



Public Service Commission

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DATE: SEPTEMBER 23, 1999

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

FROM: DIVISION OF WATER AND WASTEWATER (KYLE, MERCHANT) *JK*
DIVISION OF LEGAL SERVICES (BRUBAKER) *RS*

RE: DOCKET NO. 980744-WS - INVESTIGATION INTO RATEMAKING CONSIDERATIONS OF GAIN ON SALE FROM SALE OF FACILITIES OF FLORIDA WATER SERVICES CORPORATION TO ORANGE COUNTY. COUNTY: ORANGE

AGENDA: 10/05/99 - REGULAR AGENDA - PARTIES MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\WAW\WP\980744.HRG

CASE BACKGROUND

Florida Water Services Corporation (FWSC or utility), formerly known as Southern States Utilities, Inc., is a Class A utility which provides water and wastewater service throughout Florida. According to its 1998 annual report, FWSC recorded operating revenues of \$26,219,322 for water service and \$22,018,885 for wastewater service for facilities regulated by the Commission. The corresponding net utility operating income amounts were \$4,259,676 and \$4,046,716, respectively.

On December 30, 1997, FWSC filed an application to transfer all of its water and wastewater facilities in Orange County to Orange County with the exception of the Druid Hills water system. The transfer was based on an agreement executed by FWSC and Orange County. The closing date of the agreement was December 30, 1997. According to the contract, the sale price for the Orange County facilities was \$13,100,000, subject to adjustments and prorations permitted therein. By Order No. PSC-98-0688-FOF-WS, issued May 19,

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1998 in Docket No. 971667-WS, the Commission approved the application for transfer and ordered the cancellation of Certificate No. 73-S upon the resolution of all pending cases relating to the Orange County facilities. The Commission also ordered the opening of this docket to evaluate any gain on sale from the sale of facilities from FWSC to Orange County.

On June 29, 1998, the Office of the Public Counsel (OPC) filed a Notice of Intervention in this docket, which was acknowledged by Order No. PSC-98-1099-PCO-WS, issued August 17, 1998. On July 10, 1998, OPC filed interrogatories and requests for production. On August 13, 1998, the utility filed a motion for protective order on the basis that certain information and documents requested by OPC were confidential. By Order No. PSC-98-1489-CFO-WS, issued November 9, 1998, the Commission granted a temporary protective order to FWSC with respect to those documents.

DISCUSSION OF ISSUES

ISSUE 1: Should this docket be set for hearing?

RECOMMENDATION: Yes. Because of the controversial nature of this docket, staff believes it would be an inefficient use of time and resources to issue a Proposed Agency Action order which would almost certainly be protested. (BRUBAKER, KYLE)

STAFF ANALYSIS: The issue of the extent to which the gain or loss realized by utilities from the sale of property which has been included in rate base should be shared with ratepayers has been a source of continuing controversy. The Commission has dealt with a number of such cases in the water and wastewater industry. See Order No. PSC-96-1229-FOF-WS, issued September 30, 1996, in Docket No. 950828-WS, In Re: Application for rate increase in Marion County by Rainbow Springs Utilities, L.C.; Order No. PSC-93-0295-FOF-WS, issued February 24, 1993, in Docket No. 910637-WS, In Re: Application for a Rate Increase in Pasco County by Mad Hatter Utility, Inc.; Order No. PSC-93-0301-FOF-WS, issued February 25, 1993, in Docket No. 911188-WS, In Re: Application for a rate increase in Lee County by Lehigh Utilities, Inc. In the Lehigh case, OPC filed a motion for reconsideration which included, among other issues, the treatment of gain on sale.

This issue has been vigorously debated in both of FWSC's most recent rate cases (Dockets Nos. 920199-WS and 950495-WS). In both cases, OPC and the utility presented witnesses with widely divergent views regarding the gain-on-sale issue. Moreover, OPC appealed the Commission's determination of this issue in both cases. The Commission's decisions in these cases, as in those cited above, have resulted in varied treatments of the gain or loss issue because the circumstances underlying each case have been different. Staff's analysis of these cases leads to the belief that staff would be unable to produce a recommendation for proposed agency action (PAA) which would not have a high probability of being protested by OPC and/or by the utility. This belief is reinforced by staff's review of the discovery promulgated by OPC in this docket.

Accordingly, staff recommends that this docket should be set directly for hearing. Staff believes that issuance of a PAA Order in this case would result in an inefficient use of time and resources for the Commission and parties to this docket.

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ISSUE 2: Should this docket be expanded to include an investigation of the possible gain on sales by FWSC of a laboratory in Volusia County and facilities in Citrus County known as Crystal River Highlands?

RECOMMENDATION: Yes. This docket should be expanded to include an investigation of the possible gain on sales by FWSC of a laboratory in Volusia County and facilities in Citrus County known as Crystal River Highlands. (KYLE)

STAFF ANALYSIS: During the course of this investigation, staff became aware that the utility sold a laboratory located in Volusia County. The costs of construction and operation of this laboratory were included in the test year rate base and operation and maintenance expense in FWSC's most recent rate case. Additionally, the utility reported the sale of facilities in Citrus County known as Crystal River Highlands in connection an application for transfer of facilities in Docket No. 990743-WU. Staff believes it would be less costly and more efficient to investigate these sales in the context of this docket, rather than through opening separate dockets in which to investigate the sales. Staff therefore believes that it is appropriate to expand the current docket to include an investigation of these sales.

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ISSUE 3: Should this docket be closed?

RECOMMENDATION: No. If the Commission approves staff's recommendation in Issue 1, this docket should remain open in order to proceed to hearing in this matter. (BRUBAKER)

STAFF ANALYSIS: If the Commission approves staff's recommendation in Issue 1, this docket should remain open in order to proceed to hearing in this matter.