

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for rate increase in Brevard, Charlotte/Lee, Citrus, Clay, Duval, Highlands, Lake, Marion, Martin, Nassau, Orange, Osceola, Pasco, Putnam, Seminole, Volusia, and Washington Counties by SOUTHERN STATES UTILITIES, INC.; Collier County by MARCO SHORES UTILITIES (Deltona); Hernando County by SPRING HILL UTILITIES (Deltona); and Volusia County by DELTONA LAKES UTILITIES (Deltona).

DOCKET NO. 920199-WS
ORDER NO. PSC-01-0387-AS-WS
ISSUED: February 15, 2001

The following Commissioners participated in the disposition of this matter:

E. LEON JACOBS, JR., Chairman
J. TERRY DEASON
BRAULIO L. BAEZ
MICHAEL A. PALECKI

ORDER GRANTING MOTION TO APPROVE SETTLEMENT AGREEMENT EXTENSION

BY THE COMMISSION:

BACKGROUND

On May 11, 1992, Southern States Utilities, Inc., now Florida Water Services Corporation (FWSC or utility) filed an application to increase the rates and charges for 127 of its water and wastewater service areas regulated by this Commission. By Order No. PSC-93-0423-FOF-WS, issued March 22, 1993, this Commission approved an increase in the utility's final rates and charges, basing the rates on a uniform rate structure.

The Office of Public Counsel (OPC) filed its Notice of Intervention on May 21, 1992, and by Order No. PSC-92-0417-PCO-WS, issued May 27, 1992, OPC's intervention was acknowledged. On May 28, 1993, the Spring Hill Civic Association, Inc. (Spring Hill),

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filed its petition for intervention and reconsideration of Order No. PSC-93-0423-FOF-WS. The Petition for Intervention was initially denied by Order No. PSC-93-1598-FOF-WS, issued November 2, 1993. However, by Order No. PSC-97-1094-PCO-WS, issued September 22, 1997, this Commission ultimately granted intervention to Spring Hill.

Order No. PSC-93-0423-FOF-WS was appealed, and on April 6, 1995, the First District Court of Appeal (First District) reversed in part and affirmed in part that Order. Citrus County v. Southern States Utils., Inc., 656 So. 2d 1307 (Fla. 1st DCA 1995), rev. den., 663 So. 2d 631 (Fla. 1995) (Citrus County). The First District reversed the uniform rate structure on the grounds that there was no competent substantial evidence demonstrating that the 127 systems at issue were "functionally related," a requirement found in Section 367.171(7), Florida Statutes, which addresses the jurisdictional authority of this Commission over private water and wastewater utilities.

On October 19, 1995, this Commission issued its initial order on remand, Order No. PSC-95-1292-FOF-WS, Order Complying with Mandate, Requiring Refund, and Disposing of Joint Petition (Initial Refund Order). By that Order, FWSC was ordered to implement a modified stand-alone rate structure, develop rates based on a water benchmark of \$52 per month and a wastewater benchmark of \$65 per month, and to refund accordingly to those customers who had overpaid. However, with respect to those customers who had underpaid, this Commission found that the utility could not collect from those customers due, at least in part, to the prohibition against retroactive ratemaking.

On November 3, 1995, FWSC filed a Motion for Reconsideration of Order No. PSC-95-1292-FOF-WS, requesting that this Commission rescind any refund requirement or alternatively provide authority to impose equivalent surcharges, and requesting that the uniform rate structure be reinstated. At the February 20, 1996, Agenda Conference, FWSC's Motion for Reconsideration was denied.

Because FWSC had filed its Motion for Reconsideration, FWSC did not implement the modified stand-alone rate structure in Docket No. 920199-WS. However, FWSC did implement the modified stand-alone rate structure on January 23, 1996, for the systems included

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in a subsequent rate case, Docket No. 950495-WS (the 1995 Rate Case), as a predicate for securing interim rate relief in that case. Modified stand-alone rates were not implemented for the Spring Hill facilities in the 1995 Rate Case, however, because prior to that case being filed, the Hernando County Board of County Commissioners had rescinded this Commission's jurisdiction to regulate water and wastewater utilities in that County, and that system was consequently removed from the 1995 Rate Case.

