

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Joint application for acknowledgment of transfer of land and facilities of Florida Water Services Corporation in Duval and St. Johns Counties to JEA, and for cancellation of Certificate Nos. 177-W, 562-W and 124-S.

DOCKET NO. 030976-WS  
ORDER NO. PSC-03-1441-FOF-WS  
ISSUED: December 22, 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 APPROVING TRANSFER OF LAND AND FACILITIES  
IN DUVAL AND ST. JOHNS COUNTIES, CANCELLING CERTIFICATE  
NOS. 177-W, 562-W AND 124-S, AND OPENING DOCKET  
TO INVESTIGATE GAIN ON SALE

BY THE COMMISSION:

Florida Water Services Corporation (FWSC or utility) is a Class A utility providing water and wastewater service throughout Florida. Most of its systems are under our jurisdiction. FWSC's Duval County systems serve approximately 5,646 water and 5,471 wastewater customers and FWSC's St. Johns County systems serve approximately 317 water customers. The systems are not in a priority water resource caution area of the St. Johns River Water Management District. The utility's 2002 annual report indicates that the Duval systems had gross revenue of \$2,047,086 and \$2,823,210 and net operating income of \$569,132 and \$541,531 for water and wastewater, respectively, and the St. Johns systems had gross revenue of \$177,402 and net operating income of \$25,597 for water.

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The water and wastewater systems of Duval County were originally issued Certificate Nos. 177-W and 124-S pursuant to Order No. 6213, issued August 8, 1974, in Docket Nos. 74399-W and 74398-S, In Re: Application of Woodmere Utilities Company, Inc., for certificates to operate a water and sewer utility in Duval County, Florida. Florida Water acquired the systems in 1981, pursuant to Order No. 9909, issued March 31, 1981, in Docket No. 810029-WS, In Re: Application of Woodmere Utility Company, Inc. for transfer of Water Certificate No. 177-W and Sewer Certificate No. 124-S in Duval County to Southern States Utilities, Inc. Water Certificate No. 562-W was issued for the St. Johns County systems pursuant to Order No. PSC-94-0519-FOF-WU, issued April 29, 1994, in Docket No. 931113-WU, In Re: Application for Grandfather Certificate to provide water service in St. Johns County by Southern States Utilities, Inc.

On or about October 15, 2003, FWSC entered into an Agreement of Purchase and Sale of Water and Wastewater Assets (Agreement) with JEA to purchase the Beacon Hills and Woodmere water and wastewater systems in Duval County, and the Palm Valley and Remington Forest water systems in St. Johns County (hereafter referred to as the Duval and St. Johns County Systems).

We have jurisdiction pursuant to Sections 367.045, 367.071, and 367.081, Florida Statutes.

#### TRANSFER OF FACILITIES

On October 8, 2003, FWSC filed its application seeking acknowledgment of the transfer of its Duval and St. Johns County Systems facilities to JEA pursuant to Section 367.071(4)(a), Florida Statutes, and Rule 25-30.037(4), Florida Administrative Code. The Agreement of Purchase and Sale of Water and Wastewater Assets states that the proposed closing date is on or before October 15, 2003. We have confirmed that the closing did take place on October 15, 2003; therefore, that is the effective date of the acquisition.

FWSC filed its application pursuant to Section 367.071(4)(a), Florida Statutes, which provides that the sale of facilities, in whole or in part, to a governmental authority shall be approved as a matter of right. JEA, formally known as the Jacksonville

Electric Authority, is a governmental authority which was created and passed by a special act of the 1967 Florida Legislature (Chapter 67-1569, Laws of Florida), authorizing it to own, manage and operate electric utility systems in the city of Jacksonville, and in any or all counties adjacent thereto. In 1997, the city of Jacksonville, through amendments to its governing charter, transferred the city's Department of Public Utilities water and sewer operations to JEA. We have consistently treated JEA as a governmental authority for the purposes of transfers pursuant to Section 367.071(4)(a), Florida Statutes. See, Order No. PSC-99-0252-FOF-WS, issued February 9, 1999, in Docket No. 981241-WS, In re: Application of Ortega Utility Company for transfer of facilities in Duval County to Jacksonville Electric Authority, and cancellation of Certificate Nos. 223-W and 167-S; Order No. PSC-01-0142-FOF-SU, issued January 18, 2001, in Docket No. 000241-SU, In re: Application for transfer of facilities of J. Strauss Utility to JEA and cancellation of Certificate No. 244-S in Duval County; and Order No. PSC-02-0060-FOF-WS, issued January 8, 2002, in Docket No. 010986-WS, In re: Notice of sale of assets of Regency Utilities, Inc. in Duval County to Jacksonville Electric Authority, and request for cancellation of Certificate Nos. 197-W and 143-S.

Pursuant to Section 367.071(4)(a), Florida Statutes, the transfer of facilities to a governmental authority shall be approved as a matter of right. As such, no notice of the transfer is required and no filing fees apply. The application had no deficiencies, and is in compliance with Section 367.071(4)(a), Florida Statutes, and Rule 25-30.037(4), Florida Administrative Code.

