



Public Service Commission

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DATE: JANUARY 25, 2001

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

FROM: DIVISION OF REGULATORY OVERSIGHT (CLAPP, REDEMANN)
DIVISION OF LEGAL SERVICES (CROSBY, GERVASI)

RE: DOCKET NO. 001083-WU - APPLICATION FOR TRANSFER OF
CERTIFICATE NO. 518-W IN LAKE COUNTY FROM CENTURY REALTY
FUNDS, INC. AND HASELTON ASSOCIATES, LTD. D/B/A ROUTE 19A
NORTH JOINT VENTURE TO CWS COMMUNITIES LP.
COUNTY: LAKE

AGENDA: FEBRUARY 6, 2001 - REGULAR AGENDA - PROPOSED AGENCY ACTION
FOR ISSUES 4 and 5 - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: COMMISSION MAY WANT TO CONSIDER DOCKET NOS.
001083-WU AND 991889-WS CONSECUTIVELY

FILE NAME AND LOCATION: S:\PSC\RGO\WP\001083WU.RCM

CASE BACKGROUND

Route 19A North Joint Venture (North Joint Venture or utility) is a Class C utility serving 147 unmetered residential water and wastewater customers in Lake County. The utility was granted Water Certificate No. 518-W and Wastewater Certificate No. 451-S by Order No. 21342, issued June 6, 1989, in Docket No. 880936-WS. After the utility's wastewater system was interconnected with the City of Eustis, the utility was found to be an exempt reseller, and Wastewater Certificate No. 451-S was canceled by Order No. PSC-96-1470-FOF-SU, issued December 3, 1996, in Docket No. 961146-SU. The utility's 1999 annual report lists total gross revenue of \$18,637 with net operating income of \$1,360.

On August 9, 2000, North Joint Venture submitted an application for transfer of the utility from Century Realty Funds,

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Inc. and Haselton Associates, Ltd. d/b/a Route 19A North Joint Venture (partners or seller) to CWS Communities LP (CWS or buyer). Deficiencies were found in this application. The final corrections were received on October 20, 2000. The transfer application is the subject of this recommendation.

According to the application, on December 10, 1998, the sellers and CWS entered into an agreement of purchase and sale, where CWS contracted to buy six mobile home parks or manufactured home communities, which were owned in part by Century Realty Funds, Inc. Included in this large property transaction, CWS received Haselton Village and the North Joint Venture utility system. According to the agreement, the allocated purchase price for the Haselton Village property is \$4,961,488. The application gave the proposed value of the utility system as of the date of the proposed transfer as \$111,243, based upon the 1999 Annual Report.

Section 367.071, Florida Statutes, requires that no utility shall sell, assign, or transfer its certificate of authorization, facilities or any portion thereof, or majority organizational control without prior approval of the Commission unless such sale, assignment, or transfer is made contingent upon Commission approval. The parties closed on the sale of the utility on March 30, 1999, without having made the transfer contingent upon the approval of the Commission, which is an apparent violation of Section 367.071, Florida Statutes. This matter will be discussed further in Issue 1. The Commission has jurisdiction pursuant to Sections 367.071 and 367.061, Florida Statutes.

DISCUSSION OF ISSUES

ISSUE 1: Should North Joint Venture be ordered to show cause, in writing within 21 days, why it should not be fined for its failure to obtain Commission approval prior to transferring its facilities to CWS, in apparent violation of Section 367.071, Florida Statutes?

RECOMMENDATION: No. A show cause proceeding should not be initiated, but the utility should be placed on notice that it is expected to know and comply with the Commission's rules and regulations. (CROSBY)

STAFF ANALYSIS: Section 367.071(1), Florida Statutes, requires that:

No utility shall sell, assign, or transfer its certificate of authorization, facilities or any portion thereof . . . , without determination and approval of the commission that the proposed sale, assignment, or transfer is in the public interest However, a sale, assignment, or transfer of its certificate of authorization, facilities . . . may occur prior to commission approval if the contract for sale, assignment, or transfer is made contingent upon commission approval.

As stated in the case background, North Joint Venture closed on the sale of its facilities to CWS on March 30, 1999, prior to obtaining Commission approval. In addition, the Agreement of Purchase and Sale contained no provisions to make the agreement contingent upon Commission approval.

