



# Public Service Commission

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

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RECORDS AND REPORTING

**DATE:** October 30, 2000

**TO:** Tim Vaccaro, Division of Legal Services  
Division of Records and Reporting

**FROM:** Cheryl Johnson, Richard Redemann, Division of Regulatory Oversight

**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)

On April 15, 1999, Florida Cities Water Company (FCWC or utility) and Poinciana Utilities Inc. (PUI or utility), filed an application for transfer of the facilities to Governmental Authority. FCWC and PUI are Class A water and wastewater utilities with potable water supply, treatment and distribution, wastewater collection, transmission treatment, disposal, and reuse systems in Brevard, Collier, Hillsborough, Lee, Osceola, Polk, and Sarasota Counties. The systems located in Collier, Hillsborough, Osceola and Sarasota Counties are not jurisdictional to the Commission. 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.

On April 16, 1999, FCWC and PUI filed a joint application to transfer all of its water and wastewater facilities to the Florida Governmental Utility Authority (GUA) and to cancel its certificates, with the exception of certain portions of its facilities and certificated territory within

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the Town of Fort Myers Beach. 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.

Due to a lawsuit filed by the Town of Fort Myers against Lee County, which resulted in a delay of the validation of the bonds to be used to acquire the Town system, FCWC's filing initially excluded the portion of its territory within the Town of Fort Myers Beach. In order to proceed with the closing for the remaining systems, the parties entered into an Assignment, dated April 15, 1999, wherein GUA assigned its right to purchase the Ft. Myers System to Lee County. The Addendum set a deferred closing date for the Town System, that was based upon resolution of the pending litigation. On July 13, 2000, the Supreme Court of Florida in Raymond J. Murphy v. Lee County, issued Opinion No. SC96997, which affirmed the decision of the lower court, validating and confirming revenue bonds in the amount of \$3,500,000, to be issued by Lee County to pay the acquisition cost of the FCWC water system located within the boundaries of the Town of Fort Myers Beach. The Town System was conveyed to Lee County on September 29, 2000. Therefore, on October 4, 2000, FCWC and Poinciana Amended the Application for Transfer of the Facilities to the GUA and to Lee County to include the Town of Fort Myers Beach. As discussed above, the transfer closing on April 15, 1999, included all the remaining systems, except the Town of Fort Myers Beach. The closing on the Town of Fort Myers Beach was finalized on September 29, 2000.

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.

FCWC and PUI paid the regulatory assessment fees through the date of the transfer on March 20, 2000. Regulatory assessment fees from January 1, 2000 through September 29, 2000 for the Town system will be paid when due in accordance with the Florida Public Service Commission regulations, which is March 30, 2001. FCWC and PUI has satisfied all annual report requirements with the Commission.

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. FCWC appealed this Final Order to the First District Court of Appeal. The Florida Cities Water Company v. Florida Public Service Commission, Case No. 1D99-1666 appeal is pending. 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. Therefore, staff recommends the transfer of the water and wastewater facilities of Florida Cities Water Company and Poinciana Utilities, Inc. to The Florida Governmental Utilities Authority. This docket shall remain open until all matters in Docket No. 950387-SU have been resolved and closed. Upon Docket No. 950387-SU being closed, Certificates Nos. 027-W, 024-S (Lee County), 007-W, 003-S (Brevard County), and 146-W, 103-S (Polk and Osceola) shall be canceled and this docket will be closed administratively.