



Public Service Commission
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RECORDS AND REPORTING

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RECEIVED-FPSC

DATE: FEBRUARY 22, 2001

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

FROM: DIVISION OF ECONOMIC REGULATION (MERCHANT) *PMK*
DIVISION OF LEGAL SERVICES (WAEGER) *PS* *RT* *188*

RE: DOCKET NO. 970991-SU - INVESTIGATION INTO RATES AND CHARGES OF FLORIDA CITIES WATER COMPANY - LEE COUNTY DIVISION (SOUTH FT. MYERS WASTEWATER SYSTEM) FOR POTENTIAL OVEREARNINGS.
COUNTY: LEE

AGENDA: 03/06/2001 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\ECR\WP\970991cd.RCM

CASE BACKGROUND

Florida Cities Water Company (FCWC or utility) was a Class A utility that provided water and wastewater services in several counties, including Lee County, in South Florida. From its Lee County systems, FCWC provided service to two communities in Ft. Myers: a northern sector and a southern sector. This docket relates to the South Ft. Myers wastewater facility. As of December 31, 1997, this facility was serving approximately 8,637 equivalent residential connections (ERCs). The utility served an area that was designated by the South Florida Water Management District as a critical use area.

On April 15, 1999, FCWC and its affiliate, Poinciana Utilities, Inc. (PUI) filed a joint application to transfer all of its water and wastewater facilities to the Florida Governmental Utility Authority (GUA), except for the facilities serving the Town

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of Ft. Myers Beach. The GUA is an exempt governmental entity. That transfer was finalized on April 15, 1999. On October 4, 2000, FCWC and PUI amended their transfer application to include the facilities serving the Town of Fort Myers Beach (Town). The transfer of facilities was approved by Order No. PSC-00-2351-FOF-WS, issued December 7, 2000 in Docket No. 990489-WS.

In that Order approving the transfer, the Commission noted that Docket No. 950387-SU, involving this utility, was still open and that the utility had been directed to make refunds in that docket by Order No. PSC-99-0691-FOF-SU, issued April 8, 1999. Therefore, the Commission kept the transfer docket open and did not cancel the certificates for this utility pending the final outcome in that docket. However, the Order approving the transfer made no mention of this overearnings docket.

This recommendation addresses the resolution of the settlement offer that was approved by this Commission regarding the apparent overearnings of the South Ft. Myers wastewater system. The Commission has jurisdiction pursuant to Sections 367.011(2) and 367.082, Florida Statutes.

DISCUSSION OF ISSUE

ISSUE 1: Should this docket be closed?

RECOMMENDATION: Yes. The only action remaining to be done in this docket was to have Florida Cities Water Company credit any remaining overearnings as of December 31, 2000 to contributions-in-aid-of-construction (CIAC). However, with the sale of the utility to Florida Governmental Utility Authority, an exempt entity, this action has no meaning and the requirement is moot. As such, this docket should be closed. (MERCHANT, JAEGER)

STAFF ANALYSIS: On July 10, 1996, Lee County approached FCWC regarding treatment and disposal of reclaimed water from its Ft. Myers Beach wastewater treatment plant. On August 28, 1996, FCWC and Lee County entered into an agreement effective July 10, 1996, for Lee County to interconnect its reclaimed water distribution facilities with FCWC's wastewater transmission facility on a temporary basis. The temporary service agreement ended in late 1998.

In Docket No. 961231-WS, FCWC requested that the revenues received pursuant to the agreement be treated as non-recurring so they would not be considered in determining the level of regulated earnings for FCWC. The utility requested that if the revenues from this agreement result in overearnings, the Commission should defer those overearnings to subsequent years. Pursuant to Order No. PSC-97-0019-FOF-WS, issued January 6, 1997, in Docket No. 961231-WS, the Commission found it appropriate to treat the estimated annual revenues of \$122,912 associated with the agreement as non-recurring. This order also required FCWC to file semi-annual earnings reports with the Commission to allow staff to monitor the utility's earnings. If the revenues associated with this agreement were to place FCWC outside its approved rate of return, the matter was to be addressed in a subsequent docket.

A review of FCWC's 1996 Annual Report indicated that the utility's wastewater system in South Ft. Myers exceeded its last authorized return on equity investment, mainly because of the temporary revenues from the Lee County agreement. Therefore, pursuant to Order No. PSC-97-1125-PCO-SU, issued September 25, 1997, the Commission opened this docket and initiated an overearnings investigation for FCWC's South Ft. Myers wastewater system. That order held revenues subject to refund pending the final resolution of this docket.

On August 6, 1998, the utility filed a formal settlement offer to dispose of the overearnings. The utility proposed to defer revenues which totaled more than would be required if it were to refund or to lower rates. By Order No. PSC-98-1384-FOF-SU, issued October 14, 1998 in this docket, the Commission accepted the utility's offer of settlement and required that any overearnings be offset against any future underearnings for the years 1999 and 2000. Further, the Commission ordered that it would address overearnings for 1998 in 1999 and kept the docket open. FCWC was allowed to: defer \$21,606 in price index revenues for 1996; defer \$222,646 in excess revenues for 1997; defer all revenues for 1998 in excess of the mid-point of its authorized return on equity; and defer all the above through the test year ending December 31, 2000. Any remaining balance in deferred revenues as of December 31, 2000, would be added to contributions-in-aid-of-construction (CIAC).

Pursuant to Section 367.022(2), Florida Statutes, systems owned, operated, managed, or controlled by governmental authorities are not subject to regulation by the Commission as a utility nor are they subject to the provisions of Chapter 367. Since the transfer to GUA of the FCWC facilities (excluding the Town's facilities) occurred on April 15, 1999, the Commission's rate regulation of those facilities ceased on that date. FCWC provided only water, not wastewater, service for the Town.

The Commission ceased to regulate (or lost its regulatory authority over) the prospective rates of this utility as of April 15, 1999, the date of the transfer to GUA. However, pursuant to the holding in Charlotte County v. General Development Utilities, Inc., 653 So. 2d 1081 (Fla. 1st DCA 1995), staff believes that the Commission has continuing jurisdiction to conclude this overearnings investigation. Moreover, pursuant to the "Utility System Asset Acquisition Agreement, by and between Florida Governmental Utility Authority and Florida Cities Water Company and Poinciana Utilities, Inc.," entered into on April 1, 1999, the signatories specifically noted in Section 4.10, page 28, that to the extent there were any regulatory rate proceedings pending before the Commission, all financial responsibility or liability for any rate relief, refund or other obligations imposed by the Commission shall remain with FCWC and shall expressly not be assumed by the GUA.

Although staff believes that the Commission has continuing jurisdiction to conclude this docket, staff believes that as a practical matter, there was only one thing left to do in this docket, and that was to determine what amount, if any, was to be credited to CIAC as of December 31, 2000.

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Staff believes that, upon acceptance of the settlement offer, the Commission agreed that the utility would convert any remaining overearnings to CIAC. It was originally contemplated that any overearnings in 1997 and 1998 would be offset or reduced by underearnings in 1999 and 2000, and that a calculation would be made as of December 31, 2000, to see if any overearnings still existed. If so, any overearnings would be credited to CIAC. Through this mechanism, the customers would benefit through rate stability and the cost and expense of a rate case application could be avoided until at least some time into the year 2001 or later.

However, with the sale of the utility to GUA on April 15, 1999, staff believes that the amount of remaining overearnings, if any, to be credited to CIAC is no longer relevant and that that issue is moot. The Commission cannot now force the GUA, which is not subject to this Commission's regulation, to credit that amount to CIAC. As such, there is nothing left for this Commission to do, and this docket should be closed.