

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Rescission by Nassau County of Resolution No. 2001-128, which rescinded Florida Public Service Commission jurisdiction over investor-owned water and wastewater systems in Nassau County.

DOCKET NO. 020831-WS

In re: Resolution No. 2001-128 by Nassau County, in accordance with Section 367.171, F.S., rescinding Florida Public Service Commission jurisdiction over investor-owned water and wastewater systems in Nassau County.

DOCKET NO. 011344-WS
ORDER NO. PSC-02-1411-FOF-WS
ISSUED: October 10, 2002

The following Commissioners participated in the disposition of this matter:

LILA A. JABER, Chairman
J. TERRY DEASON
BRAULIO L. BAEZ
MICHAEL A. PALECKI
RUDOLPH "RUDY" BRADLEY

ORDER ACKNOWLEDGING NASSAU COUNTY RESOLUTION NO. 2002-130
RETURNING JURISDICTION TO THIS COMMISSION EFFECTIVE
JULY 15, 2002, AND GRANTING FLORIDA PUBLIC UTILITIES COMPANY'S
REQUEST FOR REACTIVATION OF CERTIFICATE NO. 001-W

BY THE COMMISSION:

BACKGROUND

On November 17, 1964, the Board of County Commissioners of Nassau County (County Board) adopted a resolution declaring Nassau County (County) subject to the provisions of Chapter 367, Florida Statutes. This resolution invoked Commission jurisdiction over

DOCUMENT NO. 11015

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FPSC-001 LEGISLATION CLERK

investor-owned water and wastewater utilities in the County. The Commission acknowledged the resolution by Order No. 3733, issued January 6, 1965, in Docket No. 5818-WS.

On September 17, 2001, the County Board adopted Resolution No. 2001-128, rescinding this Commission's jurisdiction over investor-owned water and wastewater utilities in the County effective immediately. We acknowledged the Resolution by Order No. PSC-02-0555-PAA-WS, issued April 23, 2002, in Docket No. 011344-WS. That order was consummated by Order No. PSC-02-0691-CO-WS, issued May 21, 2002.

On July 15, 2002, the County Board adopted Resolution No. 2002-130, which rescinded Resolution No. 2001-128. By Resolution No. 2002-130, the County ceded jurisdiction of Florida Public Utilities Company (FPUC), the sole investor-owned water and wastewater system regulated by the County, to this Commission.

This Order addresses the County's July 15, 2002, Resolution. We have jurisdiction pursuant to Section 367.171, Florida Statutes.

RESOLUTION NO. 2002-130

The following utilities held certificates of authorization from this Commission to provide water and/or wastewater service in Nassau County on September 17, 2001, when Commission jurisdiction was rescinded by County Resolution No. 2001-128:

<u>UTILITY</u>	<u>CERTIFICATE NUMBER(S)</u>	
Florida Public Utilities Company (Fernandina Beach System)	001-W	
Florida Water Services Corporation	171-W	122-S
United Water Florida Inc.	236-W	179-S

On July 29, 2002, Nassau County filed with this Commission a certified copy of Resolution No. 2002-130, dated July 15, 2002, rescinding Resolution No. 2001-128, which revoked Commission jurisdiction over investor-owned water and wastewater utilities in Nassau County. In so doing, the County ceded any jurisdiction over FPUC to the Commission. We note that only FPUC is affected by the July 15, 2002, Resolution. By Order No. PSC-02-0555-PAA-WS, we

found that pursuant to Section 367.171(7), Florida Statutes, Resolution No. 2001-128 did not rescind exclusive jurisdiction over Florida Water Services Corporation (FWSC) and United Water Florida, Inc. (UWF) based on findings that the utilities' facilities in Nassau County were single utility systems transversing county boundaries.

Although UWF was subject to Commission jurisdiction on December 28, 2001, it became exempt from Commission regulation upon its sale to JEA, a governmental authority exempt from Commission regulation pursuant to Section 367.022(2), Florida Statutes. By Order No. PSC-02-0280-FOF-WS, issued March 4, 2002, in Docket No. 020055-WS, the sale was approved as a matter of right and UWF's Certificates Nos. 236-W and 179-S were cancelled effective December 28, 2001.

