

State of Florida



Public Service Commission

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

DATE: September 9, 2004

TO: Director, Division of the Commission Clerk & Administrative Services (Bayó)

FROM: Division of Economic Regulation (Kyle, Merchant, Willis)
Office of the General Counsel (Brubaker) *JSB* *NAH* *W* *TSB*

RE: Investigation into ratemaking considerations of gain on sale from Florida Water Services Corporation

- Docket No. 980744-WS – to Orange County, in Orange County
- Docket No. 031060-WS – to Martin County, in Martin County
- Docket No. 031061-WS – to Marion County, of systems in Marion and Sumter Counties
- Docket No. 031062-WS – to Florida Governmental Utility Authority, in Lee County
- Docket No. 031063-WU – to Osceola County, in Osceola County
- Docket No. 031064-WU – to Clay County Utility Authority (CCUA), of systems in Clay and Bradford Counties
- Docket No. 031065-WS – to City of Deltona, in Volusia County
- Docket No. 040023-WS – to Charlotte County, in Charlotte County
- Docket No. 040024-WS – to Nassau County, in Nassau County
- Docket No. 040025-WU – to JEA, of systems in Duval and St. Johns Counties

AGENDA: 09/21/04 – Regular Agenda – Interested Persons May Participate

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\ECR\WP\980744.RCM.DOC

Case Background

Florida Water Services Corporation (FWSC or utility) is a Class A utility which provides water and wastewater service throughout Florida. According to its 2003 annual report, FWSC

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

Docket Nos. 980744-WS, 031060-WS, 031061-WS, 031062-WS, 031063-WU, 031064-WU, 031065-WS, 040023-WS, 040024-WS, 040025-WU

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recorded operating revenues of \$25,349,396 for water service and \$20,244,433 for wastewater service for facilities regulated by the Commission. The corresponding net utility operating income amounts were \$3,872,033 and \$2,705,635, respectively.

On December 30, 1997, FWSC filed an application to transfer all of its water and wastewater facilities in Orange County to Orange County with the exception of the Druid Hills water system. The transfer was based on an agreement executed by FWSC and Orange County. By Order No. PSC-98-0688-FOF-WS, issued May 19, 1998 in Docket No. 971667-WS, the Commission approved the application for transfer and ordered the cancellation of Certificate No. 73-S upon the resolution of all pending cases relating to the Orange County facilities. The Commission also ordered the opening of Docket No. 980744-WS to evaluate any gain on sale from the sale of facilities from FWSC to Orange County. On June 29, 1998, the Office of the Public Counsel (OPC) filed a Notice of Intervention in Docket 980744-WS, which was acknowledged by Order No. PSC-98-1099-PCO-WS, issued August 17, 1998.

By Order No. PSC-99-2125-FOF-WS, issued October 26, 1999, the Commission ordered that Docket 980744-WS be set for hearing. Further, the Commission ordered that the docket be expanded to include an investigation of the sale of a laboratory in Volusia County and the possible gain on transfer of facilities known as Crystal River Highlands facilities in Citrus County. By Order No. PSC-00-1170-PCO-WS, issued June 27, 2000, a procedural schedule was established setting forth the controlling dates for Docket 980744-WS. New controlling dates for the docket were most recently established by Order No. PSC-04-0551-PCO-WS, issued May 27, 2004.

Docket Nos. 031060-WS, 031061-WS, 031062-WS, 031063-WU, 031064-WU, 031065-WS, 040023-WS, 040024-WS, and 040025-WS were opened pursuant to the following orders to examine whether sales of facilities by FWSC involved gains which should be shared with the utility's remaining customers:

Order Number	Issue Date	Transfer Docket	Transferee	County(ies)
PSC-03-1341-FOF-WS	November 24, 2003	030967-WS	Martin County	Martin
PSC-03-1340-FOF-WS	November 24, 2003	030966-WS	Marion County	Marion, Sumter
PSC-03-1284-FOF-WS	November 10, 2003	030932-WS	FGUA	Lee
PSC-03-1275-FOF-WS	November 10, 2003	030921-WS	Osceola County	Osceola
PSC-03-1277-FOF-WU	November 10, 2003	030541-WU	CCUA	Clay, Bradford
PSC-03-1276-FOF-WS	November 10, 2003	030920-WS	City of Deltona	Volusia
PSC-04-0071-FOF-WS	January 26, 2004	030931-WS	Charlotte County	Charlotte
PSC-03-1417-FOF-WS	December 16, 2003	030542-WS	Nassau County	Nassau
PSC-03-1441-FOF-WS	December 22, 2003	030976-WS	JEA	Duval, St. Johns

Docket Nos. 980744-WS, 031060-WS, 031061-WS, 031062-WS, 031063-WU, 031064-WU, 031065-WS, 040023-WS, 040024-WS, 040025-WU

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Staff's recommendation addresses the appropriate disposition of Docket Nos. 980744-WS, 031060-WS, 031061-WS, 031062-WS, 031063-WU, 031064-WU, 031065-WS, 040023-WS, 040024-WS, and 040025-WS, in light of the recent enactment of Section 367.0813, Florida Statutes. The Commission has authority pursuant to Sections 367.081 and 367.0813, Florida Statutes.