Section 367.161(1), Florida Statutes, authorizes the Commission to assess a penalty of not more than \$5,000 for each offense, if a utility is found to have knowingly refused to comply with, or to have willfully violated any provision of Chapter 367, Florida Statutes. In closing on the transfer of its facilities prior to Commission approval, the utility's act was "willful" in the sense intended by Section 367.161, Florida Statutes. In Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL, titled In Re: Investigation Into The Proper Application of Rule 25-14.003, Florida Administrative Code, Relating To Tax Savings Refund For 1988 and 1989 For GTE Florida, Inc., the Commission having found that the company had not intended to violate the rule, nevertheless found it appropriate to order it to show cause why it should not be fined, stating that "[i]n our view, 'willful' implies an intent to do an act, and this is distinct from an intent to violate a statute or rule."

Although North Joint Venture's failure to obtain Commission approval prior to transferring its facilities is an apparent violation of Section 367.071(1), Florida Statutes, there are circumstances that appear to mitigate the utility's apparent violation. Based on information provided by CWS, North Joint Venture was transferred on March 30, 1999 as part of a large property purchase which involved other time sensitive sale transactions. In addition to the large property exchange in this Docket, CWS also purchased Alafaya Palm Valley Associates, Ltd. (Docket No. 991984-WS), and Crystal Lake Club (Docket No. 991889-WS) at about the same time North Joint Venture was purchased. The

circumstances are similar in each of these transactions. Order No. PSC-00-1675-PAA-WS, issued on September 19, 2000, in Docket No. 991984-WS, placed CWS on notice that it is expected to know and comply with the Commission's rules and regulations.

North Joint Venture's failure to obtain the Commission's approval prior to transferring its facilities appears to be due to a lack of understanding and knowledge of the Commission's rules and regulations. Although North Joint Venture is held to know the Commission's rules and statutes under which it must operate, when this matter was brought to the utility's attention, the utility stated that it was not aware of the statutory requirement to obtain prior approval of the transfer from the Commission. Staff does not believe that the apparent violation of Section 367.071, Florida Statutes, rises in these circumstances to the level which warrants the initiation of a show cause proceeding. Staff recommends that North Joint Venture should not be ordered to show cause for failure to obtain Commission approval prior to transferring its facilities to CWS. CWS should again be placed on notice that it is expected to know and comply with the Commission's rules and regulations.

ISSUE 2: Should North Joint Venture be ordered to show cause, in writing within 21 days, why it should not be fined up to \$5,000 per day for failure to maintain its accounts and records in conformance with the National Association of Regulatory Utility Commissioners (NARUC) Uniform System of Accounts (USOA), and for failure to maintain its books and records in-state, in apparent violation of Rules 25-30.115(1) and 25-30.110(1)(b), Florida Administrative Code, respectively?

RECOMMENDATION: No. North Joint Venture should not be ordered to show cause at this time. However, the utility should be ordered to maintain its books and records in conformance with the 1996 NARUC USOA. The utility should also be ordered to maintain its books and records in-state or request the requisite authorization from the Commission to continue to maintain them out-of-state. The utility should be ordered to submit a statement from its accountant by March 31, 2001, with its 2000 Annual Report stating that its books and records are in conformance with NARUC USOA and indicating that its books and records are being maintained in-state or requesting authorization to maintain them out-of-state. (CROSBY, CLAPP)

STAFF ANALYSIS: Rule 25-30.115(1), Florida Administrative Code, states "Water and wastewater utilities shall, effective January 1, 1998, maintain their accounts and records in conformity with the 1996 NARUC Uniform Systems of Accounts adopted by the National Association of Regulatory Utility Commissioners." Accounting Instruction 2, of the NARUC USOA for Class C utilities states:

Each utility shall keep its books of account, and all other books, records, and memoranda which support the entries in such books of account so as to be able to furnish readily full information as to any item included in any account. Each entry shall be supported by such detailed information as will permit a ready identification, analysis, and verification of all facts relevant thereto. (emphasis added)

Further, Accounting Instruction 4, of the NARUC USOA for Class C utilities states:

