



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-

DATE: SEPTEMBER 14, 2000

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

FROM: DIVISION OF LEGAL SERVICES (BRUBAKER) *RRR pel JRB*
DIVISION OF REGULATORY OVERSIGHT (REDEMANN, BRADY) *PB*

RE: DOCKET NO. 971638-SU - APPLICATION FOR AMENDMENT OF
CERTIFICATE NO. 226-S TO ADD TERRITORY IN SEMINOLE COUNTY
BY FLORIDA WATER SERVICES CORPORATION
COUNTY: SEMINOLE

AGENDA: 09/26/2000 - REGULAR AGENDA - DECISION ON STIPULATION
PRIOR TO HEARING - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\LEG\WP\971638.RCM

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CASE BACKGROUND

Florida Water Services Corporation (FWSC or utility) is a Class A water and wastewater utility that provides service to approximately 76,098 water and 37,751 wastewater customers. FWSC's 1999 annual report shows combined operating revenues of \$88,840,300 and a combined net operating income of \$9,385,253.

On December 22, 1997, FWSC filed an application for amendment of Certificate No. 226-S in Seminole County to provide wastewater service to additional territory in an area known as Bennett Commerce Park. The service area at issue in this docket lies within the St. John's River Water Management District, which has declared its entire district as a water use caution area. Staff notes that, although this case concerns provision of wastewater service, it does provide for use of reclaimed water, which is a water conservation-oriented measure.

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FPSC-RECORDS/REPORTING

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Bennett Commerce Park is adjacent to territory already served by FWSC known as the Florida Commerce Industrial Park. It is also near the City of Longwood's (City) wastewater service lines, which are located across a series of railroad tracks. On January 21, 1998, the City filed a timely objection to FWSC's application. Accordingly, by Order No. PSC-98-0470-PCO-SU, issued April 1, 1998, the matter was set for an administrative hearing and controlling dates were established. By Order No. PSC-99-0743-PCO-SU, issued April 19, 1999, the controlling dates were modified and the hearing scheduled to take place on October 12 and 13, 1999 in Seminole County.

On March 18, 1999, a mediation conference was held in Longwood, attended by representatives for FWSC, the City and Commission staff, in an effort to resolve the disputed issues without going to hearing. The parties successfully reached a verbal agreement, and on September 10, 1999, a letter was filed by FWSC outlining a proposed settlement agreement with the City and requesting that the hearing dates be canceled. By memo dated September 14, 1999, the Chairman's office canceled the scheduled prehearing and hearing dates.

After some months of negotiations between the parties to finalize the terms of the settlement, on August 21, 2000, the City Commissioners approved a Settlement Agreement and Bulk Wastewater and Reuse Service Agreement (Settlement Agreement). A copy of the executed Settlement Agreement was filed with the Commission on September 5, 2000, and is attached to this recommendation as Attachment A.

This recommendation addresses the parties' Settlement Agreement and the disposition of FWSC's amendment application.

DISCUSSION OF ISSUES

ISSUE 1: Should the Settlement Agreement and Bulk Wastewater and Reuse Service Agreement between FWSC and the City be approved and the withdrawal of FWSC's amendment application be acknowledged?

RECOMMENDATION: The Settlement Agreement, appended to this recommendation as Attachment A, should be approved as a reasonable resolution of this matter and the withdrawal of FWSC's amendment application should be acknowledged. The portions of the Settlement Agreement relating to bulk wastewater service proposed by the parties need not be ruled upon because the contemplated transaction between FWSC and the City results in a class of service which is exempt from the Commission's regulation pursuant to Section 367.022(12), Florida Statutes. For future ratemaking considerations, the utility's cost of providing bulk wastewater service to the City, including the interconnection costs, should not be subsidized by the jurisdictional customers. The revenues generated from the provision of bulk wastewater service to the City should not be considered in any proceedings before the Commission involving the utility. The Commission should note that the utility remains subject to its jurisdiction and regulation on all other matters including reclaimed water service. The utility should file a wastewater tariff sheet reflecting the reclaimed water class of service at a zero rate to the City of Longwood. In accordance with Rule 25-30.475, Florida Administrative Code, the rate should be effective for services rendered on or after the stamped approval date on the tariff sheets. In the event the utility agrees to provide reclaimed water service to other customers, the utility should return to the Commission for a determination regarding rates for reclaimed water service prior to providing that service to any other customers. (BRUBAKER, BRADY, REDEMANN)

STAFF ANALYSIS: As noted in the case background, the City's dispute with FWSC's amendment application was resolved on August 21, 2000, pursuant to the City Commissioners' approval of the Settlement Agreement. Under the provisions of the Settlement Agreement, FWSC agrees to provide and the City agrees to purchase bulk wastewater and to receive at no charge reclaimed water service for Bennett Commerce Park. Before becoming effective, the Settlement Agreement requires the Commission's approval of the Settlement Agreement in its entirety and the withdrawal of FWSC's amendment application. The connections in Bennett Commerce Park will be customers of the City.