The application contains a statement that JEA obtained FWSC's most recent income and expense statement, balance sheet, statement of rate base for regulatory purposes, and contributions-in-aid-of-construction pursuant to Rule 25-30.037(4)(e), Florida Administrative Code. Also included in the application was a statement that the customer deposits and interest earned, less any unpaid balances, will be refunded to the customers as required by Rule 25-30.037(4)(g), Florida Administrative Code.

Pursuant to Rule 25-30.037(4)(f), Florida Administrative Code, the application is to contain the date on which the governmental authority proposes to take official action to acquire the utility.

According to the agreement, the closing took place on October 15, 2003. Additionally, pursuant to the requirements of Rule 25-30.037(4)(h), Florida Administrative Code, a statement was included that FWSC has no outstanding regulatory assessment fees (RAFs), and no fines or refunds are owed. The utility has filed its 2002 annual report, and has paid its 2002 RAFs, and owes no outstanding penalties and interest. For the period of January 1, 2003, through October 15, 2003, FWSC has agreed to file a RAF return and remit RAF payment for the Duval and St. Johns County Systems within 20 days of the issuance of the Order approving this transfer.

In consideration of the above, we find that FWSC's application is in compliance with the provisions of Rule 25-30.037, Florida Administrative Code. Pursuant to Section 367.071(4)(a), Florida Statutes, the transfer of facilities to a governmental authority shall be approved as a matter of right. JEA shall be treated as a governmental authority as defined in Section 367.021(7), Florida Statutes, for the purposes of this transfer. Therefore, the transfer of the Duval and St. Johns County Systems land and facilities to JEA shall be approved, as a matter of right, pursuant to Section 367.071(4)(a), Florida Statutes, effective October 15, 2003. RAFs for the period of January 1, 2003, through October 15, 2003, shall be submitted within 20 days after the issuance of the Order approving this transfer. Certificate Nos. 177-W, 562-W, and 124-S shall be cancelled administratively at the conclusion of any pending dockets concerning the Duval and St. Johns County Systems.

#### OPENING OF GAIN ON SALE DOCKET

Pursuant to the acquisition agreement entered into on October 15, 2003, FWSC received a total of \$25,000,000 from JEA for the Duval and St. Johns County Systems. That sum appears to exceed the rate base values that we have approved for those facilities. In Order No. PSC-96-1320-FOF-WS, issued October 30, 1996, in Docket No. 950495-WS, In Re: Application for rate increase and increase in service availability charges in Southern States Utilities, Inc. for Orange-Osceola Utilities, Inc. in Osceola County, and in Bradford, Brevard, Charlotte, Citrus, Clay, Collier, Duval, Highlands, Lake, Lee, Marion, Martin, Nassau, Orange, Osceola, Pasco, Putnam, Seminole, St. Johns, St. Lucie, Volusia, and Washington Counties, the most recent rate proceeding for FWSC, the approved rate base

value for the combined Duval and St. Johns County Systems was \$9,207,676 for the projected test year ending December 31, 1996. Restoring used and useful adjustments, the aggregate rate base balance was \$9,215,858. In its 2002 Annual Report, FWSC reported a rate base of \$9,653,718 for the Duval and St. Johns County Systems. As the sale occurred in 2003, an updated rate base calculation will be needed to determine the gain, if any, due to sale of these facilities. Initial review indicates that FWSC will record a gain on this transaction. Therefore, we must consider whether to open a separate docket to determine if the gain should be allocated among the remaining water and wastewater customers.

By letter dated August 29, 2003, the attorney for FWSC provided the utility's position with respect to whether we should initiate a gain on sale issue in this docket. In that letter, FWSC cites our decision concerning gain on sale in Order No. PSC-93-0423-FOF-WS, issued March 22, 1993, in Docket No. 920199-WS, In Re: Application for rate increase in Brevard, Charlotte/Lee, Citrus, Clay, Duval, Highlands, Lake, Marion, Martin, Nassau, Orange, Osceola, Pasco, Putnam, Seminole, Volusia, and Washington Counties by Southern States Utilities, Inc.; Collier County by Marco Shores Utilities (Deltona); Hernando County by Spring Hill Utilities (Deltona); and Volusia County by Deltona Lakes Utilities (Deltona) (SSU Order). In the SSU Order, FWSC argues that we concluded that there should be no sharing in the gain arising from the condemnation of water and wastewater systems previously operated by FWSC. Because that decision concerning gain on sale was affirmed by the First District Court of Appeal in Citrus County v. Southern States Utilities, Inc., 656 So. 2d 1307 (Fla. 1st DCA 1995), FWSC argues that the Commission is bound by the "Citrus County precedent."