Each utility shall keep its books on a monthly basis so that for each month all transactions applicable thereto, as nearly as may be ascertained, shall be entered in the books of the utility. Amounts applicable or assignable to specific utility departments shall be segregated monthly. Each utility shall close its books at the end

of each calendar year unless otherwise authorized by the Commission. (emphasis added)

Rule 25-30.450, Florida Administrative Code, states:

In each instance, the utility must be able to support any schedule submitted, as well as any adjustments or allocations relied on by the utility. The work sheets, etc., supporting the schedules and data submitted must be organized in a systematic and rational manner so as to enable Commission personnel to verify the schedules in an expedient manner and minimum amount of time. The supporting work sheets, etc., shall list all reference sources necessary to enable Commission personnel to track to original source of entry into the financial and accounting system and, in addition, verify amounts to the appropriate schedules. (emphasis added)

During a staff audit of North Joint Venture's books and records in September 2000, staff learned that its accounts are commingled with those of the Haselton Village community and the books and records are maintained out-of-state. The resulting audit report contained audit exceptions related to the utility's books and records.

Audit Exception No. 1. This exception was the audit opinion that the utility was not maintaining its books pursuant to Rule 25-30.115(1), Florida Administrative Code, which requires all water and wastewater utilities to maintain their accounts and records in conformance with the NARUC Uniform System of Accounts. The auditor further stated that: the utility accounts are commingled with those of the operation of the Haselton Village community; documentation was not maintained at the utility location for plant additions, and no retirement entries were made; the utility contracts with a CPA firm to prepare its Annual Report to the Commission; and, the Annual Report is prepared by extracting utility activity from its Haselton Village community general ledger.

Moreover, documentation relative to utility operations and plant was located out-of-state, in apparent violation of Rule 25-30.110(1)(b), Florida Administrative Code. That rule requires that "[u]nless otherwise authorized by the Commission, each utility shall maintain its records at the office or offices of the utility within this state and shall keep those records open for inspection during business hours by Commission staff."

Section 367.161, Florida Statutes, authorizes the Commission to assess a penalty of not more than \$5,000 per day for each offense, if a utility is found to have knowingly refused to comply with, or to have willfully violated any Commission rule, order, or provision of Chapter 367, Florida Statutes. Utilities are charged with the knowledge of the Commission's rules and statutes. Additionally, "[i]t is a common maxim, familiar to all minds that 'ignorance of the law' will not excuse any person, either civilly or criminally." Barlow v. United States, 32 U.S. 404, 411 (1833). Thus, any intentional act, such as the utility's failure to maintain its accounts and records in conformance with the NARUC USOA, or its failure to maintain its accounts and records in-state, would meet the standard for a "willful violation." In Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL, titled In Re: Investigation Into The Proper Application of Rule 25-14.003, F.A.C., Relating To Tax Savings Refund for 1988 and 1989 For GTE Florida, Inc., the Commission, having found that the company had not intended to violate the rule, nevertheless found it appropriate to order it to show cause why it should not be fined, stating that "'willful' implies an intent to do an act, and this is distinct from an intent to violate a statute or rule." Id. at 6.

The sellers' failure to maintain the utility's books and records in accordance with 1996 NARUC USOA is in apparent violation of Rule 25-30.115, Florida Administrative Code. However, the sellers do not operate the utility anymore because CWS has acquired its facilities and is currently operating the utility. Staff has received a verbal commitment from CWS of its intention to bring the books and records into compliance with the 1996 NARUC USOA. Moreover, with respect to the utility's practice of maintaining its books and records out-of-state, during the course of this proceeding, the utility endeavored to make the necessary information available to staff for purposes of the audit. In light of these circumstances, staff believes that a show cause proceeding should not be initiated at this time.

For the foregoing reasons, staff recommends that North Joint Venture should not be ordered to show cause at this time, in writing within 21 days, why it should not be fined up to \$5,000 per day for failure to maintain its books and records in conformance with the NARUC USOA or for failure to maintain its accounts and records in-state, in apparent violation of Rules 25-30.115(1) and 25-30.110(1)(b), Florida Administrative Code, respectively. However, the utility should be ordered to maintain its books and records in conformance with the 1996 NARUC USOA. The utility should also be ordered to maintain its books and records in-state or request the requisite authorization from the Commission to continue

to maintain them out-of-state.¹ The utility should be ordered to submit a statement from its accountant by March 31, 2001, with its 2000 Annual Report stating that its books and records are in conformance with 1996 NARUC USOA and indicating that its books and records are being maintained in-state or requesting authorization to maintain the books and records out-of-state.