Staff believes the Settlement Agreement represents a good faith agreement between the two parties and is a reasonable solution to the territorial dispute. Except for the provisions relating to bulk service, as discussed below, staff recommends the Commission approve the Settlement Agreement and acknowledge the withdrawal of FWSC's application for amendment.

Bulk Wastewater Service

In 1999, Section 367.022(12), Florida Statutes, was amended to exempt the sale or resale of wastewater services from Commission regulation as follows:

(12) The sale for resale of bulk supplies of water or the sale or resale of wastewater services to a governmental authority or to a utility regulated pursuant to this chapter either by the commission or the county.

(emphasis added)

As a result of the 1999 amendment to Section 367.022(12), Florida Statutes, it is staff's recommendation that the Settlement Agreement's provisions for FWSC to provide bulk wastewater service to the City for resale are exempt from Commission regulation and need not be ruled upon by the Commission. See also Order No. PSC-00-1238-FOF-WS, issued July 10, 2000, in Docket No. 000315-WS, in which the Commission declined to rule upon United Water Florida Inc.'s application for approval of tariff sheets for provision of wholesale water and wastewater service to St. Joe Utilities Company. For future ratemaking considerations, the utility's cost of providing bulk wastewater to the City, including the interconnection costs, should not be subsidized by the utility's jurisdictional customers. The revenues generated from the provision of bulk wastewater service to the City should not be considered in any proceedings before the Commission involving the utility. The Commission should note that the utility remains subject to the Commission's jurisdiction and regulation on all other matters including reclaimed water service.

Reclaimed Water Service

According to the Settlement Agreement, FWSC agrees to provide at no charge to the City reclaimed water that is produced by the Bennett Commerce Park on a gallon for gallon basis. The Settlement Agreement additionally provides that FWSC shall offer at no charge to the City any excess reclaimed water it can not use in FWSC's Florida Central Commerce Park.

Due to growing concerns over water conservation, reclaimed water is increasingly being viewed as an alternative source of water for irrigation of golf courses, commercial sites and even residential communities in some cases. Along with the increased use of reclaimed water has come recognition that there are costs associated with the provision of reclaimed water. Consequently, it has become Commission practice to recognize reclaimed water service (sometimes referred to as effluent service) as a class of service which should be included in the utility's tariff, regardless of whether the utility assesses a charge for the service.

Staff notes that FWSC's existing connections in Florida Central Commerce Park have an approved effluent rate of \$0.10 per month per sprinkler head. However, the connections in Florida Central Commerce park are direct customers of FWSC with the costs associated with direct service. As noted earlier, the connections in Bennett Commerce Park will be direct customers of the City, not FWSC. Therefore, reclaimed service provided pursuant to the Settlement Agreement is service with different a set of associated costs and benefits.

In many cases, where there are costs associated with the provision of reclaimed water service, there are "avoided costs" which balance the actual cost of the service, and thus not charging for the effluent is justified. For example, disposing of effluent on non-utility property may delay or even eliminate the need for the utility to purchase additional land for spray fields or percolation ponds, thereby resulting in lower rates for the utility's existing wastewater customers. This appears to be the case with regard to this Settlement Agreement.

The Settlement Agreement provides that all wastewater generated by Bennett Commerce Park shall be returned to the park for disposal in the form of treated effluent. In addition, the Settlement Agreement also provides that Bennett Commerce Park will dispose of any surplus effluent generated by FWSC's Florida Central Commerce Park wastewater facility. Although this facility has adequate wastewater treatment capacity, it is limited in terms of local land available for disposal. Therefore, the utility benefits from the Settlement Agreement in that it does not have to incur the costs of having to locate and purchase land to be used as spray fields or percolation ponds; the City benefits from zero rate effluent service; and the State of Florida benefits from the conservation obtained when potable water is not used for irrigation purposes.