On February 29, 1996, subsequent to this Commission's decision on the utility's motion for reconsideration, but prior to the issuance of an order memorializing the decision, the Florida Supreme Court issued its opinion in GTE Florida, Inc. v. Clark, 668 So. 2d 971 (Fla. 1996) (GTE). By Order No. PSC-96-0406-FOF-WS, issued March 21, 1996, after finding that the GTE decision could have an impact on a decision in this case, this Commission decided to reconsider, on its own motion, the entire decision on remand.

By Order No. PSC-96-1046-FOF-WS, issued August 14, 1996, this Commission affirmed its earlier determination that FWSC was required to implement the modified stand-alone rate structure and to make refunds to customers who had overpaid. However, this Commission also determined that FWSC could not impose a surcharge on those customers who paid less under the uniform rate structure. The utility was ordered to make refunds (within 90 days of the issuance of the order) to its customers for the period between the implementation of final rates in September, 1993, and the date that interim rates were placed into effect in Docket No. 950495-WS.

However, that Order was appealed by the utility to the First District, and was initially stayed. On June 17, 1997, the First District issued its opinion reversing Order No. PSC-96-1046-FOF-WS implementing the remand of the Citrus County decision. See Southern States Utils., Inc. v. FPSC, 704 So. 2d 555 (Fla. 1st DCA 1997) (Southern States).

On July 17, 1997, FWSC and Hernando County (Hernando) entered into a Settlement Agreement (Agreement). Pursuant to the Agreement, among other things, FWSC and Hernando agreed on the rates to be charged by the utility for the period June 14, 1997, through September 1, 2000. However, the Agreement specifically stated that it did not settle or resolve any refund issue or refund

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obligation of FWSC during any period of time prior to June 14, 1997, and that each party would abide by any final, nonappealable Order of this Commission.

By Order No. PSC-97-1033-PCO-WS, issued August 27, 1997, this Commission required FWSC to provide an exact calculation by service area of the potential refund and surcharge amounts with and without interest as of June 30, 1997. By that Order, all parties were allowed to file briefs on the appropriate action this Commission should take in light of the Southern States decision. By Order No. PSC-97-1290-PCO-WS, issued October 17, 1997, this Commission required FWSC to provide notice by October 22, 1997 to all affected customers of the Southern States decision and its potential impact. The notice provided that affected customers could provide written comments and letters concerning their views on what action this Commission should take. Order No. PSC-97-1290-PCO-WS also established the new deadline for filing briefs as November 5, 1997. On November 5, 1997, the parties timely filed their briefs.

On December 15, 1997, a Special Agenda Conference was held to address the remand of Southern States. Pursuant to the decisions made at the Special Agenda Conference, this Commission issued Order No. PSC-98-0143-FOF-WS, January 26, 1998, declining to order refunds and surcharges for the period between the implementation of the final uniform rates on September 15, 1993 and January 23, 1996, the date on which modified stand-alone rates were implemented in the 1995 Rate Case. However, FWSC was ordered to provide refunds, without commensurate surcharges, to the Spring Hill water and wastewater customers for the period of January 23, 1996 through June 14, 1997, the effective date of FWSC's initial settlement agreement with Hernando establishing rates for the Spring Hill systems on a prospective basis.

On February 18, 1998, Sugarmill Woods Civic Association, Inc., formerly known as Cypress and Oaks Villages Association (Sugarmill Woods), filed a Notice of Appeal of Order No. PSC-98-0143-FOF-WS. On February 24, 1998, FWSC notified this Commission that it had also appealed Order No. PSC-98-0143-FOF-WS. On that same day, FWSC filed a Motion for Stay of Order No. PSC-98-0143-FOF-WS. Numerous other appeals of that Order followed. By Order No. PSC-98-0749-FOF-WS, issued May 29, 1998, this Commission granted FWSC's Motion to

Stay the Spring Hill refund requirement pending the Court's decision.

While the appeal was pending, FWSC and Hernando entered into a Settlement Agreement Extension (Settlement Extension) on December 12, 2000. Pursuant to this Settlement Extension, FWSC and Hernando state that they have reached a settlement "resolving all issues arising out of the Spring Hill refund appeal." The Settlement Extension was approved by the Hernando County Board of County Commissioners by Order issued on December 12, 2000.

