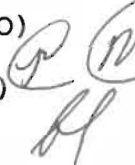



FLORIDA PUBLIC SERVICE COMMISSION  
Capital Circle Office Center • 2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

M E M O R A N D U M

October 17, 1996

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF WATER & WASTEWATER (WALDEN, GALLOWAY)   
DIVISION OF LEGAL SERVICES (JAEGER) 

RE: DOCKET NO. 950387-SU - FLORIDA CITIES WATER COMPANY,  
NORTH FT. MYERS DIVISION - APPLICATION FOR A RATE  
INCREASE IN WASTEWATER RATES

AGENDA: OCTOBER 29, 1996 - REGULAR AGENDA - POST HEARING DECISION  
PARTICIPATION IS LIMITED TO COMMISSIONERS AND STAFF

CRITICAL DATES: 8-MONTH EFFECTIVE DATE: JULY 27, 1996

SPECIAL INSTRUCTIONS: S:\PSC\WAW\WP\950387D.RCM

CASE BACKGROUND

Florida Cities Water Company (FCWC or utility) is a Class A utility that provides water and wastewater service to two communities in Ft. Myers: a northern sector and a southern sector. The North Ft. Myers service area is the applicant in this proceeding, serving about 2,559 customers at December 31, 1994. The utility serves an area that has been designated by the South Florida Water Management District (SFWMD) as a critical use area. Wastewater treatment is provided by a newly expanded advanced wastewater treatment (AWT) plant. Effluent is disposed into the Caloosahatchee River and to the Lochmoor golf course in the service area.

The utility's last rate case was finalized July 1, 1992 by Order No. PSC-92-0594-FOF-SU in Docket No. 910756-SU. In 1994, the utility's rates were increased due to an index proceeding. On May 2, 1995, the utility filed an application for approval of increased wastewater rates pursuant to Section 367.081, Florida Statutes. The petition met the minimum filing requirements (MFRs) on May 19, 1995, which was declared the official date of filing pursuant to Section 367.083, Florida Statutes. The utility requested that this filing be processed under the proposed agency action (PAA) procedures identified in Section 367.081(8), Florida Statutes. Interim rates were not requested.

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

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The Commission issued PAA Order No. PSC-95-1360-FOF-SU on November 2, 1995. The PAA Order was protested on November 27, 1995, by a group of customers; and an individual customer, Ms. Cheryl Walla, was granted intervenor status. Also, by Order No. PSC-96-0356-PCO-SU, issued on March 13, 1996, the Commission acknowledged the intervention of the Office of Public Counsel (OPC). The matter was set for hearing for April, 1996.

After the protest of the PAA, the utility requested, pursuant to statute, implementation of the rates approved in the Commission's PAA Order. This request was granted by Order No. PSC-96-0038-FOF-SU dated January 10, 1996, which also made the rates subject to refund and provided for security.

The Commission panel conducted a formal hearing in this case on April 24 and 25, 1996, in Ft. Myers. Subsequently, on July 30, 1996, FCWC filed its Notice of Issuance of FDEP Letter of Authorization or, In the Alternative, Motion to Accept FDEP Letter of Authorization Into the Record.

By Order No. PSC-96-1133-FOF-SU, issued on September 10, 1996, the Commission denied the requested wastewater rate increase, ordered FCWC to refund the revenues received as a result of the implementation of the PAA rates, and required FCWC to reduce its rates to a level below that authorized in its previous rate case (and as increased by the price index). That Order also denied FCWC's Motion to Accept FDEP Letter of Authorization Into the Record.

On October 7, 1996, FCWC filed its timely Notice of Administrative Appeal of Order No. PSC-96-1133-FOF-WS. Also, on that same date, FCWC filed its Motion for Stay Pending Judicial Review.

This recommendation addresses the above-noted motion for stay, the appropriate security pending the appeal, and the requirement to place additional revenues subject to refund.

DISCUSSION OF ISSUES

**ISSUE 1:** Should the Commission grant FCWC's Motion for Stay of Order No. PSC-96-1133-FOF-WS?

**RECOMMENDATION:** Yes. Because the order involves both a refund of monies and a decrease in rates charged to customers, the Commission should grant the motion for stay if FCWC posts sufficient security in accordance with Rule 25-22.061(1), Florida Administrative Code. (JAEGER)

**STAFF ANALYSIS:** Order No. PSC-96-1133-FOF-WS requires FCWC to refund the rates that it implemented pursuant to Section 367.081(8), Florida Statutes, and also to reduce its rates below those rates approved in its last rate case.

Rule 25-22.061(1)(a), Florida Administrative Code, provides that:

When the order being appealed involves the refund of moneys to customers or a decrease in rates charged to customers, the Commission shall, upon motion filed by the utility or company affected, grant a stay pending judicial proceedings. The stay shall be conditioned upon the posting of good and sufficient bond, or the posting of a corporate undertaking, and such other conditions as the Commission finds appropriate.

FCWC contends that pursuant to this rule, the Commission shall, upon motion filed by a utility, grant the stay. The utility asserts that the language is mandatory and therefore provides no discretion to deny a stay.