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For these considerations and, particularly in light of the parties' mediated settlement, staff therefore recommends that the utility should be authorized to provide the reclaimed water service to the City at a zero rate. This recommendation is consistent with past Commission practice. See Order No. PSC-00-0804-PAA-WS, issued April 24, 2000, and consummated by Order No. PSC-00-0960-CO-WS, issued May 17, 2000, in Docket No. 000041-WS; Order No. PSC-95-1325-FOF-WS issued on October 31, 1995, in Docket No. 941151-WS; and Order No. PSC-98-0475-FOF-WS, issued on April 1, 1998, in Docket No. 971157-WS. In accordance with Rule 25-30.475, Florida Administrative Code, the rate should be effective for services rendered on or after the stamped approval date on the tariff sheets. In the event the utility agrees to provide reclaimed water service to other customers, the utility should return to the Commission for a determination regarding rates for reclaimed water service prior to providing that service to any other customers.

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ISSUE 2: Should this docket be closed

RECOMMENDATION: Yes. If the Commission approves staff's recommendation in Issue 1, no further action is required and the docket should be closed. (BRUBAKER)

STAFF ANALYSIS: If the Commission approves staff's recommendation in Issue 1, no further action is required and the docket should be closed.

**SETTLEMENT AGREEMENT AND BULK
WASTEWATER AND REUSE SERVICE AGREEMENT**

This BULK WASTEWATER SERVICE AGREEMENT ("Agreement") is made and entered into this 22nd day of August, 2000, by **FLORIDA WATER SERVICES CORPORATION**, a Florida corporation ("Florida Water") whose mailing address is: Post Office Box 609520, Orlando, Florida 32860 and the **CITY OF LONGWOOD**, a political subdivision of the State of Florida, ("Longwood") whose mailing address is 175 West Warren Avenue, Longwood, Florida 32750.

WHEREAS, Florida Water is an investor-owned utility which provides water, wastewater and reclaimed water services in Seminole County, Florida; and

WHEREAS, Florida Water provides wastewater and reclaimed water services to a service area in Seminole County known as Florida Central Commerce Park; and

WHEREAS, Longwood is a municipal utility which provides water and wastewater services in the City of Longwood, Seminole County, Florida; and

WHEREAS, the provision of water and wastewater services by Florida Water in Seminole County, Florida, is regulated by the Florida Public Service Commission ("FPSC"); and

WHEREAS, an area in Seminole County, Florida, more commonly known as Bennett Commerce Park, as defined herein, has the need to be connected to a centralized wastewater collection system and is adjacent to Florida Central Commence Park and near Longwood's wastewater service lines; and

WHEREAS, Bennett Commerce Park has a need for reclaimed water service; and

WHEREAS, Florida Water filed with the FPSC an Application for Amendment of its Certificate No. 226-S, to add territory in Seminole County, Florida ("Territory Amendment"), and

be the sole provider of wastewater service to Bennett Commerce Park (FPSC Docket No. 971638-SU); and

WHEREAS, Longwood objected to Florida Water's Territory Amendment; and

WHEREAS, Florida Water and Longwood, mediated their dispute pursuant to the FPSC's program and this agreement represents the settlement achieved through that mediation; and

WHEREAS pursuant to the terms and conditions contained herein, Florida Water agrees to provide and Longwood agrees to purchase the bulk wastewater service and to receive at no charge reclaimed water service needed to serve Bennett Commerce Park; and

WHEREAS, upon execution of this Agreement by all parties and approval of same by the FPSC, Florida Water will withdraw its Application for Amendment of its Certificate No. 226-S with FPSC.

NOW THEREFORE, in consideration of the foregoing and the mutual promises set forth below, the parties, intending to be legally bound, agree as follows:

1. The above recitals are true, correct, form a material part of this Agreement, and are hereby incorporated by reference.

2. The following exhibits are a material part of this agreement and are adopted and incorporated herein by reference:

Exhibit "A"	Description of Bennett Commerce Park (Florida Water to provide).
Exhibit "B"	Sketch of Bennett Commerce Park Wastewater Collection System and Interconnect Facilities (City of provide).

3. Each party hereby represents and warrants that it has the right, power and authority to execute and deliver this Agreement and to perform all of the obligations stated herein.

