

State of 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-

RECEIVED-FPSC
JUN 29 PM 12:03
RECORDS AND REPORTING

DATE: JUNE 29, 2000

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

FROM: DIVISION OF REGULATORY OVERSIGHT (BRADY) *pb*
DIVISION OF LEGAL SERVICES (CHRISTENSEN) *AM*

RE: DOCKET NO. 000242-WS - REQUEST FOR ACKNOWLEDGMENT OF TRANSFER OF RECEIVERSHIP OF ENTERPRISE UTILITIES CORPORATION (DELTONA) FROM FLORIDA WATER SERVICES CORPORATION TO VOLUSIA COUNTY AND CANCELLATION OF CERTIFICATES NOS. 316-W AND 264-S.
COUNTY: VOLUSIA

AGENDA: 07/11/00 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\RGO\WP\000242.RCM

CASE BACKGROUND

Enterprise Utilities Corporation--Deltona (Enterprise or utility) is a Class C utility serving approximately 245 residential water and 141 residential wastewater customers in a community known as Enterprise on Stone Island in Volusia County. According to the utility's 1999 Annual Report, it had combined water and wastewater operating revenues of \$136,788 and a combined net operating income of \$20,039.

Pursuant to Section 367.171, Florida Statutes, Certificates Nos. 316-W and 264-S were issued to Enterprise on March 9, 1979, by Order No. 8761, in Docket No. 760255-WS. Prior to the issuance of certificates, the utility facilities were owned by Stone Island Construction Company of Volusia County, Florida (Stone Island). Order No. 8761 found that Enterprise had acquired the right, title,

DOCUMENT NUMBER-DATE
07930 JUN 29 8
FPSC-RECORDS/REPORTING

DOCKET NO. 000242-WS
DATE: JUNE 29, 2000

and interest to the utility facilities from Stone Island in lieu of foreclosure.

On November 19, 1981, Chester Tomlin, President of Enterprise notified Volusia County that he was abandoning Enterprise. Effective December 31, 1981, Dean Deakyne was appointed as the receiver. On April 29, 1982, Mr. Deakyne withdrew as receiver and the Court appointed The Deltona Corporation as the first successor receiver. On May 4, 1982, the Court appointed Deltona Utilities, Inc. (Deltona) as second successor receiver. At the time, Deltona was a subsidiary utility of The Deltona Corporation.

In 1985, MP Water Resources Corporation (MP), then known as The Topeka Group, Inc., acquired the common stock of a number of utility subsidiaries owned by The Deltona Corporation, including Deltona. By Order No. 22307, issued December 12, 1989, in Docket No. 881501-WS, the Commission approved the transfer of majority organizational control. MP was also the parent company of Southern States Utilities, Inc. (SSU). On July 15, 1992, when SSU merged with Deltona, SSU became the third successor receiver for Enterprise. By Order No. PSC-97-0427-FOF-WS, issued April 16, 1997, in Docket No. 970028-WS, the Commission approved SSU's request to change its name to Florida Water Services Corporation (FWS).

On April 24, 1998, FWS filed a petition to withdraw as receiver for Enterprise in the Circuit Court of the Seventh Judicial Circuit in and for Volusia County (Court). Both the Commission and Volusia County (County) intervened in the resulting Case No. 81-5258-CA-01. The Court granted FWS's petition to withdraw as receiver effective February 29, 2000, and appointed the County as fourth, and current, successor receiver. As a result, staff opened this docket on February 22, 2000, to acknowledge the appointment of the County as substitute receiver and to make a recommendation regarding the cancellation of the utility's certificates.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission acknowledge the withdrawal of Florida Water Services Corporation as receiver for Enterprise Utilities Corporation and the appointment of Volusia County as the successor receiver?

RECOMMENDATION: Yes. The Commission should acknowledge the withdrawal of Florida Water Services Corporation as receiver for Enterprise Utilities Corporation (Deltona) and the appointment of Volusia County as the successor receiver. Certificates Nos. 316-W and 264-S should be canceled effective February 29, 2000. (BRADY, CHRISTENSEN)

STAFF ANALYSIS: As noted in the Case Background, on April 24, 1998, FWS filed a petition with the Court to withdraw as receiver for Enterprise. At the time, FWS had received notice from the Department of Environmental Protection (FDEP) concerning deficiencies with Enterprise's effluent disposal system and related facilities. According to its petition, FWS stated that it and the FDEP had agreed that interconnection to FWS's Deltona Lakes Wastewater facilities was necessary to resolve these concerns. FWS estimated that up to \$1 million of capital investment would be necessary to maintain environmental compliance with the FDEP's laws, rules, and regulations.

FWS's petition also stated that, in 1995, it had filed a rate increase application with the Commission which included rate relief for expenses and past capital expenditures at the Enterprise facilities. The petition further stated that, in July of 1996, the Commission had ordered that Enterprise's plant and facilities not be considered for rate relief because FWS could relinquish the receivership thereby giving up any claim to the facilities or customers. Due to this action by the Commission, FWS stated it believed it could not continue to run the Enterprise facilities. FWS was also doubtful that the Commission would permit recovery of the additional capital investment necessary to maintain environmental compliance.

