

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of MEADOWBROOK UTILITY)	DOCKET NO. 850062-WS
SYSTEMS, INC. for interim and permanent)	ORDER NO. 23396
rate increase in Palm Beach County)	ISSUED: 8-23-90
)	

The following Commissioners participated in the disposition of this matter:

- THOMAS M. BEARD
- BETTY EASLEY
- GERALD L. GUNTER
- FRANK S. MESSERSMITH

FINAL ORDER REJECTING PROPOSED DISPOSITION OF
UNCLAIMED REFUNDS, PRESCRIBING DISPOSITION
OF UNCLAIMED REFUNDS, AND CLOSING DOCKET

BY THE COMMISSION:

Background

By Order No. 13664, issued September 10, 1984, this Commission initiated an investigation into the earnings of Meadowbrook Utility Systems, Inc. (Meadowbrook). On May 31, 1985, during the pendency of the overearnings investigation, Meadowbrook filed an application for increased water and sewer rates. By Order No. 14656, issued July 30, 1985, we suspended Meadowbrook's proposed rates, denied any interim increase and consolidated the overearnings investigation into the rate case docket.

On April 21, 1986, Meadowbrook gave notice of its intent to place its proposed rates into effect, pursuant to Section 367.081(6), Florida Statutes. On July 1, 1986, on its own motion, this Commission set the consolidated rate application and overearnings investigation for a formal hearing. The hearing was held on December 11 and 12, 1986, and January 9 and 26, 1987.

By Order No. 17304, issued March 19, 1987, we reduced Meadowbrook's rates and ordered it to refund, with interest, \$65,435 in excessive annual water revenues collected between August 21, 1984, and April 21, 1986, and \$416,690 in excessive

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annual water and wastewater revenues collected between April 21, 1986, and such time as the refund was completed.

On April 6, 1987, Meadowbrook filed a motion for stay of Order No. 17304, pursuant to Rule 25-22.061(1), Florida Administrative Code, pending judicial review of the order by the First District Court of Appeal (DCA). By Order No. 17567, issued May 20, 1987, we granted a stay, subject to Meadowbrook's providing additional security.

On December 10, 1987, the First DCA affirmed Order No. 17304 in all respects. Meadowbrook Utility Systems, Inc. v. The Florida Public Service Commission, 518 So. 2d 326 (Fla. 1st DCA 1987). On December 23, 1987, Meadowbrook filed a motion for rehearing with the First DCA. Meadowbrook's motion was denied on February 1, 1988.

On February 26, 1988, Meadowbrook petitioned the Supreme Court of Florida to review the decision of the First DCA. On June 20, 1988, the Supreme Court denied Meadowbrook's petition for review and granted this Commission's motion for attorney's fees. Meadowbrook Utility Systems, Inc. v. The Florida Public Service Commission, 529 So. 2d 694 (Fla. 1988).

On April 25, 1988, Kelly Tractor Company, Inc. (Kelly Tractor), filed a complaint against Meadowbrook. According to its complaint, Meadowbrook had misread Kelly Tractor's water meter for seven years, and had overcharged it by \$168,902.58 for both water and sewer service. Kelly Tractor requested that we order Meadowbrook to refund the overcharges, plus interest. The Kelly Tractor matter was processed under Docket No. 880606-WS.

On July 29, 1988, Meadowbrook filed a motion requesting that this Commission "adjust" the amount of the required refund. In its motion, Meadowbrook argued that we should reconsider certain pro forma plant additions that were disallowed in the rate case, and give initial consideration to certain unanticipated plant additions and expenses, and to Meadowbrook's overcharging of Kelly Tractor. By Order No. 20135, issued October 10, 1988, we found that, with regard to the previously disallowed pro forma plant additions, Meadowbrook's motion was an untimely motion for reconsideration. We also found that the remaining issues raised by Meadowbrook were outside of the record of the

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consolidated rate application and overearnings investigation. Accordingly, by Order No. 20135, we dismissed Meadowbrook's motion.

On November 7, 1988, by Order No. 20287, this Commission lifted the stay of Order No. 17304, recalculated Meadowbrook's rates to account for a 1987 price index and a 1987 pass-through rate increase, and required Meadowbrook to comply with the refund provisions of Order No. 17304.