Staff believes that where the order in question involves a refund or reduction in rates, then Rule 25-22.061(1)(a), Florida Administrative Code, is mandatory. The rule requires the Commission to grant a stay upon request, if the utility posts sufficient security, and complies with such other conditions as the Commission finds appropriate. Order No. PSC-96-1133-FOF-WS clearly requires FCWC to make refunds and reduce its rates. Therefore, Staff recommends that, pursuant to Rule 25-22.061(1)(a), Florida Administrative Code, the Commission impose a stay upon Order No. PSC-96-1133-FOF-WS, pending the resolution of the judicial proceedings.

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**ISSUE 2:** Should the utility hold revenues collected pursuant to Order No. PSC-96-0038-FOF-SU issued January 10, 1996 subject to refund and if so, what is the appropriate amount?

**RECOMMENDATION:** Yes, FCWC should hold 19.88% of annual revenues collected pursuant to Order No. PSC-96-0038-FOF-SU subject to refund. (GALLOWAY)

**STAFF ANALYSIS:** As discussed in the case background and in the previous issue, on December 1, 1995, FCWC submitted its Notice of Intent to Implement Rates pursuant to Section 367.081(8), Florida Statutes, pending the resolution of the protest filed in this docket. The utility elected to implement the rates approved by the Commission in PAA Order No. PSC-95-1360-FOF-SU.

Subsequently, the case went to hearing and by Order No. PSC-96-1133-FOF-WS, the Commission required FCWC to refund the revenues collected through rates that it implemented pursuant to Section 367.081(8), Florida Statutes, and also to reduce its rates to a level below that authorized in its previous rate case.

With the utility's recent Motion for Stay of Order No. PSC-96-1133-FOF-WS, the refund and the reduction to rates are postponed until a decision is made by the courts through the appeal process. Therefore, it is necessary to determine the appropriate amount of revenues collected by the utility which should be held subject to refund. Staff has determined that 19.88% of the annual revenues collected should be held subject to refund. This amount is calculated by taking the difference of the revenue requirement of \$2,489,487 granted in the PAA Order No. PSC-95-1360-FOF-SU and the revenue requirement of \$2,003,347 granted in Order No. PSC-96-1133-FOF-WS, excluding any miscellaneous revenues, guaranteed revenues and reuse revenues.

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**ISSUE 3:** What is the appropriate security to guarantee the revenue subject to refund as per Order No. PSC-96-0038-FOF-SU issued January 10, 1996 and the amount of any additional revenue due to FCWC's Motion for Stay of Order No. PSC-96-1133-FOF-WS?

**RECOMMENDATION:** The utility should be required to post a bond in the amount \$1,613,661 as security to guarantee any potential refunds of revenues collected as per Order No. PSC-96-0038-FOF-SU and any additional revenues resulting from the extended time period due to the utility's Motion for Stay of Order No. PSC-96-1133-FOF-WS. Pursuant to Rule 25-30.360(6), Florida Administrative Code, the utility should be required to provide a report by the 20th of each month indicating the monthly and total revenue collected subject to refund. Further, the bond should state that it will remain in effect during the pendency of the appeal and will be released or terminated upon subsequent order of the Commission addressing the potential refund. (GALLOWAY)

**STAFF ANALYSIS:** The security amount deemed appropriate per Order No. PSC-96-0038-FOF-SU, issued January 10, 1996, considered the increase in revenues collected during an estimated period of time through the hearing process. However, with the utility's motion for stay, this security amount must be increased for two reasons. The amount deemed appropriate per Order No. PSC-96-0038-FOF-SU did not take into consideration the period of time necessary to resolve the company's appeal. Secondly, the security amount did not include staff's further reduction of rates as per Order No. PSC-96-1133-FOF-WS.

In general, an appeal process is estimated to take 24 months. Staff has recalculated the security to include the estimated appeal time along with the period of time between the implementation of rates and this recommendation. As a result of the motion, Staff recommends that security in the amount of \$1,613,661 be posted to guarantee any potential refunds of revenues collected as per Order No. PSC-96-0038-FOF-SU and any additional revenues resulting from the extended time period due to the utility's Motion for Stay of Order No. PSC-96-1133-FOF-WS.

As discussed earlier, pursuant to Rule 25-22.061, Florida Administrative Code, the stay shall be conditioned upon the posting of good and sufficient bond, or the posting of a corporate undertaking, and such other conditions as the Commission finds appropriate.

In its motion, filed October 7, 1996, the utility states that it will post a corporate undertaking. However, a review of the utility's financial statements indicates that the utility cannot support a corporate undertaking in the amount of \$1,613,661. Staff

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notes that FCWC has an outstanding corporate undertaking in the amount of \$192,812 associated with Docket No. 951258-SU.

The criteria for a corporate undertaking includes sufficient liquidity, ownership equity, profitability, and interest coverage to guarantee any potential refund. Staff's review indicates that FCWC has adequate interest coverage and is showing a profit. However, FCWC has marginal liquidity and ownership equity. Furthermore, the annual average net income over the last three years is less than the cumulative amount under request. Therefore, staff is recommending that, rather than accepting a corporate undertaking from the utility, the utility must post a bond as security for the amount stated above.

Pursuant to Rule 25-30.360(6), Florida Administrative Code, the utility should be required to provide a report by the 20th of each month indicating the monthly and total revenue collected subject to refund. Further, the bond should state that it will remain in effect during the pendency of the appeal and will be released or terminated upon subsequent order of the Commission addressing the potential refund.