

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FLORIDA 32399-0850

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

COMMISSION  
CLERK

SEP 19 AM 9:58  
FPSC

**DATE:** SEPTEMBER 19, 2002

**TO:** DIRECTOR, DIVISION OF COMMISSION CLERK AND ADMINISTRATIVE SERVICES (BAYÓ)

**FROM:** DIVISION OF ECONOMIC REGULATION (RIEGER) *SAR*  
OFFICE OF THE GENERAL COUNSEL (GERVASI) *TSJ*

**RE:** DOCKET NO. 020831-WS - RESCISSION BY NASSAU COUNTY OF RESOLUTION NO. 2001-128, WHICH RESCINDED FLORIDA PUBLIC SERVICE COMMISSION JURISDICTION OVER INVESTOR-OWNED WATER AND WASTEWATER SYSTEMS IN NASSAU COUNTY.

DOCKET NO. 011344-WS - RESOLUTION NO. 2001-128 BY NASSAU COUNTY, IN ACCORDANCE WITH SECTION 367.171, F. S., RESCINDING FLORIDA PUBLIC SERVICE COMMISSION JURISDICTION OVER INVESTOR-OWNED WATER AND WASTEWATER SYSTEMS IN NASSAU COUNTY.

**AGENDA:** 10/01/02 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE

**CRITICAL DATES:** NONE

**SPECIAL INSTRUCTIONS:** NONE

**FILE NAME AND LOCATION:** S:\PSC\ECR\WP\020831.RCM

CASE BACKGROUND

On November 17, 1964, the Board of County Commissioners of Nassau County (County Board) adopted a resolution declaring Nassau County (County) subject to the provisions of Chapter 367, Florida Statutes. This resolution invoked Commission jurisdiction over investor-owned water and wastewater utilities in the County. The Commission acknowledged the resolution by Order No. 3733, issued January 6, 1965, in Docket No. 5818-WS.

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On September 17, 2001, the County Board adopted Resolution No. 2001-128, rescinding the Commission's jurisdiction over investor-owned water and wastewater utilities in the County effective immediately. The Commission acknowledged the resolution by Order No. PSC-02-0555-PAA-WS, issued April 23, 2002, in Docket No. 011344-WS. That order was consummated by Order No. PSC-02-0691-CO-WS, issued May 21, 2002.

On July 15, 2002, through Resolution No. 2002-130, the County Board rescinded Resolution No. 2001-128. That resolution ceded jurisdiction of Florida Public Utilities Company, the sole investor-owned water and wastewater system regulated by the County, to the Florida Public Service Commission. This recommendation addresses the County's July 15, 2002, resolution.

The Commission has jurisdiction pursuant to Section 367.171, Florida Statutes.

DISCUSSION OF ISSUES

**ISSUE 1:** Should the Commission acknowledge Nassau County Resolution No. 2002-130, which returns Commission jurisdiction over investor-owned water and wastewater utilities in Nassau County effective July 15, 2002?

**RECOMMENDATION:** Yes. The Commission should acknowledge Resolution No. 2002-130, which returns jurisdiction to the Commission over investor-owned water and wastewater utilities in Nassau County effective July 15, 2002. (RIEGER, GERVASI)

**STAFF ANALYSIS:** As stated in the case background, on November 17, 1964, the Nassau County Board adopted a resolution declaring the County subject to the provisions of Chapter 367, Florida Statutes. This resolution invoked Commission jurisdiction over investor-owned water and wastewater utilities in the County. On September 17, 2001, in accordance with Section 367.171(1), Florida Statutes, the County Board adopted Resolution No. 2001-128 rescinding Commission jurisdiction in the County. The Commission acknowledged the resolution by Order No. PSC-02-0555-PAA-WS, issued April 23, 2002, in Docket No. 011344-WS. That order was consummated by Order No. PSC-02-0691-CO-WS, issued May 21, 2002.

The following utilities held certificates of authorization from the Commission to provide water and/or wastewater service in Nassau County on September 17, 2001, when Commission jurisdiction was rescinded:

<u>UTILITY</u>	<u>CERTIFICATE NUMBER(S)</u>	
Florida Public Utilities Company (Fernandina Beach System)	001-W	
Florida Water Services Corporation	171-W	122-S
United Water Florida Inc.	236-W	179-S

On July 29, 2002, Nassau County filed with this Commission a certified copy of Resolution No. 2002-130, dated July 15, 2002, rescinding Resolution No. 2001-128, which revoked Commission jurisdiction over investor-owned water and wastewater utilities in Nassau County. In so doing, the County ceded any jurisdiction over Florida Public Utilities Company (FPUC) to the Commission. Staff notes that only FPUC is affected by the July 15, 2002, Resolution. By Order No. PSC-02-0555-PAA-WS, the Commission found that pursuant

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to Section 367.171(7), Florida Statutes, Resolution No. 2001-128 did not rescind exclusive jurisdiction over Florida Water Services Corporation (FWSC) and United Water Florida, Inc. (UWF) based on findings that the utilities' facilities in Nassau County were single utility systems tranversing county boundaries.

