

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Investigation into ratemaking considerations of gain on sale from sale of facilities of Florida Water Services Corporation to Orange County. DOCKET NO. 980744-WS

In re: Investigation into ratemaking consideration of gain on sale of facilities of Florida Water Services Corporation to Martin County in Martin County. DOCKET NO. 031060-WS

In re: Investigation into ratemaking consideration of gain on sale of facilities of Florida Water Services Corporation to Marion County in Marion and Sumter Counties. DOCKET NO. 031061-WS

In re: Investigation into ratemaking consideration of gain on sale of facilities of Florida Water Services Corporation to Florida Governmental Utility Authority in Lee County. DOCKET NO. 031062-WS

In re: Investigation into ratemaking consideration of gain on sale of facilities of Florida Water Services Corporation to Osceola County in Osceola County. DOCKET NO. 031063-WU

In re: Investigation into ratemaking consideration of gain on sale of facilities of Florida Water Services Corporation to Clay County Utility Authority in Clay and Bradford Counties. DOCKET NO. 031064-WU

In re: Investigation into ratemaking consideration of gain on sale of facilities of Florida Water Services Corporation to City of Deltona in Volusia County. DOCKET NO. 031065-WS ✓

In re: Investigation into ratemaking consideration of gain on sale of facilities of Florida Water Services Corporation to Charlotte County in Charlotte County. DOCKET NO. 040023-WS

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

ORDER NO. PSC-04-0948-FOF-WS

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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In re: Investigation into ratemaking consideration of gain on sale of facilities of Florida Water Services Corporation to Nassau County in Nassau County.

DOCKET NO. 040024-WS

In re: Investigation into ratemaking consideration of gain on sale of facilities of Florida Water Services Corporation to JEA in Duval and St. Johns Counties.

DOCKET NO. 040025-WU

ORDER NO. PSC-04-0948-FOF-WS

ISSUED: September 28, 2004

The following Commissioners participated in the disposition of this matter:

BRAULIO L. BAEZ, Chairman  
J. TERRY DEASON  
RUDOLPH "RUDY" BRADLEY  
CHARLES M. DAVIDSON

ORDER CLOSING DOCKET NOS. 980744-WS, 031060-WS, 031061-WS, 031062-WS, 031063-WU, 031064-WU, 031065-WS, 040023-WS, 040024-WS, AND 040025-WS

BY THE COMMISSION:

#### 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 recorded operating revenues of \$25,349,396 for water service and \$20,244,433 for wastewater service for facilities regulated by this 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, we 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. We 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. The Office of the Public Counsel (OPC) intervened.

By Order No. PSC-99-2125-FOF-WS, issued October 26, 1999, we ordered that Docket 980744-WS be set for hearing. Further, we ordered that the docket be expanded to include an

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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.

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 that 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

Our decision herein addresses the appropriate disposition of the dockets opened to address the unresolved gain on sale issues for FWSC, in light of the recent enactment of Section 367.0813, Florida Statutes. We have authority pursuant to Sections 367.081 and 367.0813, Florida Statutes.

#### CLOSURE OF GAIN ON SALE INVESTIGATION DOCKETS

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. Since the dockets were opened, 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.

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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 this Commission, and these dockets shall therefore be closed.

CLOSURE OF DOCKET 980744-WS

Docket No. 980744-WS was opened to evaluate any gain on sale from the sale of facilities from FWSC to Orange County and was 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 this fact, 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, we find it is not appropriate to spend further time and resources pursuing the sale of the lab at hearing. Neither FWSC nor OPC object to canceling the scheduled hearing and closing Docket 980744-WS. We therefore find that the hearing scheduled for Docket 980744-WS shall be cancelled, and the docket shall be closed.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Docket Nos. 031060-WS, 031061-WS, 031062-WS, 031063-WU, 031064-WU, 031065-WS, 040023-WS, 040024-WS, and 040025-WS shall be closed. It is further

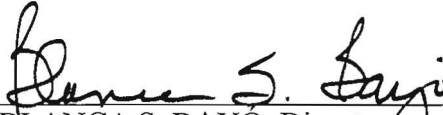
ORDERED that the hearing currently scheduled in Docket 980744-WS shall be cancelled, and the docket shall be closed.

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031065-WS, 040023-WS, 040024-WS, 040025-WU

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By ORDER of the Florida Public Service Commission this 28th day of September, 2004.



BLANCA S. BAYO, Director  
Division of the Commission Clerk  
and Administrative Services

( S E A L )

JSB

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request:

- 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or
- 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Director, Division of the Commission Clerk and Administrative Services and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.