

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation into rates  
and charges of Florida Cities  
Water Company - Lee County  
Division (South Ft. Myers  
Wastewater System) for potential  
overearnings.

DOCKET NO. 970991-SU  
ORDER NO. PSC-01-0759-FOF-SU  
ISSUED: March 26, 2001

The following Commissioners participated in the disposition of  
this matter:

J. TERRY DEASON  
BRAULIO L. BAEZ  
MICHAEL A. PALECKI

ORDER CLOSING DOCKET

BY THE COMMISSION:

BACKGROUND

Florida Cities Water Company (FCWC or utility) was a Class A utility that provided water and wastewater services in several counties, including Lee County, in South Florida. From its Lee County systems, FCWC provided service to two communities in Ft. Myers: a northern sector and a southern sector. This docket relates to the South Ft. Myers wastewater facility.

As of December 31, 1997, this facility was serving approximately 8,637 equivalent residential connections (ERCs). The utility served an area that was designated by the South Florida Water Management District as a critical use area.

On July 10, 1996, Lee County (County) approached FCWC regarding treatment and disposal of reclaimed water from its Ft. Myers Beach wastewater treatment plant. On August 28, 1996, FCWC and the County entered into an agreement effective July 10, 1996, for the County to interconnect its reclaimed water distribution facilities with FCWC's wastewater transmission facility on a temporary basis. The temporary service agreement ended in late 1998.

DOCUMENT NUMBER-DATE

03762 MAR 26 01

FPSC-RECORDS/REPORTING

In Docket No. 961231-WS, FCWC requested that the revenues received pursuant to the agreement be treated as non-recurring so they would not be considered in determining the level of regulated earnings for FCWC. The utility requested that if the revenues from this agreement result in overearnings, that we defer those overearnings to subsequent years. Pursuant to Order No. PSC-97-0019-FOF-WS, issued January 6, 1997, in Docket No. 961231-WS, we found it appropriate to treat the estimated annual revenues of \$122,912 associated with the agreement as non-recurring. This Order also required FCWC to file semi-annual earnings reports with this Commission to allow our staff to monitor the utility's earnings. If the revenues associated with this agreement were to place FCWC outside its approved rate of return, the matter was to be addressed in a subsequent docket.

A review of FCWC's 1996 Annual Report indicated that the utility's wastewater system in South Ft. Myers exceeded its last authorized return on equity investment, mainly because of the temporary revenues from the County agreement. Therefore, pursuant to Order No. PSC-97-1125-PCO-SU, issued September 25, 1997, we opened this docket and initiated an overearnings investigation for FCWC's South Ft. Myers wastewater system. That Order held revenues subject to refund pending the final resolution of this docket.

On August 6, 1998, the utility filed a formal settlement offer to dispose of the overearnings. The utility proposed to defer revenues which totaled more than would be required if it were to refund or to lower rates. By Order No. PSC-98-1384-FOF-SU, issued October 14, 1998, in this docket, we accepted the utility's offer of settlement and required that any overearnings be offset against any future underearnings for the years 1999 and 2000. Further, the Order stated that we would address overearnings for 1998 in 1999 and kept the docket open. FCWC was authorized to: defer \$21,606 in price index revenues for 1996; defer \$222,646 in excess revenues for 1997; defer all revenues for 1998 in excess of the mid-point of its authorized return on equity; and defer all the above through the test year ending December 31, 2000. Any remaining balance in deferred revenues as of December 31, 2000, was to be added to contributions-in-aid-of-construction (CIAC).

ORDER NO. PSC-01-0759-FOF-SU  
DOCKET NO. 970991-SU  
PAGE 3

However, on April 15, 1999, FCWC and its affiliate, Poinciana Utilities, Inc. (PUI) filed a joint application to transfer all of its water and wastewater facilities to the Florida Governmental Utility Authority (GUA), except for the facilities serving the Town of Ft. Myers Beach. The GUA is an exempt governmental entity. That transfer was finalized on April 15, 1999. On October 4, 2000, FCWC and PUI amended their transfer application to include the facilities serving the Town of Fort Myers Beach (Town). We approved the transfer of facilities by Order No. PSC-00-2351-FOF-WS, issued December 7, 2000, in Docket No. 990489-WS.