On December 20, 2000, FWSC filed a motion for the First District to relinquish jurisdiction of the Spring Hill appeal to allow us to consider and take action on the Settlement Extension between FWSC and Hernando. The Court granted the motion on December 22, 2000, and relinquished jurisdiction to this Commission until February 8, 2001.

On January 10, FWSC filed its Motion to Approve Settlement Agreement Extension Concerning Spring Hill Appeal (Motion to Approve Settlement Extension). Pursuant to the relinquishment of jurisdiction by the First District, and pursuant to our jurisdiction under Sections 367.011, 367.171, and 367.081, Florida Statutes, we have jurisdiction to consider FWSC's Motion to Approve Settlement Extension.

We considered the Motion to Approve Settlement Extension at our February 6, 2001 Agenda Conference. In accordance with Rule 25-22.0021, Florida Administrative Code, we allowed participation by the parties at that Agenda Conference.

MOTION TO APPROVE SETTLEMENT EXTENSION

By Hernando County Resolution No. 94-77, effective April 5, 1994, Hernando County rescinded this Commission's jurisdiction over water and wastewater utilities located in that County. By Order No. PSC-94-0719-FOF-WS, issued June 9, 1994, in Docket No. 940408-WS, this Commission acknowledged the rescission of its jurisdiction and established the procedures for cancellation of certificates in Hernando County. That Order specifically quoted Section 367.171(5), Florida Statutes, which states that:

When a utility becomes subject to regulation by a county, all cases in which the utility is a party then pending before the commission, or in any court by appeal from any order of the commission, shall remain within the jurisdiction of the commission or court until disposed of in accordance with the law in effect on the day such case was filed by any party with the commission or initiated by the commission, whether or not the parties or the subject of any case relates to a utility in a county wherein this chapter no longer applies.

That Order further noted that FWSC held valid Certificates Nos. 046-W and 047-S, that the rate case in Docket No. 920199-WS was still pending before this Commission, and that this Commission would retain jurisdiction over that case until it was concluded.

As previously noted, the issue of refunds for the customers of the Spring Hill Division of FWSC for the period January 23, 1996 through June 13, 1997 is still pending on appeal. In its Motion to Approve Settlement Extension, FWSC notes that this Commission and OPC defend and support on appeal that portion of the Final Order imposing the Spring Hill refund requirement. The utility states that it:

challenges the Spring Hill refund requirement on numerous grounds, specifically that: (a) in light of the First District Court of Appeal's decision rescinding the "functionally related" test for a uniform rate structure . . . the uniform rate structure ordered by the Commission in its March 1993 final order was lawful and could not provide the basis for refunds; (b) under GTE Florida, any refund requirement must be accompanied by authority for Florida Water to collect commensurate surcharges from Florida Water's remaining customers; (c) the revenue derived from the uniform rates collected by Florida Water from January 23, 1996 through June 13, 1997 was less than the revenue Florida Water would have collected under stand-alone rates for the same time period, and therefore, Florida Water should be authorized to collect surcharges - - not make refunds - - for the appropriate time period at issue; and (d) any refund liability of Florida Water should be limited to the

period of August 14, 1996, the date of the Final Refund Order through June 13, 1997, the effective date of the initial settlement agreement with Hernando County.

Recognizing this dispute, FWSC and Hernando executed the December 12, 2000 Settlement Extension resolving all issues concerning the requirement that FWSC make refunds to the Spring Hill water and wastewater customers for the period of January 23, 1996 through June 13, 1997. The Settlement Extension is an extension of the Agreement entered into between FWSC and Hernando dated July 17, 1997, which established water and wastewater rates for the period June 14, 1997, through September 1, 2000. FWSC states that the Settlement Extension is supported by Intervenor Spring Hill, a group comprising the substantial portion of FWSC's customers in the Spring Hill service area, and was approved by the Hernando County Board of County Commissioners by Order entered December 12, 2000.