On November 22, 1988, Meadowbrook filed a motion for reconsideration of Order No. 20287. In its motion, Meadowbrook argued again that, before this Commission enforced Orders Nos. 17304 and 20287, we should consider the effect of its overcharging of Kelly Tractor. By Order No. 20488, issued December 20, 1988, we found that Meadowbrook's motion neither raised any matter not previously considered nor pointed out any error or omission in our original disposition of the matter. We, therefore, denied Meadowbrook's motion for reconsideration. Further, by Order No. 20488, we ordered Meadowbrook to begin complying with the refund provisions of Order No. 17304 as of December 20, 1988.

Also on December 20, 1988, by Order No. 20474, issued in Docket No. 880606-WS, this Commission ordered Meadowbrook to refund, to Kelly Tractor, overcollections amounting to \$168,902.58, plus interest.

On January 19, 1989, Meadowbrook served notice of its appeal of Orders Nos. 20287 and 20488. The basis of Meadowbrook's appeal was that, in failing to take Meadowbrook's overcharging of Kelly Tractor into consideration in this consolidated rate application and overearnings docket, we had "double-dipped". In other words, Meadowbrook argued that this Commission was, in effect, requiring it to refund \$168,902.58, the amount refunded to Kelly Tractor, twice. In addition to the notice of appeal, Meadowbrook also filed a motion for a partial stay of Orders Nos. 20287 and 20488 and a motion for clarification of the refund provisions of Order No. 20488.

On April 11, 1989, by Order No. 21017, we granted Meadowbrook's motion for stay, in part, clarified the "customers of record" date, and ordered Meadowbrook to immediately begin refunding all amounts not in controversy. In addition, by Order No. 21017, this Commission ordered

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Meadowbrook to show cause why it should not be fined for its failure to have already begun making the refund.

On April 25, 1989, Meadowbrook filed a motion for reconsideration of Order No. 21017. On May 1, 1989, Meadowbrook filed a motion to dismiss the show cause provisions of Order No. 21017. In the alternative, Meadowbrook also filed its response to those provisions.

By Order No. 21596, issued July 21, 1989, this Commission denied Meadowbrook's motion for reconsideration and to dismiss. However, we also found that Meadowbrook's failure to have made the refund and its constant motions and appeals were, although frustrating, within its legal rights. Accordingly, we found that Meadowbrook had shown cause why it should not be fined.

On September 15, 1989, the First DCA affirmed Orders Nos. 20287 and 20488. Therefore, on December 22, 1989, we lifted the partial stay granted by Order No. 21017 and prescribed a simplified method of refunding the amount stayed.

On May 24, 1990, this Commission audited the refund and found that it had been satisfactorily completed. By letter dated June 1, 1990, Meadowbrook was informed that the refund appeared to have been satisfactorily made, but that this docket could not be closed until it proposed a method of disposing of unclaimed refund amounts in accordance with Rule 25-30.360(8), Florida Administrative Code, and paid the \$500 attorney's fees awarded to this Commission by the Florida Supreme Court.

Meadowbrook's Proposal

By letter dated July 10, 1990, Meadowbrook suggested a method of disposing of unclaimed refunds. Enclosed was a check for \$500. According to Meadowbrook and, as verified by Staff, \$180,103.21 of the amount ordered to be refunded remains unclaimed. In its proposal, Meadowbrook first suggests that it should be allowed to retain \$102,728 of the unclaimed amounts in order to reimburse it for administrative expenses associated with performing the refund. Meadowbrook then suggests that the remaining amount, or \$77,375.29, should be retained in order to partially reimburse Meadowbrook for amounts already refunded to Kelly Tractor. Finally, Meadowbrook argues that there are \$295,884.24 in excess funds that were not required to be

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refunded and that we should release this amount in any event. Meadowbrook's proposals are each discussed separately, below.