At the time of issuance of Order No. PSC-02-0555-PAA-WS, FPUC was a party to one docket pending before the Commission, which was Docket No. 990817-WS -- Application of Florida Water Services Corporation for amendment of Certificates Nos. 171-W and 122-S to add territory in Nassau County. Pursuant to Section 367.171(5), Florida Statutes, when a utility becomes subject to regulation by a county, all cases in which the utility is a party then pending before the Commission remain within the jurisdiction of the Commission until disposed of in accordance with the law in effect on the day such case was filed. By Order No. PSC-02-0555-PAA-WS, the Commission ordered that Certificate No. 001-W, held by FPUC, be returned for cancellation within 30 days from when FPUC is no longer a party to, or at the conclusion of, Docket No. 990817-WS, after which time Docket No. 011344-WS would be closed administratively.

By Order No. PSC-02-1025-AS-WS, issued July 29, 2002, (coincidentally, on the same day as the July 15, 2002, Resolution was filed with this Commission), in Docket No. 990817-WS, we approved a settlement agreement between FWSC and FPUC and considered FPUC's protest to FWSC's certificate amendment filed in that docket to be withdrawn. Thus, FPUC is no longer a party to that docket and no longer has any pending matters before this Commission. However, because of the July 15, 2002, Resolution giving jurisdiction back to the Commission, FPUC filed a request

for reactivation of its certificate instead of returning the certificate for cancellation. That request is addressed below.

Based upon the foregoing, we hereby acknowledge Resolution No. 2002-130, which returns jurisdiction to this Commission over investor-owned water and wastewater utilities in Nassau County effective July 15, 2002.

FPUC'S REQUEST FOR REACTIVATION OF CERTIFICATE

On August 6, 2002, FPUC filed a request for reactivation of its certificate authorizing its provision of water service in Nassau County. In that request, the utility points out that Order No. PSC-02-1025-AS-WS requires it to return its certificate for cancellation, but that because of Nassau County's intervening Resolution returning jurisdiction back to this Commission, it is also now incumbent on the utility to file for a grandfather certificate even though its certificate has not yet been cancelled. FPUC requests that under the circumstances, a grandfather certificate application filing pursuant to Section 367.171(2)(b), Florida Statutes, and Rule 25-30.035, Florida Administrative Code, as well as the filing fee under Rule 25-30.020, Florida Administrative Code, not be required.

The utility states that, during all pertinent times, its territory, its rates and charges, and the operating regulations and procedures as contained within its water tariff, have all remained unchanged from that currently on file with, and as previously authorized by, this Commission. The utility states that reactivation or reinstatement of Certificate No. 001-W would allow it to avoid the expense of preparing and filing a grandfather certificate application, as well as the filing fee.

In light of the related circumstances detailed above, we find it appropriate to grant the utility's request to reactivate Certificate No. 001-W, without requiring the utility to file a grandfather certificate application. We do not believe that any particular benefit would be gained by requiring the filing of a grandfather certificate application in this case since FPUC's certificate has not yet been cancelled and because conditions have virtually gone unchanged from when Nassau County originally rescinded this Commission's jurisdiction on September 17, 2001.

Although a completed grandfather certificate application is not necessary, we do find it necessary to require, for clarification purposes, a territory description which complies with Rule 25-30.035(9), Florida Administrative Code. By Order No. PSC-02-1025-AS-WS, the order approving the settlement agreement between FWSC and FPUC, we found that FPUC had no metes and bounds description of its territory. We further noted that by Order No. 3798, issued April 28, 1965, in Docket No. 7848-W, FPUC was granted a certificated territory which encompassed the corporate limits of the City of Fernandina Beach and any additions legally annexed by the City from time to time. However, because FPUC was non-jurisdictional at the time the settlement agreement was approved, we found that there was no need to correct FPUC's territory description at that time. However, now that FPUC is again a jurisdictional utility, an appropriate territory description is necessary. Therefore, within 90 days of the issuance date of this Order, FPUC shall file revised tariff sheets reflecting the territory description of its previously approved service area using township, range, and section references, pursuant to Rule 25-30.035(9), Florida Administrative Code. Upon verification that the tariff sheets comply with this Order, an administrative order will be issued reflecting the revised territory description and closing Docket No. 020831-WS.

In addition to the foregoing, in accordance with Rule 25-30.120, Florida Administrative Code, FPUC shall be responsible for paying regulatory assessment fees to this Commission beginning July 15, 2002, the effective date of the transfer of jurisdiction from Nassau County to this Commission.