¹ In determining whether to request such authorization from the Commission, the utility should be aware that Section 367.121(1)(k), Florida Statutes, authorizes the Commission "[to] assess a utility for reasonable travel costs associated with reviewing the records of the utility and its affiliates when such records are kept out-of-state." And Rule 25-30.110(1)(c), Florida Administrative Code, defines reasonable travel expenses as "those travel expenses that are equivalent to travel expenses paid by the Commission in the ordinary course of its business."

ISSUE 3: Should the transfer of Certificate No. 518-W from Century Realty Funds, Inc. and Haselton Associates, LTD. d/b/a Route 19A North Joint Venture to CWS Communities LP be approved?

RECOMMENDATION: Yes, the transfer of Certificate No. 518-W from Century Realty Funds, Inc. and Haselton Associates, LTD. d/b/a Route 19A North Joint Venture to CWS Communities LP should be approved. A description of the territory being transferred is appended to this memorandum as Attachment A. (CLAPP, REDEMANN)

STAFF ANALYSIS: As stated in the case background, North Joint Venture applied for a transfer of its Water Certificate No. 518-W in Lake County to CWS on August 9, 2000. Deficiencies were found and final corrections were received on October 20, 2000. The application is in compliance with the governing statute, Section 367.071, Florida Statutes, and other pertinent statutes and administrative rules concerning an application for transfer. The application contains a check in the amount of \$750, which is the correct filing fee pursuant to Rule 25-30.020, Florida Administrative Code. The applicant has provided evidence, in the form of a recorded special warranty deed, that the utility facilities are located on real property which is owned by CWS Communities LP, as required by Rule 25-30.037(2)(q), Florida Administrative Code.

In addition, the application contains proof of compliance with the noticing provisions set forth in Rule 25-30.030, Florida Administrative Code. No objections to the application were received, and the time for the filing of such objections has expired. A description of the territory served by the utility is appended to this memorandum as Attachment A. This is the original service area that was granted to the utility in Order No. 21342, issued June 6, 1989.

The application contained a statement of how the transfer would be in the public interest, pursuant to Rule 25-30.037(2)(j), Florida Administrative Code. The statement provides that the transfer is in the public interest because the Haselton Village customers would continue to receive the quality and service to which they have become accustomed. Regarding the buyer's technical ability, CWS will continue with the management team that has operated the water utility for many years. At the present time, the utility provides safe and reliable water service to its customers, according to the application. CWS has the financial resources to maintain consistent compliance with environmental regulations. Staff has contacted the Department of Environmental Protection (DEP) and has learned that there are no outstanding

notices of violation against the utility. Staff believes that the buyer has demonstrated the overall financial and technical ability to insure the continued operations of the water system.

According to the application, the buyer's financial ability will not be affected by this transfer. CWS has provided the company's consolidated financial statements. The financial statements disclosed assets of \$369,840,000 and equity of \$290,328,000. CWS has indicated that it will provide the financial stability required to maintain the utility systems in accordance with Commission standards.

The application contains a copy of the agreement for purchase and sale which includes the purchase price, terms of payment and a list of the assets purchased and liabilities assumed. The buyer will assume responsibility for the seller's existing mortgage on the Haselton Village property in the amount of approximately \$3,152,955.

The applicant stated that at the time of closing there were no outstanding or pending customer deposits, guaranteed revenue contracts, developer agreements, or customer advances related to the utility. Additionally, the applicant stated that the buyer will fulfill the commitments, obligations and representations of the seller with regard to utility matters. The buyer stated that it would pay any outstanding regulatory assessment fees or fines.

According to our records, the utility is current on its regulatory assessment fees and has filed an annual report for 1999 and all prior years. CWS will be responsible for future annual reports and the payment of all regulatory assessment fees for the year 2000. The application states that CWS's representative has performed a reasonable investigation of the utility system and it appears to be in satisfactory condition and in compliance with all applicable standards set by the DEP.