4. Longwood shall construct, permit and maintain, at its sole expense, a wastewater

collection system within Bennett Commerce Park and interconnect facilities with Florida Water's existing collection system as shown in Exhibit "B" (collectively "Bennett Commerce Park Collection System"). The point of interconnection shall be Florida Water's manhole and Longwood shall own and maintain all facilities up to that point. The interconnect facilities shall be constructed consistent with Florida Water's engineering specifications, and Longwood shall forward to Florida Water a copy of its plans. The failure of Florida Water to approve the plans of Longwood within twenty (20) days of meeting said specifications shall render this Agreement null and void.

5. All wastewater from Bennett Commerce Park shall be pumped by Longwood to the point of interconnection between the Bennett Commerce Park Collection System and Florida Water's existing collection system.

6. This agreement must be approved by the FPSC in its entirety before becoming effective. Any modification to the terms of this agreement required by the FPSC for approval shall render the agreement null and void unless agreed to by the parties within 30 days of notification of modification.

7. Longwood shall make a good faith effort to connect all Bennett Commerce Park wastewater customers to the Bennett Commerce Park Collection System by December 31, 2001 or within a reasonable time thereafter using due diligence. Longwood shall take any legal action pursuant to Longwood City Codes and/or Florida Statutes or other sanctions to connect any customer who refuses to connect.

8. Wastewater customers within the Bennett Commerce Park shall be customers of Longwood and receive all service incident to provision of wastewater service, including but not limited to connection to and maintenance of the Bennett Commerce Park Collection System, from

Longwood.

9. Florida Water shall provide bulk wastewater service to Longwood for the Bennett Commerce Park Collection System customers from Florida Water's Florida Central Commerce Park wastewater facility.

10. At the time of connection with Florida Water's wastewater transmission system, Longwood shall pay an initial connection fee of seven dollars and no cents (\$7.00) per gallon based on three hundred (300) gallons per day per Equivalent Residential Connection ("ERC") connected to the Bennett Commerce Park Collection System. This equates to two thousand one hundred dollars and no cents (\$2,100.00) per existing ERC. Subsequent to payment of the initial connection fee, Longwood shall pay the same per ERC connection fee for each subsequent connection to the Bennett Commerce Park Collection System for connections made through the time referenced in paragraph 7. Thereafter, this connection fee may be amended from time to time in accordance with the requirements of the FPSC or other applicable regulatory authority.

11. The City of Longwood will read its own meters in Bennett Commerce Park for the purpose of billing its water and sewer customers. Longwood shall provide Florida Water with copies of said readings on a monthly basis. Florida Water shall have the option of reading the water meters for its own record keeping or auditing purposes.

12. Longwood shall pay Florida Water the rate of three dollars and seventy-five cents (\$3.75) per one thousand (1,000) gallons of potable water delivered to Longwood's Bennett Commerce Park customers as evidenced by the water meter readings with Bennett Commerce Park. Florida Water shall not charge a base facility charge. This rate is subject to approval of the FPSC and may be amended from time to time (beginning no earlier than June, 2002) in accordance with the

requirements of the FPSC or other applicable regulatory authority. Failure of the FPSC to approve this initial rate shall render this agreement null and void unless a different and approved rate is agreed to by the parties. There shall never be an increase greater than the percentage of increase to other Florida Water customers in Florida Central Commerce Park.

13. Longwood shall construct, permit and maintain, at its sole expense, a reclaimed water transmission systems within Bennett Commerce Park, as is reasonably necessary and interconnect said facilities with Florida Water's existing Florida Central Commerce Park reclaimed water transmission system. The interconnect facilities shall be constructed consistent with Florida Water's engineering specifications. The point of interconnection for reclaimed water service to Longwood will be the boundary line for Florida Central Park. Longwood will own and maintain reclaimed water facilities beyond this point, however, Florida Water shall have such access to those facilities as is reasonably necessary to comply with its permits.

14. Florida Water agrees to provide at no charge to Longwood reclaimed water that is produced by the Bennett Commerce Park on a gallon for gallon basis. Additionally, Florida Water shall offer at no charge to the City any excess reclaimed water it can not use in Florida Central Commerce Park. The City of Longwood may use the reclaimed water outside of the Bennett Commerce Park area. Florida Water shall be responsible for the retention of reclaimed water, including any required permitting.

15. Longwood shall, if required by law, obtain a permit or permit modification from the Florida Department of Environmental Protection (DEP) authorizing the distribution of reclaimed water. Both parties will undertake their best efforts to comply with this permit and all other applicable permits, regulations and orders issued by St. Johns River Water Management District

(SJRWMD), DEP or any other governmental agency with applicable legal authority. Longwood shall be responsible for ensuring that only domestic quality wastewater (as defined by EPA or by applicable law or regulation) enters Florida Water's system through the Bennett Commerce Park Collection System and is responsible for the pretreatment of all non-domestic wastes (as defined by EPA or by applicable law or regulations) within Bennett Commerce Park Collection System.