The current amount of any Spring Hill refund remains at issue before the Court. FWSC claims "that the appropriate lawful period for any refunds (and surcharges) is August 14, 1996 through June 13, 1997, which equates to potential refunds (and surcharges), including interest, of approximately \$1.62 million." However, it was the position of this Commission, along with that of the OPC, that the appropriate lawful refund period is January 23, 1996 through June 13, 1997, which equates to potential refunds, including interest, of approximately \$3.1 million.

Upon approval of the Settlement Extension, FWSC has agreed to provide rate reductions over the next three-year period totaling \$1,862,000. The utility has also agreed to abstain from filing for a rate increase for the Spring Hill water or wastewater systems for a period of three years "following execution of all necessary Court, County, and PSC orders accepting the terms set forth herein and thereby relieving" FWSC from any liability for refunds to its Spring Hill customers for the period January 23, 1996 through June 13, 1997. The agreement to refrain from filing for a rate increase would be terminated if a petition or complaint is filed by or with Hernando County seeking a decrease in FWSC's Spring Hill rates or if Hernando County pursues an earnings investigation or decrease in FWSC's rates. The Settlement Extension allows FWSC to implement indexing and pass-through increases for the three-year

period. FWSC further alleges that "[t]he terms and conditions of the three-year stay-out period reflected in the Settlement Extension are consistent with those previously approved by [this] Commission for Florida Water [and] for the Palm Coast water and wastewater systems which were ultimately acquired by Florida Water."

FWSC further states that:

[A]pproval of the Settlement Agreement Extension is in the public interest. If the court were to reverse that portion of the final order concerning the Spring Hill refund and remand for further proceedings addressing surcharges, Florida Water and its customers will be faced with another round of Commission hearings and appeals and the substantial rate case expense associated therewith. Florida Water, the Spring Hill Civic Association and Hernando County have entered into an agreement which brings at least a portion of this rate case, which has been on-going for over eight years, to a close. The Settlement Agreement Extension provides substantial benefits in the form of reduced rates to the Spring Hill water and wastewater customers of Florida Water as well as rate stability and elimination of additional rate case expense.

Our staff contacted both OPC and Mr. Mike Twomey (who originally represented Spring Hill). Mr. Twomey stated that he no longer represented the interests of Spring Hill. Mr. Jack Shreve, the Public Counsel, has advised our staff that OPC will neither support nor oppose the Settlement Extension.

In considering this Settlement Extension, we note that the benefits of this offer include:

- 1) Substantial rate reductions over the three-year period totaling \$1,862,000.
- 2) Abstention from filing for a rate increase for the Spring Hill water or wastewater systems for a period of three years, and the potential for higher rates and additional rate case expense associated with another rate

case being deferred until at least February 6, 2004 due to the 3-year stayout provision.

- 3) Elimination of additional rate case expense for this system.
- 4) Rate stability for at least three years.
- 5) Avoidance of the uncertainty of further litigation and the possibility of another reversal by the First District, causing customers to be faced with another round of Commission hearings and appeals and the substantial additional rate case expense associated therewith.

We note that attorneys for both FWSC and Hernando County state that in addition to the County having approved and signed this Settlement Extension, that the Settlement Extension is supported by Intervenor Spring Hill, a group comprising the substantial portion of Florida Water's customers in the Spring Hill service area. Moreover, our staff has contacted Mr. Morty Miller, an intervenor in this case and a representative of Spring Hill, and he confirms that Spring Hill supports this agreement. We also note that FWSC states that it will withdraw its appeal of the Spring Hill refund issue upon approval by this Commission of the Settlement Extension.

Upon consideration, we find that it is in the public interest to approve the Settlement Extension. Moreover, we find that none of the provisions of the Settlement Extension are in contravention of the law, due process, or the law of the case as set forth in the previous opinions of the First District. Therefore, we shall grant FWSC's motion and the Settlement Extension is approved as submitted.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Florida Water Services Corporation's Motion to Approve Settlement Agreement Extension Concerning Spring Hill Appeal is granted, and the Settlement Agreement Extension entered into between Florida Water Services Corporation and Hernando County is approved. It is further

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ORDERED that this docket shall remain open pending the outcome of the appeal.

By ORDER of the Florida Public Service Commission this 15th day of February, 2001.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records

(S E A L)

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida

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Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Director, Division of Records and reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.