

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for approval ) DOCKET NO. 961231-WS  
of agreement for treatment and ) ORDER NO. PSC-97-0019-FOF-WS  
disposal of reclaimed water with ) ISSUED: January 6, 1997  
Lee County and for approval of )  
rate-making treatment for )  
revenues received, by Florida )  
Cities Water Company - Lee )  
County Division )  
\_\_\_\_\_ )

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK, Chairman  
J. TERRY DEASON  
JOE GARCIA  
JULIA L. JOHNSON  
DIANE K. KIESLING

ORDER APPROVING NEW CLASS OF SERVICE

BY THE COMMISSION:

BACKGROUND

Florida Cities Water Company (FCWC or utility) is a Class A utility that provides wastewater service for two communities in Ft. Myers, Florida. The applicant in this proceeding, the South Ft. Myers wastewater system, served approximately 7,928 equivalent residential connections as of December 31, 1995. The utility is located in a critical use area as designated by the South Florida Water Management District. During the twelve months ended December 31, 1995, the utility recorded operating revenues of \$3,153,103 for wastewater service, with a corresponding income of \$489,052 and an achieved rate of return of 6.22 percent. By Order No. PSC-93-1288-FOF-SU, we set an allowable rate of return of 8.89 percent in the utility's last rate proceeding in Docket No. 920808-SU.

On October 11, 1996, FCWC filed an application for approval of agreement for treatment and disposal of reclaimed water with Lee County and approval of rate making treatment of revenues received. FCWC's application did not request relief pursuant to a specific statutory provision. However, consistent with past dockets, we have considered this request as an application for a new class of service pursuant to Section 367.091, Florida Statutes. Upon request of our staff, the utility filed proposed tariff sheets and

DOCUMENT NUMBER-DATE

00091 JAN-65

FPSC-RECORDS/REPORTING

additional information pursuant to Rules 25-9.005(4) and (5), Florida Administrative Code, and Sections 367.091(4) and (5), Florida Statutes. Upon further request, the utility provided additional information regarding the calculation and cost justification of the proposed rates. Pursuant to Section 367.091(5), Florida Statutes, the sixty-day suspension date for the proposed tariff sheet is January 3, 1997.

APPROVAL OF NEW CLASS OF SERVICE

The agreement dated July 10, 1996, and amendment thereto dated August 28, 1996 (Agreement) provides for Lee County to interconnect its reclaimed water distribution facilities with the wastewater transmission facility of FCWC. The transmission of reclaimed water will meet public access reuse standards by FCWC and will flow through the facilities of FCWC to its Fiesta Village advance wastewater treatment plant. The reclaimed water will require further treatment and disposal of the reclaimed water as permitted by the Florida Department of Environmental Protection (DEP).

Lee County approached FCWC regarding treatment and disposal of reclaimed water from its Ft. Myers Beach wastewater treatment plant as a short-term response to an emergency situation which had developed at the plant. Due to inadequate disposal capacity through the reuse of reclaimed water, Lee County's storage ponds overflowed. Lee County has entered into a consent order with DEP to address the overflow. While Lee County plans to construct a deep well injection system as a permanent solution, FCWC has agreed to receive and dispose of reclaimed water from Lee County as a temporary measure.

FCWC concluded that its wastewater collection system, the Fiesta Village wastewater treatment plant and associated effluent transmission facilities were capable of transporting, further treating and disposing of varying quantities of reclaimed water depending upon the loading from FCWC's service area. However, the Agreement mandates that FCWC will have full control of the timing, quantity and flow rates of reclaimed water transferred to its system. The reclaimed water must continuously meet public access water quality standards as prescribed by Florida regulators. The parties to the Agreement anticipate that the need for the interconnection will not last beyond July, 1998.

The utility proposed a specific rate in order to provide the new service of the treatment and disposal of reclaimed water to Lee County: a base facility charge of \$1,461 and a gallonage charge of \$2.25 per one thousand gallons for the first six million gallons per month and \$2.00 per thousand in excess of six million gallons

per month. FCWC's proposed rates are based on the cost of service study, supplied in its filing, for a high volume user requiring less treatment. We have applied the standards and requirements of Section 367.091, Florida Statutes, in our consideration of the proposed rates, and conclude that the rates negotiated by the parties and proposed by FCWC in its filing are appropriate. Therefore, the utility's proposed tariff sheets shall be stamped approved.

The rates shall become effective provided Lee County has received notice. The utility shall provide proof that Lee County has received notice within ten days after the date of the notice. Therefore, in accordance with the Agreement, FCWC shall apply the approved rates to the commencement of delivery of reclaimed water and grant Lee County the appropriate credit, without interest, within 30 days. This credit shall be the amount representing the difference between the general service rates currently being charged and the approved rates.

