

FLORIDA PUBLIC SERVICE COMMISSION  
Capital Circle Office Center • 2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

MEMORANDUM

RECEIVED

January 22, 1998

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FPSC - Records/Reporting

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF WATER & WASTEWATER (WASHINGTON, RENDELL) *WR*  
DIVISION OF LEGAL SERVICES (VACCARO) *VS*

RE: DOCKET NO. [REDACTED] COMPLAINT OF THE CHRISTIAN AND  
MISSIONARY ALLIANCE FOUNDATION, INC., d/b/a SHELL POINT  
VILLAGE AGAINST FLORIDA CITIES WATER COMPANY REGARDING  
SERVICE AVAILABILITY CHARGES

COUNTY: LEE

AGENDA: FEBRUARY 3, 1998 - PROPOSED AGENCY ACTION - COMPLAINT  
INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: I:\PSC\WAW\WP\970027WS.RCM

CASE BACKGROUND

Florida Cities Water Company, Lee County Division (FCWC or utility) is a Class A utility that provides water service to approximately 17,000 customers in Ft. Myers, Florida. In 1996, FCWC's reported revenues for water service were \$8,542,616 and the corresponding income amount was \$2,330,909. The utility's service area has been designated a critical use area by the South Florida Water Management District.

On January 6, 1997, the Division of Records and Reporting received a complaint from the Christian and Missionary Alliance Foundation, Inc. d/b/a Shell Point Village (Shell Point Village or Foundation) against FCWC. In its complaint, the Foundation alleges that FCWC has attempted to collect service availability and AFPI charges which the Foundation does not owe. Shell Point Village is a continuing care retirement community located on a 75-acre island in the mouth of the Caloosahatchee River in Lee County, Florida. Shell Point Village provides all levels of care, including independent living, assisted living, and skilled nursing.

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[REDACTED] JAN 22 1998

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Water is delivered through a central water meter at the entry gate to Shell Point Village, and all internal distribution lines throughout the Village are owned and maintained by Shell Point Village. The Foundation is billed by FCWC for monthly use on a bulk basis as a general service customer.

On January 30, 1997, FCWC filed an answer to the Foundation complaint, requesting in part that the Commission order the Foundation to pay a total of \$204,690.62, which includes 239.2 ERCs for which FCWC claims the Foundation has not paid.

On March 11, 1997, staff met with representatives for both parties to discuss the details of the Foundation's complaint and possibility of a settlement. The Foundation filed supplemental information in response to FCWC's January 30 response on April 16, 1997. On May 9, 1997, a letter from FCWC legal counsel was submitted indicating that the parties were attempting to settle the controversy. FCWC filed a response to the Foundation's supplemental information on May 15, 1997. Staff met with representatives of both parties again on July 31, 1997, and a settlement seemed possible.

On October 20, 1997, a settlement agreement was filed by the Foundation. This recommendation is a result of staff's analysis of the settlement agreement, which is attached. (Attachment A)

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### DISCUSSION OF ISSUES

**ISSUE 1:** Should the settlement agreement between the Christian and Missionary Alliance Foundation, Inc., d/b/a Shell Point Village and Florida Cities Water Company be approved by the Commission.

**RECOMMENDATION:** Yes, the settlement agreement between the Christian and Missionary Alliance Foundation, Inc., d/b/a Shell Point Village and Florida Cities Water Company should be approved. (WASHINGTON, RENDELL, VACCARO)

**STAFF ANALYSIS:** As stated in the case background, the Foundation filed a complaint on January 6, 1997, against FCWC claiming it did not owe service availability charges to FCWC. The Foundation states that to date it has paid FCWC service availability charges for 443 garden apartment units, 209 midrise units, and 40 assisted living units. The Foundation further states that it has paid for 692 units at the multi-family rate which equates to 250 gallons per day each, for total paid connection fees for 173,000 gallons per day of demand. The Foundation states it has added 97 additional units for which FCWC has requested service availability charges of \$625 per unit, and an AFPI charge of \$230.73 per unit.

The Foundation contends that it is a general service customer and has always been billed for monthly service as a general service customer. The Foundation has in excess of two hundred thousand dollars invested in the cost of construction of its internal water distribution system throughout its 75 acre development, which it maintains at its own expense.

The Foundation states that its highest water usage is 118,545 gallons per day. Thus, FCWC is not entitled to any additional service availability or AFPI charges at this time and, in fact, should refund the excess charges for commitment of capacity which the Foundation is not now utilizing or provide a credit towards new demands to be added. The Foundation requests this Commission enter an Order determining that it owes no service availability or AFPI charges to FCWC.

In its response dated January 30, 1997, FCWC states that the Foundation is not billed for monthly use on a bulk basis as a general service customer. Instead, the Foundation is billed as a multiple-dwelling service (MDS) customer. The MDS rate is the same as for general service (FCWC water tariff sheet 22.0). The Foundation has not paid capacity charges for 553.6 (692 x 0.8) equivalent residential connections (ERCs). The Foundation has paid fees for 392 ERCs leaving a balance of 161.6 ERCs, which currently exists for which service availability charges have not been paid.

