

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Investigation into proposed sale of
Florida Water Services Corporation.

DOCKET NO. 021066-WS
ORDER NO. PSC-04-0336-FOF-WS
ISSUED: March 31, 2004

The following Commissioners participated in the disposition of this matter:

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

ORDER CLOSING DOCKET

BY THE COMMISSION:

Background

This docket was opened to investigate the proposed sale of Florida Water Services Corporation (FWSC or utility) to a new entity, the Florida Water Services Authority (FWSA). The Office of Public Counsel (OPC), Charlotte County, Nassau County, the City of Palm Coast, the City of Marco Island, and the Flagler County Utility Regulatory Authority intervened.

By Order No. PSC-03-0193-FOF-WS, issued February 7, 2003, we ordered FWSC to file an application seeking our approval of the proposed transfer of its assets as mandated by Section 367.071(1), Florida Statutes, and Rule 25-30.037(2), Florida Administrative Code. On our own motion, we also set the matter for hearing, and prohibited FWSC from selling its assets prior to us approving either its application or the contingency language in the contract for sale. FWSC timely filed its application, and appealed Order No. PSC-03-0193-FOF-WS to the First District Court of Appeal.

FWSC complied with our order insomuch as it filed its application; however, it quickly became evident that FWSC intended to go forward with the sale with or without our approval, thereby potentially violating the specific mandate of our order requiring the company to obtain prior approval. Accordingly, pursuant to Section 367.121(1)(j), Florida Statutes, we filed a Verified Complaint in the Circuit Court of the Second Judicial Circuit in and for Leon County, Florida, seeking an injunction to prohibit FWSC from proceeding with its proposed sale without obtaining prior Commission approval. On February 17, 2003, the Circuit Court granted our Motion for Temporary Injunction. The Court set a hearing date to consider permanent injunctive relief, and ordered us to post a \$5,000 bond.¹

¹ The bond was released on January 28, 2004.

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FPSC-COMMISSION CLERK

The Court issued its Final Order Granting Plaintiff's Request for Continuation of Injunction and Granting Plaintiff's Motion to Dismiss Counterclaim for Writ of Mandamus on March 7, 2003. FWSC was enjoined from failing to comply with our order and selling its assets to FWSA without our approval of either the application or contingency language. In addition, the injunction was to remain in full force and effect until further order of the Court. FWSC appealed this order to the First District Court of Appeal.

On May 15, 2003, FWSC filed a Notice of Cancellation of Contract and Suggestion of Mootness (Notice of Cancellation), which we consider below. We have jurisdiction pursuant to Section 367.121, Florida Statutes.

Decision

According to FWSC, on March 10, 2003, the utility advised FWSA that it was terminating its purchase agreement in accordance with the terms of the agreement. In addition, FWSC voluntarily dismissed its appeals of both the Commission and Circuit Court orders. Because the purchase agreement has been terminated and the appeals dismissed, FWSC argues that its application should be considered moot and the docket closed.

The City of Palm Coast responded in opposition to the utility's Notice of Cancellation. According to Palm Coast, the application should not be considered moot because the FWSA did not consider the contract for sale terminated. However, on January 9, 2004, the City of Palm Coast withdrew its response, and instead requested us to conclude that the application is now moot.

Since we opened this docket to investigate the proposed sale, the agreement between FWSC and FWSA has been terminated. Furthermore, FWSC has begun selling its land and facilities to the local governments where those facilities are located. To date, we have approved or acknowledged the sale of 32 of FWSC's 81 systems that are under our jurisdiction. Because we required FWSC to file its application seeking our approval of the proposed sale, it would be inappropriate for FWSC to simply withdraw its application. Accordingly, we find FWSC's application for us to approve the proposed sale to FWSA to be moot and this docket shall be closed.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Florida Water Services Corporation's application for Commission approval of its proposed sale to Florida Water Services Authority shall be considered moot. It is further

ORDERED that this docket shall be closed.

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By ORDER of the Florida Public Service Commission this 31st day of March, 2004.

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

By:



Kay Flynn, Chief
Bureau of Records

(SEAL)

MAH

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,

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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.