

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application of a staff-) DOCKET NO. 941107-WU
assisted rate case in Lake) ORDER NO. PSC-94-1556-POF-WU
County for FORTH-EIGHT ESTATES) ISSUED: December 13, 1994
WATER SYSTEM by J. SWIDERSKI)
UTILITIES, INC., as receiver)

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman
SUSAN F. CLARK
JOE GARCIA
JULIA L. JOHNSON
DIANE K. KIESLING

ORDER GRANTING REQUEST FOR EMERGENCY RATE RELIEF

BY THE COMMISSION:

BACKGROUND

On September 17, 1994, J. Swiderski Utilities, Inc., as receiver, (JSU or the Receiver) filed an application for a staff-assisted rate case on behalf of Forty-Eight Estates Water System (48 Estates or the Utility). In addition to its staff-assisted rate case application, JSU also petitioned the Commission for permission for emergency rates and charges.

Forty Eight Estates is a Class C water utility serving 72 customers in Lake County. The Utility was organized in 1971. Lake County came under Commission jurisdiction on June 13, 1972, but the Commission first became aware of 48 Estates upon a customer inquiry in December 1986. Stanley Busk became the owner of the Utility in 1985. On January 22, 1987, 48 Estates applied for a certificate for its existing water system and was granted Certificate 498-W in Order No. 18839, issued February 10, 1988.

The Utility has never submitted an annual report to the Commission. Show cause actions have been brought against the Utility by the Commission for failure to file 1988, 1989, 1990 and 1991 annual reports. As of the date of this Order, past due regulatory assessment fees total \$896.07 for 1988, 1992 and 1993. On August 9, 1994, Judge Jerry T. Lockett, in the Circuit Court of the Fifth Judicial Circuit for Lake County, declared 48 Estates abandoned and appointed JSU as receiver of the system. The

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FPSC-RECORDS/REPORTING

abandonment was precipitated by a Department of Environmental Protection (DEP) suit for a failure to respond to a DEP order requiring the Utility to make immediate repairs and upgrades to the water system.

We acknowledged JSU as receiver in Order No. PSC-94-1356-FOF-WU, issued November 7, 1994. JSU is a utility operating two systems in Lake County: Summit Chase, serving 219 water and 218 wastewater customers, and Kings Cove, serving 148 water and 143 wastewater customers, under Certificates 441-W and 371-S. The Utility's existing tariff contains a gallonage charge of \$1.16 per 1,000 gallons with a minimum charge of \$6.25. Rates have not changed since the Utility's original certification in 1988.

The Utility faces extensive capital improvements in order to comply with DEP operational standards. Until capital improvements can be thoroughly examined within the scope of this staff-assisted rate case, the Utility maintains that it must be permitted to recover at least its operating and maintenance costs, along with the related regulatory assessment fees.

Water use in the Utility's service territory, which is within a critical use area, is under the jurisdiction of the St. Johns River Water Management District.

EMERGENCY RATES

As will be discussed in greater detail below, we find it appropriate to grant the Utility emergency temporary rates, subject to providing adequate security and subject to potential refund. Although we will consider permitting emergency temporary rates for a utility in receivership, we do not ordinarily consider such rates in staff-assisted rate cases in order to encourage the utilities to timely seek rate relief. See, e.g., Order No. PSC-93-1844-FOF-WS, Order Granting Emergency Rates and Charges, In Re: Application for Staff-Assisted Rate Case in Marion County by ASTOR WEST, INC., 93 FPSC 12:528, December 28, 1993. Whether emergency temporary rates are appropriate is a determination we make on a case-by-case basis; however, we typically disallow such rates because of a lack of audited data. See, e.g., Order No. PSC-93-0633-FOF-SU, Order Granting Emergency Temporary Rates and Placing Docket in Monitor Status, In Re: Application for Staff-Assisted Rate Case by L.C.M. Sewer Authority in Lee County, 93 FPSC 4:608, April 22, 1993. We will permit a utility to collect emergency temporary rates, subject to refund, in order to preserve the public health, safety, and welfare. See, e.g., Order No. 25711, Order Granting Emergency Temporary Wastewater Rate Increase, Subject to Refund, and Establishing Provisions for Deposit and Release of Escrow Funds, In

Re: Petition for Emergency Limited Proceedings on Wastewater Service in Pasco County by MAD HATTER UTILITY, INC., 92 FPSC 2:276, February 12, 1992.

While this staff-assisted rate case will in due course allow the recovery of prudent utility expenses in rates and allow 48 Estates the opportunity to earn a fair rate of return, the Utility could not expect to receive compensatory rates until June 26, 1995, on the basis of the docket schedule. The Utility's annual operating and maintenance expenses appear at this point to be exceeding revenues by \$6,551. We find the Receiver to be blameless for the financial and physical disrepair of the Utility. Further, the Receiver cannot be expected to operate the Utility even in the near term without a capacity to at least recover its operating and maintenance costs; this much is clearly necessary in order to protect the interests of the Utility's customers.

