactory inspection reports.

Based upon the foregoing, Florida Water's Motion for Extension of Time to Comply with Commission Order is hereby granted. The extension is granted until September 7, 2000, or six months from March 7, 2000, the date the improvements should have been completed pursuant to Order No. PSC-99-1399-PAA-WU.

No Show Cause Required

By Order No. PSC-99-1399-PAA-WU, we ordered Tangerine to complete six pro forma plant improvement items within 180 days of the effective date of the Order, or by March 7, 2000. As previously discussed, only three of the six items were timely completed.

Utilities are charged with the knowledge of the Commission's rules and statutes. Additionally, "[i]t is a common maxim, familiar to all minds that 'ignorance of the law' will not excuse any person, either civilly or criminally." Barlow v. United States, 32 U.S. 404, 411 (1833). Thus, the utility's failure to complete the pro forma improvements in accordance with Order No. PSC-99-1399-PAA-WU would meet the standard for a "willful violation." In Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL titled In Re: Investigation Into The Proper Application of Rule 25-14.003, F.A.C., Relating To Tax Savings Refund for 1988 and 1989 For GTE Florida, Inc., the Commission, having found that the company had not intended to violate the rule, nevertheless found it appropriate to order it to show cause why it should not be fined, stating that "'willful' implies an intent to do an act, and this is distinct from an intent to violate a statute or rule." Id. at 6.

Section 367.161, Florida Statutes, authorizes the Commission to assess a penalty of not more than \$5,000 per day for each offense, if a utility is found to have knowingly refused to comply with, or to have willfully violated any Commission rule, order, or provision of Chapter 367, Florida Statutes.

Tangerine did not join in Florida Water's Motion for Extension of Time to Comply with Commission Order, and thus, did not provide an explanation as to why it did not complete all of the required pro forma plant improvements by the time of the sale of the utility. However, as previously stated, on April 18, 2000, our staff contacted Tangerine's Treasurer, Ms. Connie Hurlburt, who stated that she was the only remaining officer of Tangerine and that she was aware of Florida Water's Motion and fully supported it. Florida Water states that Tangerine did not complete the remaining required improvements due to the anticipated sale of the utility. As stated previously, the pending sale of the utility does not justify Tangerine's failure to complete all of the ordered improvements.

Florida Water states that it encountered delays in completing the required plant improvements due to permitting delays and due to the time intensive nature of the chlorine system conversion. The delays experienced by Florida Water could have been averted by early planning and proper preparation on the part of Tangerine. Nevertheless, Florida Water has provided us with reasonable assurances that it will make every effort to complete the improvements on behalf of Tangerine by September 7, 2000.

Typically, show cause proceedings are initiated in order to prompt a utility to come into compliance with the law or with a Commission directive.

Based upon the foregoing, we find that Tangerine's conduct does not rise to the level to warrant the initiation of a show cause proceeding.

Proposed Agency Action Requiring Monthly Reports

As previously discussed, only three of the six pro forma improvement items required by Order No. PSC-99-1399-PAA-WU were timely completed. The three pro forma plant improvements which have not been completed represent \$222 per month in utility revenue (\$.95/month per ERC), as shown below:

| <u>Revenue Impact of</u>                      | <u>Amount</u>   |
|---|-----------------|
| <u>Pro Forma Plant not completed</u>          |                 |
| a) DEP required chlorine alarm                | \$ 1,345        |
| (Retire existing chlorine alarm)              | ( 637)          |
| b) DEP required transfer switch               | 2,405           |
| c) DEP required electrical work               | <u>14,159</u>   |
| Total pro forma                               | \$17,272        |
| Accumulated Depreciation                      | ( 416)          |
| Net Effect on Rate Base                       | \$16,856        |
| Approved Overall Rate of Return               | <u>.0908</u>    |
| Annual Rate Base Revenue impact for pro forma | 1,531           |
| Annual Depreciation                           | <u>\$ 1,016</u> |
| Net annual revenue impact                     | \$ 2,547        |
| Gross-up for RAFs                             | <u>.955</u>     |
| Total annual revenue impact                   | <u>\$ 2,667</u> |
| <br>  |                 |
| Total monthly Revenue impact                  | \$ 222          |
| Monthly revenue impact per ERC                | \$ .95          |