Administrative Costs

As for Meadowbrook's proposal to retain certain amounts to reimburse it for administrative expenses, it should be pointed out that Rule 25-30.360, Florida Administrative Code, does not contain any provisions for reimbursement of the administrative expenses of a refund. Further, it is this Commission's policy that utilities not be reimbursed for the administrative expenses of making a refund. The reason behind this policy is that all of the monies were, essentially, wrongfully collected from "captive" customers. The only protection available to these customers is a refund in accordance with Section 367.082(2)(a), Florida Statutes, and Rule 25-30.360, Florida Administrative Code. If a utility were given its administrative expenses, that would only reduce the amounts that should rightfully be returned to the customers.

We also cannot stress strongly enough that we first required this refund by Order No. 17304, issued March 19, 1987. The main reason such a large amount of refunds remain unclaimed is because of Meadowbrook's three-year delay. If Meadowbrook had not waited three years to make the refund, we believe that more customers would have been available to collect the amounts due to them. We also believe that the administrative costs of the refund would not have been as high had Meadowbrook not delayed for some three years.

Further, if we were to award the administrative costs of making the refund under these circumstances, it would only reward Meadowbrook for its dilatory tactics and encourage other utilities to delay making their refunds for as long as possible, so that more unclaimed amounts will remain to reimburse them for their expenses.

Based upon the discussion above, we hereby reject Meadowbrook's proposal to use the unclaimed refunds to offset the administrative costs of making the refund.

Kelly Tractor

Meadowbrook also suggested that we should allow it to utilize the remaining amount of unclaimed refunds to partially

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offset the Kelly Tractor refund. As already discussed, Meadowbrook believes that we "double-dipped" on the Kelly Tractor refund. However, as also discussed, the Kelly Tractor matter has been the subject of a number of our orders, not to mention an appellate proceeding, none of which allowed such an offset.

Since we have already ruled on the Kelly Tractor matter a number of times, Meadowbrook's current request is really only an untimely motion for reconsideration. Accordingly, we hereby reject Meadowbrook's proposal to use unclaimed refunds to offset the Kelly Tractor refund.

Excess Funds

Finally, Meadowbrook argues that there are \$295,884.24 in excess funds held by it pending the refund. These amounts were not required to be refunded pursuant to Commission order; rather, these amounts were retained by Meadowbrook as a "safety cushion". As already noted, we have audited the refund and verified that it has been performed satisfactorily. Accordingly, these excess funds are hereby released for disbursement to Meadowbrook.

Disposition of Unclaimed Refunds

Generally speaking, when there are unclaimed refund amounts, we order those amounts booked to CIAC. However, in this case, Meadowbrook no longer exists as a public utility. Under Section 717.109, Florida Statutes:

Except to the extent otherwise ordered by the court or administrative agency, any sum that a business association has been ordered to refund by a court or administrative agency which has remained unclaimed by the owner for more than 1 year after it became payable in accordance with the final determination or order providing for the refund, regardless of whether the final determination or order requires any person entitled to a refund to make a claim for it, is presumed abandoned.

Pursuant to Section 717.103, Florida Statutes, all such abandoned property escheats to the State of Florida. Since the

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refund finally became payable by Order No. 21017, issued April 11, 1989, Meadowbrook shall remit all unclaimed amounts to the State of Florida, Department of Banking and Finance, in accordance with Chapter 717, Florida Statutes.

Upon consideration of the above, it is

ORDERED by the Florida Public Service Commission that Meadowbrook Utility Systems, Inc.'s proposal to use unclaimed refund amounts to offset the administrative expenses of performing the refund is hereby denied. It is further

ORDERED that Meadowbrook Utility Systems, Inc.'s proposal to use unclaimed refund amounts to offset the refund to Kelly Tractor Company, Inc. is hereby denied. It is further

ORDERED that \$295,884.24 in excess funds held by Meadowbrook Utility Systems, Inc. pending its completion of the refund are hereby released. It is further

ORDERED that, in accordance with Chapter 717, Florida Statutes, Meadowbrook Utility Systems, Inc. shall remit all unclaimed refund amounts to the State of Florida, Department of Banking and Finance. It is further

ORDERED that Docket No. 850062-WS be and is hereby closed.

By ORDER of the Florida Public Service Commission,
this 23rd day of AUGUST, 1990.



STEVE TRIBBLE, Director
Division of Records and Reporting

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), 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 Records and Reporting 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 or sewer utility by filing a notice of appeal with the Director, Division of Records and Reporting 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.