The emergency temporary rates approved herein are designed to equate revenues, grossed-up for regulatory assessment fees, with operating and maintenance costs. These rates will support the generation of additional annual water service revenues of \$7,293, an increase of 79.27%. They are based on a staff audit of the Utility, completed September 11, 1987, with a test year ending December 31, 1986, adjusted by means of historical cost records supplied by the Utility's vendors, the cost experiences of like-sized utilities and indexing the Utility's audited 1986 costs. Updated revenues have been calculated on the basis of average consumption taken from the billing analysis prepared in the 1987 audit as applied to the Utility's present number of customers. The calculations of expenses do not include depreciation expense or rate of return. These calculations are shown, with appropriate annotations, in Schedule No. 1, attached to and incorporated into this Order by reference.

Forty-Eight Estates' existing tariff does not provide for a base facility and gallonage rate structure, the preferred rate structure to provide for the equitable sharing by the ratepayers of both the fixed and variable costs of providing service. We find that the rate structure shall be changed to the base facility and gallonage rate structure, in accordance with Rule 25-30.437 (6), Florida Administrative Code. The approved emergency temporary rates are shown in the following table.

WATER
MONTHLY RATES

Residential

	<u>Existing Rates</u>	<u>Commission Approved Emergency Temporary Rates</u>
<u>Base Facility Charge</u>		
<u>Meter Size</u>		
5/8" x 3/4"	N/A	\$ 7.79
<u>Gallorage Charge</u>		
Per 1,000 gallons	\$ 1.16*	\$ 1.23
* Minimum Charge of \$6.25		

Based on the 72 residential water customers consuming on average 9,179 gallons per month, an average residential monthly water bill comparison is calculated as follows:

	<u>Average Monthly Bill For Existing Rates</u>	<u>Average Monthly Bill Using Emergency Temporary Rates</u>	<u>Percent Increase</u>
Base Facility Charge	\$ 0.00	\$ 7.79	
Gallorage Charge	<u>\$10.65</u>	<u>\$ 11.29</u>	
Total	\$10.65	\$ 19.08	79.15%

The emergency temporary rates approved herein are subject to refund with interest pursuant to Rule 25-30.360, Florida Administrative Code.

SECURITY

The Receiver shall provide security in the form of a bond or letter of credit in the amount of \$5,102. Alternatively, the Receiver may establish an escrow agreement with an independent financial institution. The security must remain in effect until a final order in this docket is issued.

If the Receiver chooses a bond as security, the bond must contain wording to the effect that it will be terminated only under the following conditions:

- 1) If the Commission approves the final rate increase; or
- 2) If the Commission denies the increase, the utility shall refund the amount collected that is attributable to the emergency temporary rate increase.

If the Receiver chooses a letter of credit as security, it shall contain the following conditions:

- 1) The letter of credit is irrevocable for the period it is in effect.
- 2) The letter of credit will be in effect until a final Commission order is rendered, either approving or denying the rate increase.

If security is provided through an escrow agreement, the following conditions shall be part of the agreement:

- 1) No refunds in the escrow account may be withdrawn by the utility without the express approval of the Commission.
- 2) The escrow account shall be an interest bearing account.
- 3) If a refund to the customers is required, all interest earned by the escrow account shall be distributed to the customers.
- 4) If a refund to the customers is not required, the interest earned by the escrow account shall revert to the utility.
- 5) All information on the escrow account shall be available from the holder of the escrow account to a Commission representative at all times.
- 6) The amount of revenue subject to refund shall be deposited in the escrow account within seven days of receipt.
- 7) The escrow account is established by the direction of the Florida Public Service Commission for the purpose(s) set forth in its order requiring such account. Pursuant to Cosentino v. Elson, 263 So. 2d 253 (Fla. 3d DCA 1972), escrow accounts are not subject to garnishments.

- 8) The Director of Records and Reporting must be a signatory to the escrow agreement.

In no instance shall the maintenance and administrative costs associated with the refund be borne by the customers. These costs are the responsibility of, and should be borne by, the Utility. Irrespective of the form of security chosen by the Receiver, an account of all monies received as a result of the rate increase shall be maintained by the Receiver. This account must specify by whom and on whose behalf such monies were paid. If a refund is ultimately required, it shall be paid with interest calculated pursuant to Rule 25-30.360 (4), Florida Administrative Code.

The Receiver shall maintain a record of the amount of the appropriate security, and the amount of revenues that are subject to refund. In addition, after the approved increased rates are in effect, the Receiver shall file reports with the Division of Water and Wastewater no later than 20 days after each monthly billing. These reports shall indicate the monthly and total amounts of revenues collected under the increased rates.

EFFECTIVE DATE

The approved emergency temporary rates shall be effective for service rendered as of the stamped approval date on the revised tariff sheets, provided customers have received notice, in accordance with Rule 25-30.475, Florida Administrative Code. The Utility must provide proof to the Commission that its customers have received notice within ten days of the date of the notice. Tariff sheets will be approved upon the Commission's verification that the tariff sheets are consistent with this Order, that the proposed customer notice is adequate, and that the required security has been provided. In no event shall these rates be effective for services rendered prior to the stamped approval date.

