

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for
acknowledgment of transfer of
receivership of Enterprise
Utilities Corporation (Deltona)
from Florida Water Services
Corporation to Volusia County
and cancellation of Certificates
Nos. 316-W and 264-S.

DOCKET NO. 000242-WS
ORDER NO. PSC-03-0324-FOF-WS
ISSUED: March 6, 2003

The following Commissioners participated in the disposition of
this matter:

LILA A. JABER, Chairman
J. TERRY DEASON
BRAULIO L. BAEZ
RUDOLPH "RUDY" BRADLEY
CHARLES M. DAVIDSON

ORDER AUTHORIZING OUR STAFF TO SEEK TO WITHDRAW
THE COMMISSION AS A PARTY FROM CIRCUIT COURT
CASE NO. 81-5258-CA-01

BY THE COMMISSION:

BACKGROUND

Enterprise Utilities Corporation - Deltona (Enterprise or
utility) is a Class C utility serving approximately 245 residential
water and 141 residential wastewater customers in a community known
as Enterprise on Stone Island in Volusia County. According to the
utility's 1999 Annual Report, it had combined water and wastewater
operating revenues of \$136,788 and a combined net operating income
of \$20,039.

Pursuant to Section 367.171, Florida Statutes, Certificates
Nos. 316-W and 264-S were issued to Enterprise on March 9, 1979, by
Order No. 8761, in Docket No. 760255-WS. Prior to the issuance of
certificates, the utility facilities were owned by Stone Island
Construction Company of Volusia County, Florida (Stone Island).

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FPSC-COMMISSION CLERK

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Order No. 8761 found that Enterprise had acquired the right, title, and interest to the utility facilities from Stone Island in lieu of foreclosure.

On November 19, 1981, Chester Tomlin, President of Enterprise, notified Volusia County that he was abandoning Enterprise. Effective December 31, 1981, Dean Deakyne was appointed as the receiver. On April 29, 1982, Mr. Deakyne withdrew as receiver and the Court appointed The Deltona Corporation as the first successor receiver. On May 4, 1982, the Court appointed Deltona Utilities, Inc. (Deltona) as second successor receiver. At the time, Deltona was a subsidiary utility of The Deltona Corporation.

In 1985, MP Water Resources Corporation (MP), then known as The Topeka Group, Inc., acquired the common stock of a number of utility subsidiaries owned by The Deltona Corporation, including Deltona. By Order No. 22307, issued December 12, 1989, in Docket No. 881501-WS, this Commission approved the transfer of majority organizational control. MP was also the parent company of Southern States Utilities, Inc. (SSU). On July 15, 1992, when SSU merged with Deltona, SSU became the third successor receiver for Enterprise. By Order No. PSC-97-0427-FOF-WS, issued April 16, 1997, in Docket No. 970028-WS, this Commission approved SSU's request to change its name to Florida Water Services Corporation (FWSC).

On April 24, 1998, FWSC filed a petition to withdraw as receiver for Enterprise in the Circuit Court of the Seventh Judicial Circuit in and for Volusia County (Court). Both this Commission and Volusia County (County) intervened in the resulting Case No. 81-5258-CA-01. The Court granted FWSC's petition to withdraw as receiver effective February 29, 2000, and appointed the County as the fourth, and current, successor receiver.

As a result, our staff opened this docket on February 22, 2000, to acknowledge the appointment of the County as successor receiver and to make a recommendation regarding the cancellation of the utility's certificates. By Order No. PSC-00-1375-FOF-WS, issued July 31, 2000, we acknowledged the transfer of the receivership from FWSC to Volusia County and cancelled the certificates. However, the Order required that the docket remain open pending the disposition of Circuit Court Case No. 81-5258-CA-

01, after which time our staff was authorized to administratively close the docket.

On January 10, 2003, the Court held a hearing on FWSC's motion to establish a procedure for the final accounting and the final accounting report filed by the Guardian Ad Litem for the ratepayers. At the hearing, it was determined that the Guardian Ad Litem's report would be treated as a pleading. The Court granted FWSC's motion to establish a procedure to address the final accounting. The Court also stated that the parties should engage in mediation to resolve the remaining issue which the parties agreed was the amount of compensation due FWSC, if any, for the time period FWSC was receiver. The Court also inquired whether this Commission wished to remain as a party to the proceeding given that the only outstanding issue is the amount of compensation due FWSC, if any. Our legal counsel advised the Court that the question would be presented to us. The parties indicated that they would have no objection should we wish to withdraw by motion without further hearing.

This Order addresses whether we should authorize our staff to withdraw us as a party from Circuit Court Case No. 81-5258-CA-01.

AUTHORIZATION TO WITHDRAW

We find that it is no longer necessary for us to remain as a party to this case. As noted above, by Order No. PSC-00-1375-FOF-WS, issued July 31, 2000, we acknowledged the withdrawal of FWSC as the receiver of Enterprise and the appointment of Volusia County as the successor receiver and cancelled Enterprises' certificates. At that time, the docket was to remain open pending the resolution of the civil case. However, it has become clear that the civil case will remain open for an indefinite period of time.

At the January 10, 2003, hearing, it also became clear that the only remaining issue for the final accounting was what amount of compensation FWSC is entitled to for its receivership activities. We find that the issue of compensation due to a receiver appointed in accordance with Section 367.165, Florida Statutes, is solely within the discretion of the Court. Since we have no jurisdiction over the compensation due the receiver for its service as a receiver, and since we no longer have authority over

Enterprise because Volusia County is the current receiver, we find that we no longer has an interest in this matter and should withdraw from this case. We note that if there is an evidentiary hearing in the future, our staff may be called to testify regarding Enterprise including the annual reports filed by FWSC on behalf of Enterprise. However, we do not find that this reason alone is sufficient for us to remain a party to the civil proceeding.

In summary, because Enterprise is no longer within our jurisdiction and the issue of compensation for a receiver is solely within the jurisdiction of the Court, we find that we no longer have an interest in remaining as a party to the civil case. Therefore, we authorize our legal staff to file a motion seeking to withdraw as a party from Circuit Court Case No. 81-5258-CA-01.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that our legal staff is authorized to seek to withdraw the Commission as a party from Circuit Court Case No. 81-5258-CA-01. It is further

ORDERED that upon the Court's granting the Commission's Motion to withdraw as a party to the civil case, this docket shall be administratively closed.

By ORDER of the Florida Public Service Commission this 6th day of March, 2003.

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

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records and Hearing
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 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.