At the April 18, 2000, agenda conference, we asked our staff to make a recommendation on what action, if any, should be taken with regard to the portion of the rate increase associated with the pro forma plant in light of the failure to timely complete all of the required pro forma plant improvements. In response, by letter dated April 24, 2000, Florida Water states that it believes that "the Commission was operating under the misapprehension that the Commission had conditioned the increase in rates on completion of the improvements. No such condition is reflected in the order." The letter goes on to state that:

As in prior rate case orders, in the Tangerine Order, the Commission granted a rate increase and required that specific improvements be made and that completion of the improvements be verified by the Commission staff without conditioning any portion of the increase or holding any of the increase revenue subject to refund based on completion of the improvements. Florida Water maintains that it would be inconsistent with the terms and conditions of the Order to reduce the Commission approved revenue requirement, intended to allow Tangerine the opportunity to earn a reasonable rate of return, due to the failure of Tangerine to timely complete all of the improvements. Florida Water understands and recognizes that it now stands in the shoes of Tangerine with respect to these requirements and has confirmed its commitment to timely complete the improvements.

We agree with Florida Water's assertion that the rate increase associated with the pro forma plant improvements was not conditioned upon the completion of all of the required improvements within the specified time frame. Nevertheless, the utility was given a deadline by which to complete these improvements. However, in the interest of rate stability for the ratepayers, we shall not reduce the utility's rates to reflect the incomplete pro forma improvements at this time.

We also considered whether \$222 per month, or the amount of the increase in rates associated with the incomplete pro forma plant improvements, should be debited from revenue and credited to contributions-in-aid-of-construction (CIAC). This would remove the amount of the incomplete plant improvements from the utility's rate base. We are unaware of any cases in which, as a result of an apparent violation of a Commission order related to pro forma improvements, the utility's revenue or CIAC was adjusted. In order to accomplish such an adjustment, we find that we would have to revisit Order No. PSC-99-1399-PAA-WU, if we were to determine that the Order was based on erroneous or fraudulent facts. However, that is not the situation in this case. Alternatively, we could initiate an investigation with monies held subject to refund pending the outcome of the investigation. Any action taken to address the revenue impact of the pro forma plant not yet installed would have to be done prospectively.



That said, we find that it is in the best interests of the ratepayers to have larger, more efficiently managed utilities acquire smaller, financially troubled systems, such as Tangerine. Either of the two aforementioned options may provide a disincentive for the acquisition of smaller systems. Moreover, Florida Water has provided us with reasonable assurance that it is making every effort to complete the improvements.

Accordingly, no action shall be taken at this time with regard to the portion of the rate increase associated with the pro forma plant improvements. Nevertheless, the utility shall file monthly reports detailing its progress in completing the required pro forma plant improvements until all construction is completed.

If the proposed agency action becomes final and effective, this docket shall remain open to allow Commission staff to verify that the utility has completed the required pro forma plant improvements. Once Commission staff has verified that this work has been completed, the docket shall be closed administratively.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Florida Water Services Corporation's Motion for Extension of Time to Comply with Commission Order is hereby granted as set forth within the body of this Order. It is further

ORDERED that Tangerine Water Company Inc. shall file monthly reports detailing its progress in completing the required pro forma plant improvements until all construction is completed. It is further

ORDERED that the proposed agency action, requiring Tangerine Water Company Inc. to file monthly reports, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further


ORDERED that if the proposed agency action becomes final and effective, this docket shall remain open to allow Commission staff to verify that the utility has completed the required pro forma



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plant improvements. Once Commission staff has verified that this work has been completed, the docket shall be closed administratively.

By ORDER of the Florida Public Service Commission this 6th day of June, 2000.

  
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BLANCA S. BAYÓ, Director  
Division of Records and Reporting

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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.

As identified in the body of this order, our action requiring monthly reports is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, at 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on June 27, 2000. If such a petition is filed, mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing. In the absence of such a petition, this order shall become effective and final upon the issuance of a Consummating Order.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

Any party adversely affected by the procedural portion of this Order may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) 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 or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.

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 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 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.