

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for staff-) DOCKET NO. 910276-WS
assisted rate case in Volusia) ORDER NO. PSC-94-1053-FOF-WS
County by PINE ISLAND UTILITY) ISSUED: August 29, 1994
CORPORATION.)
_____)

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman
SUSAN F. CLARK
DIANE K. KIESLING

ORDER DENYING PETITION FOR EMERGENCY RATES
OR FOR RECONSIDERATION OF ORDER NO. 24643

BY THE COMMISSION:

BACKGROUND

On March 3, 1991, Pine Island Utility Corporation (Pine Island) filed an application for a staff-assisted rate case. By Proposed Agency Action Order No. 24643, issued June 10, 1991, we authorized Pine Island to collect increased rates on a temporary basis, subject to refund, in the event of a protest.

On July 1, 1991, we received a number of protests to Order No. 24643. Pursuant to the protests, we scheduled a hearing. However, prior to the scheduled hearing, Pine Island reached a settlement with its customers. By Order No. PSC-92-0126-AS-WS, issued March 31, 1992, we approved the settlement and revived Order No. 24643, thereby making the approved rates effective and final.

Notwithstanding the above, we left this docket open so that we could verify Pine Island's completion of certain improvements, including the installation of meters, required by Order No. 24643. By Order No. PSC-93-0049-FOF-WS, January 13, 1993, we granted Pine Island additional time to install the meters and to obtain Department of Environmental Protection (DEP) permits for other required improvements.

On December 29, 1992, Pine Island's owner submitted a sixty-day notice of his intent to abandon the utility. On July 15, 1993, the Volusia County Circuit Court appointed Water Spectrum, Inc. (Water Spectrum) to be the receiver of Pine Island.

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

Water Spectrum has installed meters for all of its customers, with the exception of one customer. By Order No. PSC-94-0449-FOF-WS, issued April 14, 1994, we approved Water Spectrum's request to be relieved of the requirement of metering the remaining customer because the installation was cost prohibitive. We had previously authorized a flat rate for this customer.

By Order No. PSC-94-0449-FOF-WS, we also listed a number of improvements required in order to satisfy Water Spectrum's consent agreement with the Volusia County Public Health Unit (VCPHU). In addition, by Order No. PSC-94-0449-FOF-WS, we gave Water Spectrum additional time to complete a detailed plan for correcting any remaining deficiencies. Water Spectrum has not completed the required improvements.

PETITION FOR EMERGENCY RATES

On April 18, 1994, Water Spectrum filed a Petition for Emergency Rates. Alternatively, Water Spectrum requested that we reconsider the rates approved by Order No. 24643. Its request for reconsideration is discussed further hereunder.

In its Petition for Emergency Rates, Water Spectrum argued that the current approved rates, which reflected a test year ending June 30, 1990, had not been adjusted for inflation and, thereby, made the approved rates obsolete. Water Spectrum also stated that the approved rates included neither the improvements that it had completed or other improvements that it needed to make. According to Water Spectrum, its expenses exceed its revenues and it is not able to maintain the utility properly. Water Spectrum argued that Pine Island had, in fact, been abandoned because the rates were inadequate to maintain utility operations. Water Spectrum further argued that requiring improvements to the system without "an appropriate adjustment would be financially punitive", since it did not create the utility's existing substandard conditions.

According to Water Spectrum, Section 367.081(2)(a), Florida Statutes, confers upon the Commission the authority "to fix the rates of this utility on its own motion without the utility demanding a new rate case." Alternatively, Water Spectrum argued that Docket No. 910276-WS would be an appropriate forum for implementing new rates since the Commission left open the docket to monitor the progress of its orders. Water Spectrum stated that, if the Commission decides that it must apply for a rate case, it will be financially injured because it has only 87 connections to recover its \$1000 filing fee.

We do not agree with Water Spectrum's contention that the currently approved rates are insufficient just because they have not been adjusted for inflation. Section 367.081(4)(a), Florida Statutes, allows utilities to recover their inflationary costs through a price index adjustment, however, it is up to the utility to avail itself of the price index adjustment.

As for Water Spectrum's argument that the rates are insufficient because they do not include improvements already made or pro forma improvements, we note that Water Spectrum has been informed, on several occasions, that it should apply for a staff-assisted rate case. Water Spectrum ignored this advice and, instead, filed this petition for emergency rates. A petition for emergency rates is only appropriate when there is an immediate and urgent need for a rate increase. Emergency rates should be granted only in very unique circumstances and only until rates can be properly set. Moreover, the only way this Commission can adequately assess the need for emergency rates is through the proper financial data. Water Spectrum has not filed any financial data to support its petition. As such, its petition is facially deficient. We also note that neither Water Spectrum nor its predecessor in interest have filed any annual reports since 1990. Although Water Spectrum itself is only delinquent with regard to the 1993 annual report, it must file that report before we will consider any request for increased rates.

Based upon the discussion above, we hereby deny Water Spectrum's Petition for Emergency Rates.

RECONSIDERATION OF RATES APPROVED BY ORDER NO. 24643

As discussed previously, on April 18, 1994, Water Spectrum filed a petition requesting, in the alternative, that we reconsider the rates approved in Order No. 24643, issued June 10, 1991. According to Rule 25-22.060(1)(a), Florida Administrative Code, this Commission will not entertain a motion for reconsideration of a proposed agency action order, regardless of whether the order has become final and effective. Accordingly, Water Spectrum's petition for reconsideration is denied.

COMPLIANCE WITH COMMISSION REQUIREMENTS

Finally, as also addressed above, Water Spectrum has not filed an annual report or paid its regulatory assessment fees for 1993. Accordingly, it is hereby ordered to file its 1993 annual report and pay the its 1993 regulatory assessment fees no later than sixty

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days from the date of this Order. Moreover, Water Spectrum is still required to complete all improvements mandated by Order No. PSC-94-0449-FOF-WS. This docket shall, therefore, remain open so that we may monitor its compliance with these requirements.

Based upon the foregoing, it is

ORDERED by the Florida Public Service Commission that Water Spectrum, Inc.'s Petition for Emergency Rates is denied. It is further

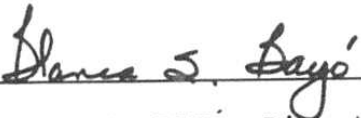
ORDERED that Water Spectrum, Inc.'s alternative petition for reconsideration of Order No. 24643, is denied. It is further

ORDERED that Water Spectrum, Inc. shall file its 1993 annual report for the Pine Island system within sixty (60) days of the date of this Order. It is further

ORDERED that Water Spectrum, Inc. shall remit regulatory assessment fees for 1993 within sixty (60) days of the date of this Order. It is further

ORDERED that this docket shall remain open in order to monitor Water Spectrum, Inc.'s compliance with the requirements detailed in this Order and in Order No. PSC-94-0449-FOF-WS.

By ORDER of the Florida Public Service Commission, this 29th day of August, 1994.



BLANCA S. BAYÓ, 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 Civil Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.