



Public Service Commission

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DATE: FEBRUARY 6, 2003

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

FROM: OFFICE OF THE GENERAL COUNSEL (CHRISTENSEN, GERVASI)
DIVISION OF ECONOMIC REGULATION (BRADY)

RE: DOCKET NO. 000242-WS - REQUEST FOR ACKNOWLEDGMENT OF
TRANSFER OF RECEIVERSHIP OF ENTERPRISE UTILITIES
CORPORATION (DELTONA) FROM FLORIDA WATER SERVICES
CORPORATION TO VOLUSIA COUNTY AND CANCELLATION OF
CERTIFICATES NOS. 316-W AND 264-S.

AGENDA: 02/18/03 - REGULAR AGENDA - INTERESTED PERSONS MAY
PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\GCL\WP\000242.RCM

CASE BACKGROUND

Enterprise Utilities Corporation--Deltona (Enterprise or utility) is a Class C utility serving approximately 245 residential water and 141 residential wastewater customers in a community known as Enterprise on Stone Island in Volusia County. According to the utility's 1999 Annual Report, it had combined water and wastewater operating revenues of \$136,788 and a combined net operating income of \$20,039.

Pursuant to Section 367.171, Florida Statutes, Certificates Nos. 316-W and 264-S were issued to Enterprise on March 9, 1979, by Order No. 8761, in Docket No. 760255-WS. Prior to the issuance of certificates, the utility facilities were owned by Stone Island Construction Company of Volusia County, Florida (Stone Island). Order No. 8761 found that Enterprise had acquired the right, title,

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and interest to the utility facilities from Stone Island in lieu of foreclosure.

On November 19, 1981, Chester Tomlin, President of Enterprise notified Volusia County that he was abandoning Enterprise. Effective December 31, 1981, Dean Deakyne was appointed as the receiver. On April 29, 1982, Mr. Deakyne withdrew as receiver and the Court appointed The Deltona Corporation as the first successor receiver. On May 4, 1982, the Court appointed Deltona Utilities, Inc. (Deltona) as second successor receiver. At the time, Deltona was a subsidiary utility of The Deltona Corporation.

In 1985, MP Water Resources Corporation (MP), then known as The Topeka Group, Inc., acquired the common stock of a number of utility subsidiaries owned by The Deltona Corporation, including Deltona. By Order No. 22307, issued December 12, 1989, in Docket No. 881501-WS, the Commission approved the transfer of majority organizational control. MP was also the parent company of Southern States Utilities, Inc. (SSU). On July 15, 1992, when SSU merged with Deltona, SSU became the third successor receiver for Enterprise. By Order No. PSC-97-0427-FOF-WS, issued April 16, 1997, in Docket No. 970028-WS, the Commission approved SSU's request to change its name to Florida Water Services Corporation (FWSC).

On April 24, 1998, FWS filed a petition to withdraw as receiver for Enterprise in the Circuit Court of the Seventh Judicial Circuit in and for Volusia County (Court). Both the Commission and Volusia County (County) intervened in the resulting Case No. 81-5258-CA-01. The Court granted FWSC's petition to withdraw as receiver effective February 29, 2000, and appointed the County as fourth, and current, successor receiver. As a result, staff opened this docket on February 22, 2000, to acknowledge the appointment of the County as substitute receiver and to make a recommendation regarding the cancellation of the utility's certificates. By Order No. PSC-00-1375-FOF-WS, issued July 31, 2000, this Commission acknowledged the transfer of the receivership from FWSC to Volusia County and cancelled the certificates. However, the Order required that the docket remain open pending the disposition of Circuit Court Case No. 81-5258-CA-01, after which time the Commission staff was authorized to administratively close the docket.

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On January 10, 2003, the Court held a hearing on FWSC's motion to establish a procedure for the final accounting and the final accounting report filed by the Guardian Ad Litem for the ratepayers. At the hearing, it was determined that the Guardian Ad Litem's report would be treated as a pleading. The Court granted FWSC's motion to establish a procedure to address the final accounting. The Court also stated that the parties should engage in mediation to resolve the remaining issue which the parties agreed was the amount of compensation due FWSC, if any, for the time period FWSC was receiver. The Court also inquired whether the Commission wished to remain as a party to the proceeding given that the only outstanding issue is the amount of compensation due FWSC, if any. Commission legal counsel advised the Court that the question would be presented to the Commission. The parties indicated that they would have no objection should the Commission wish to withdraw by motion without further hearing.

This recommendation addresses whether the Commission should authorize staff to withdraw as a party from Circuit Court Case No. 81-5258-CA-01.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission authorize Commission legal staff to file a motion seeking to withdraw as a party from Circuit Court Case No. 81-5258-CA-01?

RECOMMENDATION: Yes, the Commission should authorize Commission legal staff to file a motion seeking to withdraw as a party from Circuit Court Case No. 81-5258-CA-01. (CHRISTENSEN, BRADY)

STAFF ANALYSIS: As noted in the Case Background, on January 10, 2003, the Court held a hearing on FWSC's motion to establish a procedure for the final accounting and the final accounting report filed by the Guardian Ad Litem for the ratepayers. At the hearing, it was determined that the final issue remaining regarding FWSC's receivership is the amount of compensation due to FWSC for its services, if any. At the hearing, the Court decided that the parties should participate in mediation, after the Court issued some preliminary rulings, to determine if the parties could reach agreement on the amount of compensation due FWSC.

As noted previously, the Court also inquired whether the Commission wished to remain as a party to the proceeding given that the only outstanding issue is the amount of compensation, if any, due FWSC while it acted as receiver for Enterprise. Commission legal counsel advised the Court that the question would be presented to the Commission.

Staff believes that it is no longer necessary for the Commission to remain as a party to this case. As noted in the Case Background, by Order No. PSC-00-1375-FOF-WS, issued July 31, 2000, this Commission acknowledged the withdrawal of FWSC as the receiver of Enterprise and the appointment of Volusia County as the successor receiver and cancelled Enterprises' certificates. At that time, the docket was to remain open pending the resolution of the civil case. However, it has become clear that the civil case will remain open for an indefinite period of time.

At the January 10, 2003, hearing, it also became clear that the only remaining issue for the final accounting was what amount of compensation FWSC is entitled to for its receivership activities. Staff believes that the issue of compensation due to a receiver appointed in accordance with Section 367.165, Florida

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Statutes, is solely within the discretion of the Court. Since the Commission has no jurisdiction over the compensation due the receiver for its service as a receiver, and since the Commission no longer has authority over Enterprise because Volusia County is the current receiver, staff believes that the Commission no longer has an interest in this matter and should withdraw from this case. Staff notes that if there is an evidentiary hearing in the future, staff may be called to testify regarding Enterprise including the annual reports filed by FWSC on behalf of Enterprise. However, staff does not believe that this reason alone is sufficient for the Commission to remain a party to the civil proceeding.

In summary, because Enterprise is no longer within the Commission's jurisdiction and the issue of compensation for a receiver is solely within the jurisdiction of the Court, staff believes that the Commission no longer has an interest in remaining as a party to the civil case. Therefore, staff recommends that the Commission should authorize Commission legal staff to file a motion seeking to withdraw as a party from Circuit Court Case No. 81-5258-CA-01.

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ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes. If the Commission approves staff's recommendation on Issue 1, then the Commission should authorize staff to administratively close the docket upon the Court granting its motion to withdraw as a party to the civil case. (CHRISTENSEN)

STAFF ANALYSIS: If the Commission approves staff's recommendation on Issue 1, then the Commission should authorize staff to administratively close the docket upon the Court granting its motion to withdraw as a party to the civil case.