Although UWF was subject to Commission jurisdiction on December 28, 2001, it became exempt from Commission regulation upon its sale to JEA, a governmental authority exempt from Commission regulation pursuant to Section 367.022(2), Florida Statutes. By Order No. PSC-02-0280-FOF-WS, issued March 4, 2002, in Docket No. 020055-WS, the sale was approved as a matter of right and UWF's Certificates Nos. 236-W and 179-S were cancelled effective December 28, 2001.

At the time of issuance of Order No. PSC-02-0555-PAA-WS, FPUC was a party to one docket pending before the Commission, which was Docket No. 990817-WS -- Application of Florida Water Services Corporation for amendment of Certificates Nos. 171-W and 122-S to add territory in Nassau County. Pursuant to Section 367.171(5), Florida Statutes, when a utility becomes subject to regulation by a county, all cases in which the utility is a party then pending before the Commission remain within the jurisdiction of the Commission until disposed of in accordance with the law in effect on the day such case was filed. By Order No. PSC-02-0555-PAA-WS, the Commission ordered that Certificate No. 001-W, held by FPUC, be returned to the Commission for cancellation within 30 days from when FPUC is no longer a party to, or at the conclusion, of Docket No. 990817-WS, after which time Docket No. 011344-WS would be closed administratively.

By Order No. PSC-02-1025-AS-WS, issued July 29, 2002, (coincidentally, on the same day as the July 15, 2002, Resolution was filed with this Commission), in Docket No. 990817-WS, the Commission approved a settlement agreement between FWSC and FPUC and considered FPUC's protest to FWSC's certificate amendment filed in that docket to be withdrawn. Thus, FPUC is no longer a party to that docket and no longer has any pending matters before the Commission. However, because of the July 15, 2002, Resolution giving jurisdiction back to the Commission, FPUC filed a request for reactivation of its certificate instead of returning the certificate for cancellation. That request is the subject of Issue 2 of this recommendation.

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Based upon the foregoing, staff recommends that the Commission should acknowledge Resolution No. 2002-130, which returns jurisdiction to the Commission over investor-owned water and wastewater utilities in Nassau County effective July 15, 2002.

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**ISSUE 2:** Should the Commission grant Florida Public Utilities Company's request for reactivation of Certificate No. 001-W, authorizing it to provide water service in Nassau County?

**RECOMMENDATION:** Yes. Florida Public Utilities Company's request for reactivation of Certificate No. 001-W should be granted, and FPUC should be authorized to provide water service in Nassau County in its previously approved service territory at its previously approved rates and charges. Because the certificate was never returned, no grandfather application is necessary. Within 90 days of the issuance date of the order arising from this recommendation, FPUC should be required to file revised tariff sheets reflecting a territory description of its previously approved service area using township, range and section references, pursuant to Rule 25-30.035(9), Florida Administrative Code. Upon verification that the tariff sheets comply with the order arising from this recommendation, an administrative order should be issued reflecting the revised territory description and closing Docket No. 020831-WS. FPUC should also be responsible for paying regulatory assessment fees to the Commission beginning July 15, 2002, the effective date of the transfer of jurisdiction to the Commission, in accordance with Rule 25-30.120, Florida Administrative Code. (RIEGER, GERVASI)

**STAFF ANALYSIS:** On August 6, 2002, FPUC filed a request for reactivation of its certificate authorizing its provision of water service in Nassau County. In this request, the utility points out that Order No. PSC-02-1025-AS-WS requires it to return its certificate for cancellation, but that because of Nassau County's intervening resolution returning jurisdiction back to the Commission, it is also now incumbent on the utility to file for a grandfather certificate even though its certificate has not yet been cancelled. FPUC requests that under the circumstances, a grandfather certificate application filing pursuant to Section 367.171(2)(b), Florida Statutes, and Rule 25-30.035, Florida Administrative Code, as well as the filing fee under Rule 25-30.020, Florida Administrative Code, not be required.

The utility states that, during all pertinent times, its territory, its rates and charges, and the operating regulations and procedures as contained within its water tariff, have all remained unchanged from that currently on file with and as previously authorized by the Commission. The utility states that reactivation or reinstatement of Certificate No. 001-W would allow it to avoid

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the expense of preparing and filing a grandfather certificate application, as well as the filing fee.