Both the Commission and the County intervened in the resulting Circuit Court Case No. 81-5258-CA-01. In its petition for intervention, the Commission indicated it had no objection to FWS's request to withdraw as receiver. However, the Commission believed it had an obligation to bring to the Court's attention certain misstatements and omissions of fact contained in FWS's petition. In particular, the 1996 Commission decision referenced by FWS in

DOCKET NO. 000242-WS
DATE: JUNE 29, 2000

its petition was the Commission's order regarding SSU's 1995 application for approval of uniform rates for 141 service areas in 22 counties. Order No. PSC-96-1320-FOF-WS, issued October 30, 1996, in Docket No. 950495-WS, stated the following with regard to Enterprise's inclusion in SSU's rate base:

SSU does not own the Enterprise facilities and could relinquish the receivership. In fact, the utility stated that it is in the process of preparing the necessary documents to transfer the receivership of Enterprise. Because the utility does not own the facility, and appears ready to relinquish its receivership, we find it appropriate to remove the Enterprise facility from this docket. We note that Enterprise is a Class C utility and as such can file for a Staff Assisted Rate Case (SARC) at a later date. (Emphasis added.)

As indicated above, the County also intervened in FWS's Court petition. The County's primary concern had to do with a 1991 Service Area Agreement (Agreement) that FWS's predecessors had entered into with the County. The Agreement designated an area of Volusia County called the Deltona Service Area for FWS to provide current and future water and wastewater service. Enterprise was included within this service area. The intent of the Agreement was to prevent the needless and wasteful expenditures from unrestrained competition between two utilities. Further the parties agreed to adopt the least restrictive means available for consumers to obtain safe, efficient, economical, and sufficient water and wastewater service.

At the July 17, 1998, hearing on the matter, the Court requested both the Commission and the County file preliminary reports addressing the need, expense and potential funding under their respective jurisdictions for an interconnection of Enterprise to a regional wastewater treatment facility. In August of 1998, representatives of the Commission's staff, the County, the FDEP and FWS met regarding this matter. It was generally agreed that it was necessary for Enterprise to connect its wastewater system to a larger, effluent disposal system. Because of the Agreement between the County and FWS, described above, FWS had the only such facility in the area. According to FWS's estimates given Commission staff, the cost of such an interconnection would run from \$1,325,000 to \$2,000,000.

The Commission staff submitted its report to the Court on August 20, 1998 and the County submitted its report on August 25, 1998. Both reports agreed that, in addition to there being a

limited number of buildable lots, many lots were on septic which continued to be permitted on Stone Island. This situation adversely affects the ability of the utility to spread the cost of capital projects. Staff's report contained its best estimate of the costs associated with the implementation of either a surcharge or a standard rate increase. Regardless of the scenario, the costs associated with either were extremely high relative to customers' existing rates.

The County's report indicated that the time-frame for the corrective action required by the FDEP would likely eliminate certain options for low interest loans available to publicly-owned utilities. Under a conventional loan, the County did not believe FWS, as receiver, could be compelled to provide the additional security which may be needed over and above the pledge of future utility rates. Both the reports recommended that the County examine public financing through special assessment or a special taxing district. However, the threshold issue would be the legality of a local government to fund a project for an entity other than a publicly owned utility. Under Commission jurisdiction, Enterprise was a privately-owned, for-profit utility.

On September 2, 1998, a petition by the Committee for Responsible Resolution of Enterprise Utilities, Inc. sought a temporary delay in the Court proceedings to enable the affected property owners to research and obtain counsel to represent their interests. The Court appointed Mr. C. Allen Watts, Esquire, as the attorney ad litem for the ratepayers. Then on February 14, 2000, the Court granted FWS's petition to withdraw as receiver for Enterprise and appointed the County of Volusia as the successor receiver. The effective date of the transfer was February 29, 2000. FWS was also required to file a final accounting within sixty (60) days over which the Court reserved jurisdiction to the extent the Court had jurisdiction in these matters.

On February 22, 2000, staff established this docket to acknowledge the appointment of the County as successor receiver. The County reported to staff that, as soon as jurisdiction was transferred, the utility qualified for Statewide funding to help pay for the interconnection with FWS. Under new legislative procedures, a grant in the amount of \$750,000 was awarded and will be administered through the FDEP.

Staff has confirmed that FWS filed a 1999 Annual Report on behalf of Enterprise and paid the resulting 1999 Regulatory Assessment Fees (RAFs). In addition, FWS has prepaid 2000 RAFs on behalf of Enterprise for the portion of 2000 in which it was

DOCKET NO. 000242-WS

DATE: JUNE 29, 2000

responsible for collection. There are no penalties, interest or refunds due. The effective date for the end of Commission jurisdiction is February 29, 2000. Since Enterprise will not be jurisdictional December 31, 2000, pursuant to Rule 25-30.110(3), Florida Administrative Code, an Annual Report for 2000 is not required.

Staff has confirmed there are no open dockets or issues pending before the Commission with respect to this utility. However, the Court Case is still open pending acceptance of FWS's final accounting by the ad litem attorney for Enterprise's ratepayers. At staff's request, Mr. Watts filed a June 19, 2000, status report of his review in which he enumerated a number of concerns with FWS's accounting. Mr. Watts also indicated he was in consultation with the County, as successor receiver, as to the most efficient and economical method of mutually resolving these concerns and filing a final report with the court. Since the Commission is still a party to the court case, staff believes it is appropriate to leave this docket open pending disposition of the court case at which time staff recommends it be given the authority to administratively close the docket.

Based on the above, staff recommends that the Commission acknowledge the withdrawal of Florida Water Services Corporation as receiver for Enterprise Utilities Corporation (Deltona) and the appointment of Volusia County as successor receiver. Certificates Nos. 316-W and 264-S should be canceled effective February 29, 2000.

DOCKET NO. 000242-WS
DATE: JUNE 29, 2000

ISSUE 2: Should this docket be closed?

RECOMMENDATION: No. This docket should remain open pending disposition of Circuit Court Case No. 81-5258-CA-01. (CHRISTENSEN)

STAFF ANALYSIS: Based on the Commission's vote in Issue 1, this docket should remain open pending disposition of Circuit Court Case No. 81-5258-CA-01, whereupon staff should administratively close the docket.