In the Order approving the transfer, we noted that Docket No. 950387-SU, involving this utility, was still open and that the utility had been directed to make refunds in that docket by Order No. PSC-99-0691-FOF-SU, issued April 8, 1999. Therefore, we kept the transfer docket open and did not cancel the certificates for this utility pending the final outcome in that docket. However, the Order approving the transfer made no mention of this overearnings docket.

This Order addresses the resolution of the settlement offer that approved in Order No. PSC-98-1384-FOF-SU, issued October 14, 1998, in this docket, regarding the apparent overearnings of the South Ft. Myers wastewater system. We have jurisdiction pursuant to Sections 367.011(2) and 367.082, Florida Statutes.

#### PENDING MATTERS

Pursuant to Section 367.022(2), Florida Statutes, systems owned, operated, managed, or controlled by governmental authorities are not subject to Commission regulation. Upon the transfer to GUA of the FCWC facilities (excluding the Town's facilities) on April 15, 1999, our rate regulatory authority over of those facilities ceased on that date.

Although we lost regulatory authority over the prospective rates of this utility as of April 15, 1999, the date of the transfer to GUA, pursuant to the holding in Charlotte County v. General Development Utilities, Inc., 653 So. 2d 1081 (Fla. 1st DCA 1995), we have jurisdiction to conclude this overearnings

ORDER NO. PSC-01-0759-FOF-SU  
DOCKET NO. 970991-SU  
PAGE 4

investigation. Moreover, pursuant to the "Utility System Asset Acquisition Agreement, by and between Florida Governmental Utility Authority and Florida Cities Water Company and Poinciana Utilities, Inc.," entered into on April 1, 1999, the signatories specifically noted in Section 4.10, page 28, that to the extent there were any regulatory rate proceedings pending before this Commission, all financial responsibility or liability for any rate relief, refund or other obligations imposed by the Commission shall remain with FCWC and shall expressly not be assumed by the GUA.

Although we have continuing jurisdiction to conclude this docket, as a practical matter, there was only one thing left for us to do in this docket, and that was to determine what amount, if any, was to be credited to CIAC as of December 31, 2000.

Upon acceptance of the settlement offer, we agreed that the utility would convert any remaining overearnings to CIAC. It was originally contemplated that any overearnings in 1997 and 1998 would be offset or reduced by underearnings in 1999 and 2000, and that a calculation would be made as of December 31, 2000, to determine whether any overearnings still existed. If so, any overearnings would be credited to CIAC. Through this mechanism, the customers would benefit through rate stability and the cost and expense of a rate case application could be avoided until at least some time into the year 2001 or later.

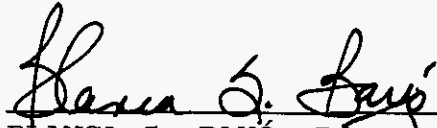
However, with the sale of the utility to GUA on April 15, 1999, the amount of remaining overearnings, if any, to be credited to CIAC is no longer relevant and that action is now moot. We cannot now require the GUA, which is not subject to our regulation, to credit that amount to CIAC. As such, there is nothing left for us to do, and this docket shall be closed.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that because the requirement for the remaining balance in deferred revenues as of December 31, 2000 to be added to contributions-in-aid-of-construction is now moot, no further action is required and this docket shall be closed.

ORDER NO. PSC-01-0759-FOF-SU  
DOCKET NO. 970991-SU  
PAGE 5

By ORDER of the Florida Public Service Commission this 26th  
day of March, 2001.



BLANCA S. BAYÓ, Director  
Division of Records and Reporting

( S E A L )

RRJ

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 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.