

State of Florida



Public Service Commission

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COMMISSION CLERK

DATE: MAY 9, 2002
TO: DIRECTOR, DIVISION OF THE COMMISSION CLERK &
ADMINISTRATIVE SERVICES (BAYÓ)
FROM: DIVISION OF ECONOMIC REGULATION (WETHERINGTON)
OFFICE OF THE GENERAL COUNSEL (BRUBAKER)
RE: DOCKET NO. 010153-WU - PETITION BY CITIZENS OF THE STATE
OF FLORIDA TO OPEN INVESTIGATION INTO QUALITY OF SERVICE
PROVIDED BY FLORIDA WATER SERVICES CORPORATION TO DELTONA
SERVICE TERRITORY.
COUNTY: LAKE
AGENDA: 05/21/02 - REGULAR AGENDA - INTERESTED PERSONS MAY
PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\GCL\GCO\WP\010153.RCM

CASE BACKGROUND

Florida Water Services Corporation (FWSC or utility) is a Class A utility providing service from its Deltona Lakes system to approximately 25,895 water and 4,701 wastewater customers. According to its 2001 annual report, the utility reported gross operating revenues for its Deltona system of \$7,701,635 for water and \$3,572,516 for wastewater and net operating income of \$2,446,048 for water and \$948,808 for wastewater.

In September 2000, a customer of FWSC's Deltona system in Volusia County, Ms. Rosemarie Hester, reported the presence of midge fly larvae in the potable water supplied to her home. In the months following the first report, FWSC worked to identify the source of the contamination and resolve the problem. Notwithstanding these efforts, reports regarding the presence of

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larvae in the potable water continued as late as January 2001. While it was not documented to be a widespread problem, it was reported that larvae were found in water in at least one other home, and in fire hydrants connected to the utility's main water transmission lines, for several months after first being discovered.

On February 1, 2001, the Office of Public Counsel (OPC) filed a Petition with this Commission to open an investigation into the quality of service provided by Florida Water Services Corporation to the Deltona service area in Volusia County. In its Petition, OPC stated that the Deltona customers needed to be reassured that their potable water is safe and free of organic contamination. OPC therefore requested that the Commission determine the cause of the contamination, determine the best solution to resolve it, and verify the permanent elimination of the problem.

On February 21, 2001, FWSC requested additional time to answer OPC's Petition, stating that it was cooperating with the Volusia County Health Department (VCHD), the City of Deltona, and other health environmental agencies to investigate the source of the larvae and rectify any possible contamination. FWSC noted that VCHD stated that the larvae did not pose a health threat, and that the utility wished to gather all information pertinent to its investigation so as to provide a comprehensive, detailed answer to OPC's Petition.

On May 11, 2001, FWSC filed an Answer to OPC's Petition, stating that all water facilities within Deltona have been thoroughly inspected for the presence of midge fly larvae. The water plant in the immediate area where the larvae was first detected was twice taken out of service for inspection. The water tank that initially had evidence of larvae was twice drained, steam cleaned and sanitized. An extra-fine screening was installed at the aerator and its framework and other structures were resealed. An in-line filter costing over \$75,000 was placed in the water main leaving the plant site. Water lines were flushed throughout the northeast Deltona neighborhood where the larvae were detected. FWSC indicated that it was continuing to take samples from various locations within the area, especially upon request by individual customers. Based on independent laboratory analysis, FWSC reported that the presence of larvae had been verified in only one home.

Having no further reports of larvae within the neighborhood, FWSC decided to remove the filter from the service line in the vicinity of Ms. Hester's home. However, within one week after removal of the filter, Ms. Hester reported seeing larvae again in her home. FWSC recovered samples from her house, which confirmed the presence of a larva in one of three samples. The utility expanded its investigation and took additional steps to remedy the situation. Also, on February 7, 2001, FWSC held a public meeting in cooperation with the City of Deltona and the VCHD to inform the citizens of the steps being taken to eliminate the problem. In summary, FWSC indicates that it has responded, and will continue to respond fully and professionally, to all of the issues raised in the midge fly investigation, and that the utility maintains its commitment to ensuring that all of its customers receive high quality and safe water.

On July 24, 2001, a Motion to Intervene was filed by counsel for Ms. Hester. By Order No. PSC-01-1674-PCO-WU, issued August 16, 2001, the Prehearing Officer found that the Motion was not in substantial compliance with Rule 28-106(2), and it was therefore dismissed without prejudice in accordance with Rule 28-106(4), Florida Administrative Code. A subsequent petition to intervene was filed on behalf of Ms. Hester, and intervention was granted by Order No. PSC-01-1968-PCO-WU, issued October 3, 2001.