Docket Nos. 980744-WS, 031060-WS, 031061-WS, 031062-WS, 031063-WU, 031064-WU, 031065-WS, 040023-WS, 040024-WS, 040025-WU

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Discussion of Issues

Issue 1: What is the proper disposition of Docket Nos. 031060-WS, 031061-WS, 031062-WS, 031063-WU, 031064-WU, 031065-WS, 040023-WS, 040024-WS, and 040025-WS?

Recommendation: All of the above sales of assets resulted in a loss of customers and the associated future revenue streams. Accordingly, by operation of Section 367.0813, Florida Statutes, any gain or loss at issue in the dockets shall be borne by the shareholders. No further action is required in these dockets by the Commission, and they should be closed. (Brubaker, Kyle)

Staff Analysis: Docket Nos. 031060-WS, 031061-WS, 031062-WS, 031063-WU, 031064-WU, 031065-WS, 040023-WS, 040024-WS, and 040025-WS were all established for the sole purpose of investigating whether FWSC's sale of its respective land and facilities involved a gain that should be shared with remaining customers.

On June 18, 2004, Section 367.0813, Florida Statutes, was enacted, which "affirms and clarifies the clear policy of this state that gains or losses from a purchase or condemnation of a utility's assets which results in the loss of customers served by such assets and the associated future revenue streams shall be borne by the shareholders of the utility." Further, Section 367.0813 specifically states that it applies to all transactions prior to and after the effective date of this section.

The transactions which gave rise to these dockets all involved the sale of FWSC assets which resulted in the loss of customers served by such assets and the associated future revenue streams. Accordingly, any gains or losses realized on the sales at issue in these dockets are squarely within the purview of Section 367.0813, Florida Statutes. By operation of the statute, any gains or losses on such sales shall be borne by the shareholders of the utility. No further action is required by the Commission, and Docket Nos. 031060-WS, 031061-WS, 031062-WS, 031063-WU, 031064-WU, 031065-WS, 040023-WS, 040024-WS, and 040025-WS should therefore be closed.

Docket Nos. 980744-WS, 031060-WS, 031061-WS, 031062-WS, 031063-WU, 031064-WU, 031065-WS, 040023-WS, 040024-WS, 040025-WU

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Issue 2: Should Docket 980744-WS be closed?

Recommendation: Yes, the hearing currently scheduled in Docket 980744-WS should be cancelled, and Docket 980744-WS should be closed. The disposition of the loss on the sale of the laboratory is no longer at issue, and the sales of assets in Orange and Citrus Counties resulted in losses of customers and the associated revenue streams. Accordingly, by operation of Section 367.0813, Florida Statutes, gains resulting in a loss of customers shall be borne by the shareholders. (Brubaker, Kyle)

Staff Analysis: As discussed in the case background, Docket No. 980744-WS was opened to evaluate any gain on sale from the sale of facilities from FWSC to Orange County. On June 29, 1998, the Office of the Public Counsel (OPC) filed a Notice of Intervention in Docket 980744-WS, which was acknowledged by Order No. PSC-98-1099-PCO-WS, issued August 17, 1998. By Order No. PSC-99-2125-FOF-WS, issued October 26, 1999, the Commission ordered that Docket 980744-WS be set for hearing. Further, the Commission ordered that the docket be expanded to include an investigation of the sale of a laboratory in Volusia County, and the possible gain on transfer of facilities known as Crystal River Highlands facilities in Citrus County in Docket No. 990743-WU.

The sales to Orange and Citrus Counties both involve the sale of FWSC assets which result in the loss of customers served by such assets and the associated future revenue streams. Accordingly, the disposition any gain realized on those sales falls squarely within the purview of Section 367.0813, Florida Statutes, namely, that any gain or loss shall be borne by FWSC's shareholders.

The sale of the laboratory located in Volusia County does not appear to be the sale of an asset which would fall under Section 367.0813, Florida Statutes, because it did not result in the loss of customers served by the asset and the associated future revenue streams. However, the prefiled testimony of FWSC witnesses Cirello and Perry, and FWSC's response to OPC's Interrogatories Nos. 15 and 16, indicate that the lab was sold at a loss. In light of the fact that the lab was sold at a loss, and in light that any gains on the sales of FWSC's facilities to Orange and Citrus Counties are disposed of by operation of Section 367.0813, Florida Statutes, staff does not believe that further time and resources should be spent on pursuing the sale of the lab at hearing. Neither FWSC nor OPC object to canceling the scheduled hearing and closing Docket 980744-WS.

Staff therefore recommends that the hearing scheduled for Docket 980744-WS should be cancelled, and Docket 9809744-WS should be closed.