#### TIMELINESS OF FCWC'S FILING

FCWC's filing indicates that service was commenced at Lee County's request on July 19, 1996. However, FCWC did not file for approval of the new rate until October 11, 1996. Therefore, we considered whether a show cause proceeding should be initiated against the utility for this apparent failure to comply with Section 367.091(4), Florida Statutes, which requires notice to the Commission within ten days of commencement of service.

The Agreement indicates that FCWC's approved general service rate will be applied to any service which commences prior to our approval of the proposed rate. Furthermore, FCWC agrees to apply the approved rate retroactively to the commencement of delivery of reclaimed water and grant Lee County credit, without interest, for the difference. Lee County also has the option to terminate the Agreement if the approved rate materially exceeds the proposed rate. Because FCWC has continued to charge its approved general service rate until we approve the new rate, and in consideration of the circumstances of the Agreement, we conclude that FCWC has not violated Section 367.091(4).

#### TREATMENT OF REVENUES

FCWC requested that the revenues received by FCWC pursuant to this Agreement be treated as non-recurring so that they will not be considered in determining the level of regulated earnings for FCWC. The utility requested that if the revenue from this Agreement



results in over earning, this Commission should defer those over earnings to subsequent years.

A review of FCWC's 1995 annual report, reveals that FCWC's rate of return is 6.22 percent. As set forth in Order No. PSC-93-1288-FOF-SU, the zone of reasonableness of the rate of return is from 8.60 percent to 9.18 percent. Based on FCWC's 1995 annual report, the utility is not earning its allowed rate of return. In addition, service is only being supplied to Lee County on a temporary basis which will not extend beyond July, 1998. Therefore, we find it appropriate to treat the estimated annual revenues of \$122,912 associated with this Agreement as non-recurring. However, FCWC shall file semi-annual earnings reports with the Commission to allow our staff to monitor the utility's earnings. If the revenues associated with this Agreement place FCWC outside its approved rate of return, the matter will be addressed in a subsequent docket.

This docket shall be closed once the utility has demonstrated that proper notice has been provided to Lee County within 21 days of the issuance of this Order. However, if a substantially affected person files a protest within 21 days of the issuance of the Order, this docket shall remain open. If a protest is received, the utility's proposed tariff may be implemented, and all charges collected shall be held subject to refund pending resolution of the protest. We will address the appropriate security for such refunds at that time.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Florida Cities Water Company - Lee County Division's proposed tariff sheet containing rates and charges for the treatment and disposal of reclaimed water for Lee County shall be stamped approved. It is further

ORDERED that Florida Cities Water Company - Lee County Division shall apply the approved rates to the commencement of delivery of reclaimed water and grant Lee County the appropriate credit, without interest. It is further

ORDERED that the rates shall become effective provided Lee County has received notice. Florida Cities Water Company - Lee County Division shall provide proof that Lee County has received notice within ten days after the date of the notice. It is further

ORDERED that the new class of service tariff approved herein is interim in nature and shall become final unless a substantially

ORDER NO. PSC-97-0019-FOF-WS  
DOCKET NO. 961231-WS  
PAGE 5

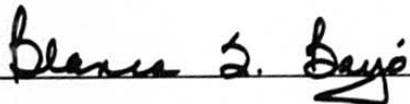
affected person files a petition for formal proceeding which is received by the Director, Division of Records and Reporting, by the date specified in the Notice of Further Proceedings or Judicial Review set forth below. It is further

ORDERED that Florida Cities Water Company - Lee County Division shall file semi-annual earning reports with the Commission. It is further

ORDERED that if a timely protest is filed in accordance with the requirements set forth below, the tariff revision approved herein shall remain in effect and the revenues shall be held subject to refund pending resolution of the protest. It is further.

ORDERED that if no timely protest is filed, this docket shall be closed.

By ORDER of the Florida Public Service Commission, this 6th day of January, 1997.

  
\_\_\_\_\_

BLANCA S. BAYÓ, Director  
Division of Records and Reporting

( S E A L )

MEO

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), 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.

The Commission's decision on this tariff is interim in nature and will become final, unless a person whose substantial interests are affected by the action proposed files a petition for a formal proceeding, as provided by Rule 25-22.036(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a)(d) and (e), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on January 27, 1997.

In the absence of such a petition, this order shall become final on the day subsequent to the above date.

Any objection or protest filed in this docket before the issuance date of this Order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If this Order becomes final on the date described above, any party adversely affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting 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 of the date this Order becomes final, 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.