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The Foundation has not been billed for plant service capacity charges on the basis of gallonage per day, but on the basis of ERCs. FCWC's approved tariff does not provide for average gallonage per day used to calculate the plant capacity charges. The charge is based on ERCs.

FCWC further states that the Foundation is not due any refund or credit and, in fact, the Foundation owes additional plant capacity and AFPI charges for 161.6 ERCs for existing facilities plus 77.6 ERCs for new facilities at \$855.73 per ERC, resulting in a total of \$204,690.62. The AFPI charges are set forth on approved tariff sheet no. 39.0. The current charge is \$230.73 per ERC.

FCWC requests that the Commission deny the Foundation's complaint in this docket, on the basis that FCWC has followed the applicable statutes, rules and approved tariffs. FCWC states that the complaint of the Foundation should be dismissed on the basis that this matter was resolved by the Commission in Order No. 8468, issued September 6, 1978, and no change in circumstances are alleged by the Foundation. By that Order, the Commission required the Foundation to pay FCWC \$52,500 for 210 units in controversy. FCWC requests that the Commission order that the Foundation pay FCWC a total of additional \$204,690.62, which includes 239.2 ERCs for which the Foundation has not paid.

On April 16, 1997, the Foundation filed supplemental information. In this supplemental information, the Foundation contends that in FCWC's Answer to the Foundation's Complaint, FCWC states without explanation that the Foundation owes FCWC for 161.6 ERCs. The Foundation states that FCWC has previously advised the Foundation that service availability charges were due on 123.2 ERCs.

The Foundation contends this amount does not take into consideration that 7 of its units were demolished in order to construct a new 40 unit building, thus the net charge is only 33 units. The only units constructed at Shell Point Village after August 8, 1973 were 210 units constructed in 1975 and 1976 and were paid for as a result of the previous ruling, 40 units in King's Crown which were constructed and paid for in 1986 and the 97 net units currently constructed. Therefore, the only units in question are the 97 net units from Harbor Court and Sundial.

In FCWC's response to the supplemental information filed by the Foundation on April 16, 1997, it states that FCWC's tariffs provide that capacity charges for a multi-family dwelling unit is based on ERCs and not gallons. FCWC also states that it has no record of capacity fees in 1986 relative to King Crown project. If

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payment was made and can be verified, a credit by FCWC would be appropriate. If units for which capacity fees have been paid were demolished to build Sundial, a credit for these units would be appropriate. FCWC has no record that these capacity fees were paid or that the units were demolished.

The parties entered into a settlement agreement on October 17, 1997. This settlement agreement was filed on October 20, 1997 and is included in this recommendation as an attachment. (Attachment A) The settlement agreement basically provides the following:

FCWC relies on such representation, that a net of 137 units have been added to Shell Point Village since the additions of the 210 units referenced in FPSC Order No. 8468. Of these 210 units, the service availability charge has been paid for 40 units, leaving a net of 97 units for which the service availability charges have not been paid, and further, with the construction of the 137 units Shell Point Village is build out and no additional units will be placed into service under current zoning;

There is \$47,587.15 owed to FCWC by the Foundation for the 97 units, which shall be paid to FCWC within thirty (30) days of approval by the Florida Public Service Commission of this Settlement Agreement. The \$47,587.15 for the payment of service availability and AFPI charges is calculated as follows:

97 units at 172 gallons per day (gpd) = 16,684 gpd  
16,684 gpd divided by 300 gpd/ERC = 55.61 ERCs  
55.61 ERCs (\$625.00+230.73 per ERC) = \$47,587.15;

Based on the representations of Shell Point Village, the predominant water consumption use is for multi-family residential. Other uses traditionally classified as general service or commercial exist throughout the development and are a significant contributor to the total water consumed by Shell Point Village. FCWC has no similar development within its service area. It is unlikely that a similar situation will ever exist again, because if the property were developed today the internal infrastructure that serves Shell Point Village would be owned and maintained by FCWC

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eliminating the master meter at the entrance to the facility and inserting meters at individual buildings or groups of buildings; and

This Settlement Agreement is subject to the approval of the FPSC without change. If the Settlement Agreement is not approved by the FPSC exactly as written, then this Settlement Agreement shall become null and void.

Staff recommends that the Settlement Agreement entered into by the parties on October 17, 1997 and filed with the Division of Records and Reporting on October 20, 1997, be approved as a reasonable resolution of the dispute.

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ISSUE 2: Should the docket be closed?

RECOMMENDATION: Yes, the docket should be closed administratively if no person, whose interest are substantially affected by the proposed action, files a protest within the 21 day protest period.

STAFF ANALYSIS: If a protest is not received within 21 days of issuance of the PAA order, the order will become final. This docket should be closed at the conclusion of the protest period, if no protest is filed.