Based on the above, staff recommends that the transfer of assets and facilities from the seller to the buyer and the transfer of Water Certificate No. 518-W is in the public interest and should be approved.

CWS Communities LP

Lake County - Water Service Area
Serving Haselton Village Mobile Home Park

Township 18 South, Range 26 East
Section 34

PARCEL A: Beginning at the East 1/4 corner of Section 34, Township 18 South, Range 26 East, Lake County, Florida, run thence South 01 degrees 48' 30" West a distance of 600.06 feet, thence South 60 degrees 02' 15" East a distance of 258.75 feet to the Westerly right of way of County Road No. 19A, thence South 27 degrees 20' 27" West along said right of way, a distance of 529.11 feet to the beginning of a curve having a radius of 510.46 feet and being concave Easterly, thence along the arc of said curve and through a central angle of 23 degrees 49' 40" an arc length of 212.28 feet, thence South 01 degrees 43' 53" West along said Westerly right of way of County Road No. 19-A, a distance of 369.71 feet to the Northerly right of way of County Road No. 452-A, thence South 89 degrees 58' 57" West along said Northerly right of way a distance of 806.22 feet, thence North 01 degrees 52' 26" East, a distance of 514.53 feet, thence North 89 degrees 19' 12" West a distance of 9.49 feet, thence North 01 degrees 50' 47" East a distance of 39.32 feet, thence South 89 degrees 37' 31" West a distance of 339.62 feet, thence North 01 degrees 51' 37" East a distance of 641.18 feet to the Southwest bank of a dug canal, thence North 25 degrees 58' 09" West along said Southwest bank of dug canal, a distance of 304.55 feet, thence North 01 degrees 51' 37" East a distance of 340.00 feet to the East-West Mid-Section line, thence South 88 degrees 35' 32" East along said East-West Mid-Section line, a distance of 1315.80 feet to the Point of Beginning.

PARCEL B: (Wastewater Treatment Plant Site) That part of the Northeast 1/4 of Section 34, Township 18 South, Range 26 East, Lake County, Florida, described as follows: Begin at the Southeast corner of said Northeast 1/4 of Section 34, run thence North 01 degrees 54' 49" East along the East line of said Northeast 1/4 a distance of 202.01 feet, thence North 42 degrees 18' 58" West 524.11 feet, thence South 22 degrees 28' 22" West 621.10 feet to a point on the South line of said Northwest 1/4 of Section 34, thence South 88 degrees 28' 40" East along the said South line of the Northeast 1/4 Section 34, a distance of 583.71 feet to the Point of Beginning and Point of Terminus.

ISSUE 4: What is the rate base of the utility at the time of transfer?

RECOMMENDATION: The rate base of the utility could not be determined at this time. CWS should be put on notice that an original cost study may be required at the time of filing a rate petition, if the utility cannot provide the original cost documentation. (CLAPP)

STAFF ANALYSIS: As discussed in Issue 2, North Joint Venture did not maintain its books and records in compliance with 1996 NARUC USOA. The utility accounts are commingled with operating records of Haselton Village. In addition, there has never been a Commission audit of the North Joint Venture system books and records and documentation relative to utility operations and plant was located out-of-state. Therefore, staff was unable to obtain sufficient information to determine the utility's rate base at the time of transfer. Further, two additional audit exceptions should be noted.

Audit Exception No. 2. This exception was the audit opinion that without an official starting point, a per audit balance could not be established for land, plant, and accumulated depreciation. The staff auditor recommended that an original cost study be performed in conjunction with the next rate proceeding for the utility.

Audit Exception No. 3. This exception was the audit opinion that the CIAC and Amortization of CIAC were incorrect. Based upon the existing rates approved in the certification docket, by Order No. 21342 mentioned earlier, the utility had charged its 143 customers a tap-in fee of \$325. From June 30, 1988, to March 31, 1999, the utility has added four customers. The resulting CIAC (147 x \$325) is \$47,775. The auditor calculated CIAC amortization to be \$20,686.

Although, pursuant to Section 367.071(5), Florida Statutes, which states, "The commission by order may establish the rate base for a utility or its facilities or property when the commission approves a sale, assignment, or transfer thereof..." staff recommends that rate base at the time of the transfer cannot be set at this time since staff was unable to obtain sufficient information to determine the utility's rate base at the time of transfer. Staff further recommends that the utility be put on notice that an original cost study may be required at the time of filing a rate petition, if the utility cannot provide the original cost documentation. If the filing is a Staff Assisted Rate Case (SARC), then Commission staff may prepare the original cost study if appropriate at that time.