Moreover, FWSC notes that "the Citrus County appellate court decision is consistent with "Order Nos. PSC-93-1821-FOF-WS, issued December 22, 1993, in Docket No. 930373-WS, In Re: Application for amendment of Certificate No. 247-S by North Fort Myers Utility, Inc., and cancellation of Certificate No. 240-S issued to Lake Arrowhead Village, Inc., in Lee County, and 930379-SU, In Re: Application for a limited proceeding concerning the rates and charges for customers of Lake Arrowhead Village, Inc., in Lee County, by North Fort Myers Utility (North Fort Myers Order). In

the North Fort Myers Order, FWSC points to the paragraph where we stated:

[C]ustomers of utilities do not have any proprietary claim to utility assets. Although customers pay a return on utility investment through rates for service, they do not have any ownership rights to the assets, whether contributed or paid for by utility investment.

We note that this sale to JEA does not involve a condemnation proceeding. Moreover, we believe that FWSC has misinterpreted each of the above-noted Orders and court decision. In the SSU Order, in addressing whether a sharing of the gain on sale was appropriate, we specifically said, "Since SSU's remaining customers never subsidized the investment in the SAS [St. Augustine Shores] system, they are no more entitled to share in the gain from that sale than they would be required to absorb a loss from it." Therefore, our determination that a sharing of the gain on sale was not appropriate was limited to the specific facts of that case and was not a "blanket" legal determination that a gain on sale would never be appropriate. The Citrus County case merely confirmed this factual interpretation.

As to the North Fort Myers Order, the language quoted by FWSC was merely addressing whether there should be a refund to the customers of the former utility, Lake Arrowhead Village, Inc. (LAVI). As to consideration of the gain on sale, we said:

We first examined whether any gain on sale should be passed on to the customers. The costs to dismantle the plant would range from \$20,000 to \$50,000, depending on the public health and other sanitary requirements for the intended use of the land where the treatment and disposal facilities are located. Therefore, even if the few lots which might be created by clearing the former plant site were sold, a significant portion of the gain would be greatly offset by the cost of clearing the site and preparing the lots for sale.

Therefore, again on a factual basis, we determined that a gain on sale adjustment was not appropriate. We believe that a review of the appropriate disposition of any gain on sale is appropriate, and

to do so, we are merely carrying out our jurisdictional duty to "fix rates which are just, reasonable, compensatory, and not unfairly discriminatory" to the remaining customers of FWSC, as required by Section 367.081(2)(a)1., Florida Statutes.

Before the Duval and St. Johns County Systems were purchased by JEA, the facilities were subject to our jurisdiction. Their service rates were established in FWSC's 1995 rate proceedings in Docket No. 950495-WS. According to FWSC's 2002 annual report the Duval and St. Johns County Systems had combined net operating income of \$594,729 and \$541,531 for water and wastewater, respectively. Whether the Duval and St. Johns County Systems were subsidized by other systems has yet to be determined.

Further study to examine sharing considerations for the Duval and St. Johns County Systems gain on sale is required to permit timely examination of this topic. Accordingly, a docket to examine whether FWSC's sale of its Duval and St. Johns County Systems involves a gain that should be shared with FWSC's remaining customers shall be opened. This is consistent with our prior decisions in the following Orders: Order No. PSC-98-0688-FOF-WS, issued May 19, 1998, in Docket No. 971667-WS, In Re: Application for approval of transfer of facilities of Florida Water Services Corporation to Orange County and cancellation of Certificate Nos. 84-W and 73-S in Orange County; Order No. PSC-99-2171-FOF-WU, issued November 8, 1999, in Docket No. 981589-WU, In re: Application for approval of transfer of a portion of the facilities operated under Certificate No. 40-W in Orange County from Utilities, Inc. of Florida to the City of Maitland; and Order No. PSC-99-2373-FOF-WS, issued December 6, 1999, in Docket No. 991288-WS, In re: Application for transfer of a portion of Certificates Nos. 278-W and 225-S in Seminole County from Utilities, Inc. of Florida to the City of Altamonte Springs. In each of the above-three Orders, we acknowledged the transfer to the respective governmental authority and opened another docket to evaluate the gain on sale.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the transfer of Florida Water Services Corporation's Beacon Hills and Woodmere water and wastewater systems in Duval County, and the Palm

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Valley and Remington Forest water systems in St. Johns County to JEA shall be approved as a matter of right. It is further

ORDERED that Certificate Nos. 177-W, 562-W, and 124-S shall be cancelled administratively at the conclusion of any pending dockets concerning the Duval and St. Johns County systems. It is further

ORDERED that for the period of January 1, 2003, through October 15, 2003, Florida Water Services Corporation shall submit a regulatory assessment fees payment within 20 days of the issuance of this Order. It is further

ORDERED that a docket to examine whether Florida Water Services Corporation's sale of its Duval and St. Johns County land and facilities involves a gain on sale that should be shared with Florida Water Service Corporation's remaining customers shall be opened. It is further

ORDERED that this docket shall remain open until the conclusion of any pending dockets concerning the Duval and St. Johns County facilities, and until Certificate Nos. 177-W, 562-W, and 124-S are cancelled administratively.

By ORDER of the Florida Public Service Commission this 22nd Day of December, 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 on the transfer 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.

Any party adversely affected by the decision to open a docket to examine gain on sale in this order, which is procedural in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, 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. A motion for reconsideration shall be filed with the Director, Division of the Commission Clerk and Administrative Services, 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. Mediation may be available

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on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.