In light of the related circumstances detailed above, staff recommends that the Commission grant the utility's request to reactivate Certificate No. 001-W, without requiring the utility to file a grandfather certificate application. Staff does not believe that any particular benefit would be gained by requiring the filing of a grandfather certificate application in this case since FPUC's certificate has not yet been cancelled and because conditions have virtually gone unchanged from when Nassau County originally rescinded the Commission's jurisdiction on September 17, 2001.

Although a completed grandfather certificate application is not recommended, staff believes that it is necessary to require, for clarification purposes, a territory description which complies with Rule 25-30.035(9), Florida Administrative Code. By Order No. PSC-02-1025-AS-WS, the order approving the settlement agreement between FWSC and FPUC, the Commission found that FPUC had no metes and bounds description of its territory. The Commission further noted that by Order No. 3798, issued April 28, 1965, in Docket No. 7848-W, FPUC was granted a certificated territory which encompassed the corporate limits of the City of Fernandina Beach and any additions legally annexed by the City from time to time. However, because FPUC was non-jurisdictional at the time the settlement agreement was approved, the Commission found that there was no need to correct FPUC's territory description at that time. However, now that FPUC is again a jurisdictional utility, staff believes that an appropriate territory description is necessary. Therefore, staff recommends that within 90 days of the issuance date of the order arising from this recommendation, FPUC should be required to file revised tariff sheets reflecting the territory description of its previously approved service area using township, range and section references, pursuant to Rule 25-30.035(9), Florida Administrative Code. Upon verification that the tariff sheets comply with the order arising from this recommendation, an administrative order should be issued reflecting the revised territory description and closing Docket No. 020831-WS.

In addition to the above, in accordance with Rule 25-30.120, Florida Administrative Code, staff recommends that FPUC be responsible for paying regulatory assessment fees to the Commission beginning July 15, 2002, the effective date of the transfer of jurisdiction from Nassau County to the Commission.

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For informational purposes, staff notes that the Commission received a letter from Nassau County dated August 5, 2002, requesting that the Board of County Commissioners receive a pro-rata share of any fees that are due for the time that the County had regulatory authority. Staff responded with an August 14, 2002, letter advising that the Commission had collected no regulatory assessment fees from FPUC during the time period the County had regulatory authority over FPUC from September 17, 2001, to July 15, 2002. Staff suggested that the County may wish to contact FPUC concerning any fees due the County for that time period.

Based upon all of the foregoing, staff recommends that FPUC's request for reactivation of Certificate No. 001-W should be granted, authorizing FPUC to provide water service in Nassau County in its previously approved service territory at its previously approved rates and charges. Because the certificate was never returned, no grandfather application is necessary. Additionally, within 90 days of the date of the issuance date of the order arising from this recommendation, FPUC should be required to file revised tariff sheets reflecting the territory description of its previously approved service area using township, range and section references, pursuant to Rule 25-30.035(9), Florida Administrative Code. Upon verification that the tariff sheets comply with the order arising from this recommendation, an administrative order should be issued reflecting the revised territory description and closing Docket No. 020831-WS. FPUC should also be responsible for paying regulatory assessment fees to the Commission beginning July 15, 2002, the effective date of the transfer of jurisdiction from Nassau County to the Commission, in accordance with Rule 25-30.120, Florida Administrative Code.



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**ISSUE 3:** Should Dockets Nos. 011344-WS and 020831-WS be closed?

**RECOMMENDATION:** Because no further action is necessary in Docket No. 011344-WS, that docket should be closed. Docket No. 020831-WU should remain open to allow FPUC time to revise its tariff to reflect a territory description of its service area using township, range and section references, as recommended in Issue 2. Upon verification that the tariff sheets comply with the order arising from this recommendation, an administrative order should be issued reflecting the revised territory description and Docket No. 020831-WS should be closed. (GERVASI, RIEGER)

**STAFF ANALYSIS:** As discussed in Issue 1 of this recommendation, Order No. PSC-02-0555-PAA-WS required that Certificate No. 001-W, held by FPUC, be returned to the Commission for cancellation within 30 days from when FPUC is no longer a party to, or at the conclusion of, Docket No. 990817-WS, after which time Docket No. 011344-WS was to be closed administratively. The utility is no longer a party to Docket No. 990817-WS. However, in Issue 2, staff recommends that FPUC's certificate be reactivated. Therefore, no further action is necessary in Docket No. 011344-WS, and that docket should be closed.

Docket No. 020831-WU should remain open to allow FPUC time to revise its tariff to reflect a territory description of its service area using township, range and section references, as recommended in Issue 2. Upon verification that the tariff sheets comply with the order arising from this recommendation, an administrative order should be issued reflecting the revised territory description and Docket No. 020831-WS should be closed.