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT is made and entered into this 17<sup>th</sup> day of October, 1997, by and between the Christian and Missionary Alliance Foundation, Inc. d/b/a Shell Point Village ("Foundation") and Florida Cities Water Company ("FCWC").

WHEREAS, the Foundation owns and operates Shell Point Village in Lee County, Florida, which receives potable water service from FCWC; and

WHEREAS, the Foundation represents that: Shell Point Village is a continuing care retirement community located on a 75-acre island in the mouth of the Caloosahatchee River in Lee County, Florida; Shell Point Village provides all levels of care, including independent living, assisted living, and skilled nursing; there is a central kitchen and dining facility provided for assisted living, skilled nursing and independent living residents; there is also a medical center on site with four physicians employed by the Foundation; Shell Point Village also includes an administrative building, welcome center, maintenance building, conference center, marina, residents activities center, and social center; towels and linen are furnished and centrally laundered for all residents; most of the independent living apartment complexes have central laundry facilities for residents to do their personal laundry and there are not laundry facilities within the individual apartments; the residents, regardless of the level of care, pay an initial fee and a monthly maintenance fee; no separate charge is imposed on



residents for water service; all of the dwelling units are owned by the Foundation; Shell Point Village is built out and no additional residential development can occur under current zoning; and

WHEREAS, Water is delivered to Shell Point Village through one master water meter at the entry gate to Shell Point Village, and all internal distribution lines throughout the Village are owned and maintained by Shell Point Village. The Foundation does not use water purchased from FCWC for irrigation purposes as it purchases effluent from Lee County for that purpose; and

WHEREAS, a dispute has arisen between the Foundation and FCWC as to whether additional service availability charges, and allowance of funds prudently invested ("AFPI") charges are due to FCWC by the Foundation; and

WHEREAS, considering the time and expense of litigation, the parties desire to settle their differences.

NOW, THEREFORE, for and in consideration of the mutual covenants set forth herein, the Foundation and FCWC agree as follows:

1. The foregoing recitations are true and correct and incorporated herein by reference.
2. On September 6, 1978 the Florida Public Service Commission (FPSC) entered Order No. 8468 in Docket No. 770236-W. By Order No. 8468 the Commission ruled that the Foundation was required to pay FCWC \$52,500 in capacity charges for the 210 units in controversy. The \$52,500 has been paid to FCWC by the Foundation. By letter dated October 9, 1997 addressed to FCWC from the Foundation and

residents for water service; all of the dwelling units are owned by the Foundation; Shell Point Village is built out and no additional residential development can occur under current zoning; and

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signed by Dennis Bayes, Vice President of Finance, Shell Point Village, the Foundation represents, and FCWC relies on such representation, that a net of 137 units have been added to Shell Point Village since the additions of the 210 units referenced in FPSC Order No. 8468 for which the service availability charge has been paid for 40 units leaving a net of 97 units for which the service availability charges have not been paid, and further, with the construction of the 137 units Shell Point Village is build out and no additional units will be placed into service under current zoning. The letter from the Foundation to FCWC dated October 9, 1997 and signed by Dennis Bayes, is attached hereto as Exhibit A and made a part hereof. There is \$47,587.15 owed to FCWC by the Foundation for the 97 units which shall be paid to FCWC within thirty (30) days of approval by the Florida Public Service Commission of this Settlement Agreement. The \$47,587.15 is for the payment of service availability and AFPI charges calculated as follows:

97 units at 172 gallons per day (gpd) = 16,684 gpd

16,684 gpd divided by 300 gpd/ERC = 55.61 ERCs.

55.61 ERCs (\$625.00+230.73 per ERC) = \$47,587.15

3. Based on the representations of Shell Point Village, the predominant water consumption use is for multi-family residential. Other uses traditionally classified as general service or commercial exist throughout the development and are a significant contributor to the total water consumed by Shell Point Village. FCWC has no similar development within its service area. It is

unlikely that a similar situation will ever exist again because if the property were developed today the internal infrastructure that serves Shell Point Village would be owned and maintained by FCWC eliminating the master meter at the entrance to the facility and inserting meters at individual buildings or groups of buildings. Shell Point Village is an anomalous and unique customer. Therefore, the parties believe that a combination of the commercial and multi-family tariffs would best suit the calculation of service availability and AFPI charges

4. Upon approval by the FPSC as set forth herein, this Settlement Agreement shall operate as a full and complete resolution regarding service availability and AFPI charges due to FCWC by the Foundation in connection with Shell Point Village as it has been developed as of the date of this Agreement.

5. This Settlement Agreement is subject to the approval of the FPSC without change. If the Settlement Agreement is not approved by the FPSC exactly as written, then this Settlement Agreement shall become null and void.

FLORIDA CITIES WATER COMPANY

By: Michael Hart

Its: Vice President

(Corp. Seal)

THE CHRISTIAN AND MISSIONARY  
ALLIANCE FOUNDATION, INC.

By: Dennis Dayer

Its: U. P. FINANCE + ASST. TREAS.

(Corp. Seal)