Staff has reviewed all discovery conducted in this matter, which includes documentation of supplemental tests performed by FWSC on November 15, 2001 and February 25, 2002, on water samples collected from the Deltona area. The analyses indicate that there was no observable contamination present.

On April 3, 2002, staff counsel spoke with Ms. Hester's counsel. Ms. Hester reports no recurrences of larvae in her water, and seems generally satisfied that the contamination problem has been resolved.

On April 26, 2002, OPC filed a Notice of Withdrawal of its Petition, stating that according to the VCHD and FWSC's responses to OPC's discovery, there have been no more incidences of contamination in the Deltona water system. Due to the corrective actions taken by FWSC and the apparently successful results of those actions, OPC requests that the Commission acknowledge the withdrawal of its Petition.

The Commission has jurisdiction to consider this matter pursuant to Sections 367.011 and 357.121, Florida Statutes.

ISSUE 1: Should OPC's Notice of Withdrawal of its Petition to open an investigation into the quality of service provided to FWSC's Deltona service area be acknowledged?

RECOMMENDATION: Yes, OPC's Notice of Withdrawal should be acknowledged. The contamination appears to have been very limited in scope, and there has been no recurrence since remedial action and testing have been performed by the utility. Further, Commission staff, the Department of Environmental Protection and the Volusia County Health Department will continue to monitor the matter as necessary. FWSC should be required to notify staff should a complaint of larval contamination be brought to FWSC subsequent to this recommendation. (BRUBAKER, WETHERINGTON)

STAFF ANALYSIS: The Commission has previously considered the issue of whether an entity initiating a proceeding can subsequently voluntarily dismiss its petition, and has decided it can. See Order No. PSC-01-1948-PCO-EI, issued September 28, 2001, in Docket No. 010827-EI; Order No. PSC-94-0310-FOF-EQ, issued March 17, 1994, in Docket 920977-EQ; Order No. PSC-01-0082-FOF-EI, issued January 9, 2001, in Docket No. 000442-EI. But for the fact that the Commission has taken official action in this docket, it would be appropriate to handle this matter administratively. As noted below, staff recommends that the Commission should acknowledge OPC's Notice of Withdrawal. However, because the Commission has plenary authority over the quality of service a utility provides its customers, and could open an investigation on its own motion should the circumstances merit it, staff provides herein its recommendation as to why such an investigation is not merited at this time.

Rule 25-30.225(5), Florida Administrative code, states that:

Each water utility shall operate and maintain in safe, efficient, and proper condition, all of its facilities and equipment used to distribute, regulate, measure or deliver service up to and including the point of delivery into the piping owned by the customer.

The presence of midge fly larvae in potable water does not violate the rules or regulations of either the Department of Environmental Protection (DEP) or the VCHD. Rather, as described in OPC's Petition, the matter appears to be that of "an unsavory organic contamination."

Staff has monitored this matter since it was first brought to the Commission's attention. Both DEP and VCHD took an active role in the investigation, and the agencies report to staff that FWSC cooperated to the fullest degree possible in identifying and correcting the problem. As discussed above, FWSC has taken corrective measures such as inspecting its water plant, sanitizing the suspect water tank, installing an aerator screen and in-line filter, flushing water lines, and resealing other structures. FWSC has provided copies of laboratory tests conducted on water samples from various locations within the area, including those requested by individual customers. As referenced above, a public meeting was held on February 7, 2001, in cooperation with the City of Deltona and the VCHD, to inform the citizens of the steps being taken to eliminate the problem.

The contamination appears to have been very limited in scope, and there has been no recurrence since remedial action and testing have been performed by the utility. Further, DEP and the Volusia County Health Department will continue to monitor the matter as necessary. All indications are that FWSC's Deltona system is operating in a safe, efficient, and proper condition. Under the circumstances, staff recommends that a formal quality of service investigation is not necessary at this time, and therefore recommends that OPC's Notice of Withdrawal of its Petition should be acknowledged.

All parties to this matter agree that there has been no further incidence of midge fly larva contamination, and that the problem seems to have been eliminated. Certainly, should any subsequent complaint be brought to FWSC regarding larval contamination, staff recommends that the utility immediately notify staff so that the matter can be further monitored. FWSC should be

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encouraged to continue to work professionally and courteously with its customers to resolve any quality of service issues. Should a future problem be identified regarding the utility's product quality, operational conditions, or customer satisfaction, staff would recommend that a formal investigation be initiated at that time. In light of the foregoing, OPC's Notice of Withdrawal of its Petition to open a quality of service investigation into the quality of service provided to FWSC's Deltona service area should be acknowledged.

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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 necessary and this docket should be closed. (BRUBAKER, WETHERINGTON)

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