For informational purposes, we note that we received a letter from Nassau County dated August 5, 2002, requesting that the Board of County Commissioners receive a pro rata share of any fees that are due from FPUC for the time that the County had regulatory authority. Our staff counsel responded with an August 14, 2002, letter advising that this Commission had collected no regulatory assessment fees from FPUC during the time period the County had regulatory authority over FPUC from September 17, 2001, to July 15, 2002, and suggesting that the County may wish to contact FPUC concerning any fees that may be due to the County for that time period.

Based upon all of the foregoing, we hereby grant FPUC's request for reactivation of Certificate No. 001-W, authorizing FPUC to provide water service in Nassau County in its previously approved service territory at its previously approved rates and charges. Because the certificate was never returned, no grandfather application is necessary. Additionally, within 90 days of the date of this Order, FPUC shall file revised tariff sheets reflecting the territory description of its previously approved service area using township, range, and section references, pursuant to Rule 25-30.035(9), Florida Administrative Code. Upon verification that the tariff sheets comply with this Order, an administrative order will be issued reflecting the revised territory description and closing Docket No. 020831-WS. FPUC shall also be responsible for paying regulatory assessment fees to this Commission beginning July 15, 2002, the effective date of the transfer of jurisdiction from Nassau County to this Commission, in accordance with Rule 25-30.120, Florida Administrative Code.

As previously discussed herein, by Order No. PSC-02-0555-PAA-WS, we required that Certificate No. 001-W, held by FPUC, be returned for cancellation within 30 days from when FPUC is no longer a party to, or at the conclusion of, Docket No. 990817-WS, after which time Docket No. 011344-WS was to be closed administratively. FPUC is no longer a party to Docket No. 990817-WS. However, by this Order, we are reactivating FPUC's certificate. Therefore, no further action is necessary in Docket No. 011344-WS, and that docket shall be closed.

Docket No. 020831-WU shall remain open to allow FPUC time to revise its tariff to reflect a territory description of its service area using township, range, and section references, as required herein. Upon verification that the tariff sheets comply with this Order, an administrative order will be issued reflecting the revised territory description and closing Docket No. 020831-WS.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Nassau County Resolution No. 2002-130, rescinding Resolution No. 2001-128 and returning jurisdiction over investor-owned water and wastewater utilities in Nassau County to this Commission effective July 15, 2002, is acknowledged. It is further

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ORDERED that Florida Public Utilities Company's request for reactivation of Certificate No. 001-W, authorizing FPUC to provide water service in Nassau County in its previously approved service territory at its previously approved rates and charges, is granted. It is further

ORDERED that within 90 days of the issuance date of this Order, FPUC shall file revised tariff sheets reflecting the territory description of its previously approved service area using township, range, and section references, pursuant to Rule 25-30.035(9), Florida Administrative Code. It is further

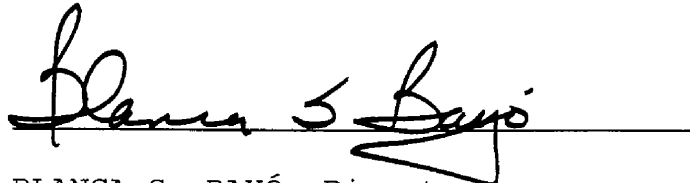
ORDERED that Florida Public Utilities Company shall be responsible for paying regulatory assessment fees to this Commission beginning July 15, 2002, the effective date of the transfer of jurisdiction from Nassau County to this Commission, in accordance with Rule 25-30.120, Florida Administrative Code. It is further

ORDERED that Docket No. 011344-WS is hereby closed. It is further

ORDERED that Docket No. 020831-WU shall remain open to allow Florida Public Utilities Company time to revise its tariff to reflect a territory description of its service area, as required herein. Upon verification that the tariff sheets comply with this Order, an administrative order will be issued reflecting the revised territory description and closing Docket No. 020831-WS.

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By ORDER of the Florida Public Service Commission this 10th
day of October, 2002.

A handwritten signature in black ink, reading "Blanca S. Bayó", is written over a horizontal line. The signature is cursive and includes a large, stylized flourish at the end.

BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

(S E A L)

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(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 the Commission Clerk and Administrative Services, 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

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of a water and/or wastewater utility by filing a notice of appeal with the Director, Division of the Commission Clerk and Administrative Services 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.