ISSUE 5: Should an acquisition adjustment be approved?

RECOMMENDATION: No. An acquisition adjustment was not requested. Moreover, an acquisition adjustment cannot be determined at this time. (CLAPP)

STAFF ANALYSIS: An acquisition adjustment results when the purchase price differs from the original cost calculation adjusted to the time of the acquisition. The buyer stated in the application that it was not seeking an acquisition adjustment. As previously noted, the buyer acquired the utility facilities along with a mobile home community as part of a large acquisition of six mobile home and manufactured housing communities. Haselton Village, including the utility, had an allocated purchase price of \$4,961,488. Neither party to the overall sales transaction was able to place a separate value on the purchase of the utility facilities. In addition, as discussed in Issue 4, staff recommends that rate base cannot be established at this time. Therefore, without the rate base or purchase price associated with utility facilities the amount of an associated acquisition adjustment cannot be determined at this time.

Moreover, in the absence of extraordinary circumstances, it has been Commission practice that a subsequent purchase of a utility system at a premium or discount should not affect the rate base calculation. There are no extraordinary circumstances regarding this purchase that would justify an acquisition adjustment to rate base. The treatment of the acquisition adjustment in this instance is consistent with previous Commission decisions. See Order No. PSC-00-1675-PAA-WS, issued September 19, 2000, in Docket No. 991984-WS; Order No. PSC-00-1659-PAA-WU, issued September 18, 2000, in Docket No. 000334-WU; Order No. PSC-00-1515-PAA-WU, issued August 21, 2000, in Docket No. 000333-WU; and Order No. PSC-00-1389-PAA-WU, issued July 31, 2000, in Docket No. 991001-WU.

In summary, the buyer is not requesting an acquisition adjustment. The buyer was unable to provide a separate purchase price for the utility's assets because the utility assets were included, non-specifically, in the overall sales transaction for the mobile home community. Staff recommends that rate base cannot be determined at this time.

ISSUE 6: Should the rates and charges approved for this utility be continued?

RECOMMENDATION: Yes, CWS should continue charging the rates and charges approved for this utility system until authorized to change by the Commission in a subsequent proceeding. The tariff reflecting the change in ownership should be effective for services provided or connections made on or after the stamped approval date on the tariff sheets. (CLAPP)

STAFF ANALYSIS: The North Joint Venture's current rates for service were approved by the Commission pursuant to Order No. 21342, issued June 6, 1989, in Docket No. 880936-WS. The utility's approved rates and charges are as follows:

Water Monthly Service Rates
Residential and General Service

<u>Flat Base Facility Charge</u>	<u>Approved</u>
Occupied Unit	\$7.00
Unoccupied Unit	\$3.00
If Unoccupied for 60 consecutive days.	

Miscellaneous Service Charges

None

Service Availability Charges

Residential Tap in Fee - per ERC \$325.00

Rule 25-9.044(1), Florida Administrative Code, provides that:

In case of change of ownership or control of a utility which places the operation under a different or new utility . . . the company which will thereafter operate the utility business must adopt and use the rates, classification and regulations of the former operating company (unless authorized to change by the commission)

CWS has not requested a change in the rates and charges of the utility. Accordingly, staff recommends that the utility continue operations under the existing tariff and apply the approved rates and charges until authorized to change by the Commission in a subsequent proceeding. The utility has filed a revised tariff

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reflecting the change in issuing officer due to the transfer of control. If the Commission approves staff's recommendation, the tariff filing should be effective for services rendered or connections made on or after the stamped approval date.

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ISSUE 7: Should this docket be closed?

RECOMMENDATION: Yes, if no timely protest is received to the proposed agency action issues, the Order should become final and effective upon the issuance of a Consummating Order and the docket should be closed. (CROSBY)

STAFF ANALYSIS: If no timely protest is received to the proposed agency action issues, upon the expiration of the protest period, the Order should become final and effective upon the issuance of a Consummating Order and the docket should be closed.