16. Any notice required or allowed to be delivered hereunder shall be in writing and shall be deemed to be delivered at the earlier of (i) the date received, or (ii) five (5) business days after the date deposited in an United States Postal Service depository, postage prepaid, registered or certified mail, return receipt requested, addressed to Florida Water or Longwood as the case may be, at the addresses set forth opposite their names below:

AS TO FLORIDA WATER:

Florida Water Services Corporation
Post Office Box 609520
Orlando, Florida 32860
Attn: General Counsel

with a copy to:
Florida Water Services Corporation
Post Office Box 609520
Orlando, Florida 32860
Attn: Charles Sweat, V.P., Developer Relations

AS TO LONGWOOD:

City Administrator
175 West Warren Avenue
Longwood, Florida 32750

with a copy to:
Department of Public Works
Utilities Division
City of Longwood
180 East Warren Avenue
Longwood, Florida 32750

17. Neither party shall be liable to the other for its inability to comply with this Agreement due to causes that are outside their control and could not be avoided by the exercise of due care including: acts of God; fires; strikes; casualties; accidents; breakdowns of or injuries to machinery, pumps, or pipelines; necessary maintenance work; civil or military authority; insurrection; riots; acts

or omissions of third parties; or any other cause beyond the control of the parties. Furthermore, these acts shall not constitute a breach of this Agreement on the part of either party.

18. This Agreement shall remain effective for a period of twenty-five (25) years and shall be binding upon and inure to the benefit of the parties and their respective successors, heirs and assigns, provided written notice is provided to the other party at least sixty (60) days before the assignment becomes effective. Following the first term, this Agreement shall be renewed automatically for consecutive five (5) year terms unless either party provides notice at least six (6) months prior to termination, that it intends to renegotiate or terminate this Agreement.

19. A failure by either party to demand compliance with any provision of this Agreement will not constitute a waiver of that party's right to demand compliance with the provision thereafter. Any waiver by either party of any provision of this Agreement must be in writing and shall not constitute a waiver of any other provision.

20. In the event any part of this Agreement is found invalid or unenforceable by any court of competent jurisdiction, the remainder of this Agreement shall remain in full force and effect.

21. The Parties hereto hereby agree to indemnify each other for all costs, claims and damages, except economic losses but including attorney's fees, arising from the breach of this agreement by the other and from the negligent acts or omissions of the other incident to performance hereof.

22. This Agreement constitutes the entire agreement between the parties and supersedes all prior oral or written agreements. No amendment or modification of this Agreement shall be

effective unless set forth in writing executed by both parties and if required approved by the FPSC.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

FLORIDA WATER:
FLORIDA WATER SERVICES
CORPORATION, a Florida corporation

LONGWOOD:
CITY OF LONGWOOD, a political
subdivision of the State of Florida

By: *Charles L. Sweat*

By: *Paul Lovestrand*

Name: Charles L. Sweat

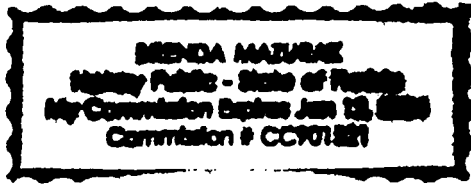
Name: Paul Lovestrand

Title: Vice President Developer Relation

Title: Mayor

STATE OF FLORIDA
COUNTY OF

The foregoing instrument was acknowledged before me this 26th day of July, 2000, by Charles L. Sweat as Vice President Developer Relation for Florida Water Service Corporation, a Florida corporation.



Brenda Mazurak
(Signature of Notary Public)
Brenda Mazurak
(Print, Type or Stamp Commissioned Name of Notary Public)

Personally known _____ OR Produced Identification _____
Type of Identification Produced _____

STATE OF FLORIDA
COUNTY OF

The foregoing instrument was acknowledged before me this 23rd day of August, 2000, by Paul Lovestrand as Mayor for the City of Longwood, a political subdivision of the State of Florida.

Gregory D. Canfield
(Signature of Notary Public)

Personally known OR Produced Identification _____
Type of Identification Produced _____

(Print, Type or Stamp Commissioned Name of Notary Public)

