



Public Service Commission

-M-E-M-O-R-A-N-D-U-M-

DATE: June 14, 1999

TO: Donna Clemons, Division of Legal Services
Division of Records and Reporting

FROM: Cheryl Johnson, Richard Redemann, Division of Water and Wastewater *BSM for RPA* *gpn*

RE: Docket No. 990489-WS, Application for transfer of Water and Wastewater facilities of Florida Cities Water Company and Poinciana Utilities, Inc. to The Florida Governmental Utilities Authority and for cancellation of Certificate Nos. 027-W, 024-S (Lee County), and 007-W, 003-S (Brevard County), and 146-W, 103-S (Polk and Osceola)

Florida Cities Water Company (FCWC or utility) and Poinciana Utilities Inc. (PUI or utility), are Class A water and wastewater utilities. FCWC provides service in Lee County, pursuant to Commission Certificates Nos. 027-W and 024-S, and in Brevard County, pursuant to Certificates Nos. 007-W and 003-S. PUI operates in Polk and Osceola Counties, pursuant to Certificates Nos. 146-W and 103-S. According to FCWC's 1997 annual report, it serves approximately 23,352 water and 13,390 wastewater customers with combined water and wastewater revenues of \$17,330,100 and a combined net operating income of \$4,277,488. PUI's 1997 annual report states that it serves 6,133 water and 5,691 wastewater customers with combined water and wastewater revenues of \$3,623,893 and a combined net operating income of \$656,891.

The Commission granted FCWC's original certificates for Brevard County in Docket No. 70394-WS, by Order No. 5016, issued December 30, 1970. The certificate action was pursuant to a July 2, 1970 resolution by the Board of County Commissioners of Brevard County invoking Commission jurisdiction in Brevard County. The Commission granted FCWC's original certificates for Lee County's water division in Docket No. 70167-W, by Order No. 4901, issued June 8, 1970. FCWC's wastewater division in Lee County received its original certificate in Docket No. 70168-S, by Order No. 4890, issued May 20, 1970. The certificate action was pursuant to the February 18, 1970 resolution by the Board of County Commissioners of Lee County invoking Commission jurisdiction in Lee County.

The Commission granted PUI's original certificates for Osceola County in Docket Nos. 71580-W and 71581-S, by Order No. 5787, issued June 22, 1973. The certificate action was pursuant to a resolution by the Board of County Commissioners of Osceola County. However, the certificate territory extends into both Osceola and Polk Counties.

FCWC and PUI have potable water supply, treatment and distribution, wastewater collection, transmission treatment, disposal, and reuse systems in Brevard, Collier, Hillsborough, Lee, Osceola, Polk, and Sarasota Counties.

On April 16, 1999, FCWC and PUI filed a joint application to transfer all of their water and wastewater facilities to the Florida Governmental Utility Authority (GUA) and to cancel their certificates, except that FCWC is not transferring certain portions of its facilities and

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certificated territory within the town of Fort Myers Beach (see Attachment A). The application includes a copy of the "FCWC and PUI Utility System Asset Acquisition Agreement" (Acquisition Agreement), which was filed with the Commission. The transfer closing was finalized on April 15, 1999. According to the application, FCWC and PUI had no intention of selling the utilities' assets, until there was the threat of condemnation by the GUA. In lieu of condemnation, the utilities entered into an amicable agreement for the sale and purchase of the facilities for the aggregate price of \$226,000,000. The \$226,000,000 purchase price amount is subject to the terms, adjustments, and prorations as described in the contract for closing. The adjustments include, but are not limited to, the Due Diligence adjustment, the Accounts Receivable adjustment, the Net Interest Rate adjustment, and the Defeasance adjustment.

FCWC is not transferring the portion of its territory within the town of Fort Myers Beach due to a lawsuit filed by the town in the Lee County Circuit Court, Town of Fort Myers Beach v. Lee County, Case No. 99-1753-CA-JBR. There is an addendum to the Acquisition Agreement that separately addresses the deferred closing for the Fort Myers utility system.

The application states that the GUA would assume liability for the customer deposits and any interest due thereon, through the date of closing, and that FCWC and PUI would provide the county with a listing of current customers by account, customer deposits, and an aggregate total, fifteen days prior to closing and at the closing. A copy of a GUA internal memorandum dated April 12, 1999, was provided as evidence that it had obtained the utilities' most recently available income and expense statements, balance sheets, statements of rate base for regulatory purposes, and contributions-in-aid-of-construction. The memorandum was signed by Mr. Robert E. Sheets, Secretary-Treasurer of GUA.

FCWC is current with its regulatory assessment fees and its annual report information. PUI was granted an extension to file its annual report information until April 30, 1999, but to date, it still has not filed. FCWC and PUI will pay the regulatory assessment fees through the date of the transfer.

On April 8, 1999, the Commission issued Order No. PSC-99-0691-FOF-SU in Docket No. 950387-SU, requiring refunds and granting in part and denying in part FCWC's motion to make rates permanent. Any financial responsibility or regulatory rate relief that may result from Docket No. 950387-SU will remain with FCWC after the transfer.

Based on the above, we find that the application is in compliance with Section 367.071(4)(a), Florida Statutes, and Rule 25-30.037(4), Florida Administrative Code. Pursuant to Section 367.071(4)(a), Florida Statutes, the sale of facilities to a governmental authority shall be approved as a matter of right.

Florida Cities Water Company

South Lee County

Town of Ft. Myers Beach

Township 46 South, Range 24 East

Section 19

All that part on Estero Island

Section 20

All that part on Estero Island

Section 28

All that part on Estero Island

Section 29

All that part on Estero Island

Section 30

All that part on Estero Island

Section 33

All that part on Estero Island

Section 34

All that part on Estero Island

Township 47 South, Range 24 East

Section 3

All that part on Estero Island

Township 46 South, Range 23 East

Section 24

All that part on Estero Island