Based on the foregoing, it is therefore

ORDERED by the Florida Public Service Commission that the petition of J. Swiderski Utilities, Inc., as Receiver, on behalf of Forty-Eight Estates Water System, for emergency temporary rates as set forth in the body of this Order is hereby granted. It is further

ORDERED that the emergency temporary rates shall be subject to refund in accordance with Rule 25-30.360, Florida Administrative Code. It is further

ORDERED that each of the findings made in the body of this Order is hereby approved in every respect. It is further

ORDERED that all matters contained in the Schedule attached hereto are by reference incorporated herein. It is further

ORDERED that J. Swiderski Utilities, Inc. shall submit revised tariff sheets consistent with our decision herein and a proposed notice to its customers showing the rate increase and explaining the reasons therefor. It is further

ORDERED that the approved emergency temporary rates approved herein shall be effective for service rendered as of the stamped approval date on the revised tariff sheets in accordance with Rule 25-30.475 (1) (a), Florida Administrative Code. It is further

ORDERED that in no event shall the approved emergency temporary rates be effective for water services rendered prior to the stamped approval date in accordance with Rule 25-30.475 (1) (c), Florida Administrative Code. It is further

ORDERED that tariff sheets will be approved only upon the Commission's verification that the tariff sheets are consistent with this Order, that the proposed customer notice is adequate, and that the required security has been provided in accordance with Rule 25-30.475 (1) (a), Florida Administrative Code. It is further

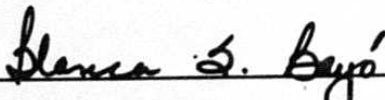
ORDERED that J. Swiderski Utilities, Inc. shall provide security in the amount of \$5,102 as a guarantee for any potential refund. It is further

ORDERED that, after the approved emergency temporary rates are in effect, the Receiver shall, pursuant to Rule 25-30.360 (6), Florida Administrative Code, be required to file reports with the Division of Water and Wastewater no later than twenty days after each monthly billing date, which shall show the amount of revenue collected each month and in total under these rates. It is further

ORDERED that this docket shall remain open for the completion of the staff-assisted rate case.

ORDER NO. PSC-94-1556-FOF-WU
DOCKET NO. 941107-WU
PAGE 8

By ORDER of the Florida Public Service Commission, this 13th
day of December, 1994.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

CJP

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 this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.038(2), Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) 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 wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.

ORDER NO. PSC-94-1556-FOF-WU
 DOCKET NO. 941107-WU
 PAGE 9

FORTY-EIGHT ESTATES WATER SYSTEM
DOCKET NO. 941107-WU
CALCULATION OF EMERGENCY RATE INCREASE (WATER)
SCHEDULE NO. 1

ACCOUNT NUMBER	ACCOUNT TITLE	PER COMMISSION AUDIT DEC. 31, 1986	1986 AUDIT ADJUSTMENTS	PER COMMISSION JAN. 1, 1986 THROUGH DEC. 31, 1986	COMMISSION ADJUSTMENTS FOR EMERGENCY RATES	ADJUSTED REVENUE & O & M
461	Revenue	6,700	251	6,951	2,249	9,200 *8
601	Salaries and Wages-Employees	0	780	780	244	1,024 *1
603	Salaries and Wages - Officers	2,507	365	2,872	898	3,770 *1
604	Employee Pensions and Benefits	0		0		0
610	Purchased Water	0		0		0
615	Purchased Power	1,359		1,359	(26)	1,333 *2
616	Fuel for Power Production	0		0		0
618	Chemicals	27		27	119	146 *3
620	Materials and Supplies	1,460		1,460	457	1,917 *1
630	Contractual Services	837	(500)	337	4,499	4,836 *4
640	Rents	125		125	39	164 *1
650	Transportation Expenses	190		190	59	249 *1
655	Insurance Expense	0		0	822	822 *5
665	Regulatory Commission Expense	0		0	50	50 *6
670	Bad Debt Expense	0		0		0
675	Miscellaneous Expenses	1,849	195	2,044	(604)	1,440 *7
	Total Expenses	8,354	840	9,194	6,557	15,751
	OPERATING LOSS	(1,654)		(2,243)		(6,551)

GROSS UP FOR REGULATORY ASSESSMENT FEES
 \$15,751/.955 = \$16,493

PERCENTAGE INCREASE
 \$7,293/\$9,200 = 79.27%

ORDER NO. PSC-94-1556-FOF-WU
DOCKET NO. 941107-WU
PAGE 10

FORTY-EIGHT ESTATES WATER SYSTEM
DOCKET NO. 941107-WU
CALCULATION OF EMERGENCY RATE INCREASE (WATER)
SCHEDULE NO. 1

NOTES

- *1 Indexed up from the 1986 staff audit using the Commission approved index figure.
- *2 Actual 12 month historic cost from electric company.
- *3 Pro rated using cost of another of receiver's systems, which has just completed a Commission audit for a SARC.
- *4 Includes \$2,837 for operator services, \$1,949 for water testing, \$300 for accounting fees and \$200 for repairs and maintenance.
- *5 Actual cost, per system, for receiver's other 2 systems which just completed a Commission audit.
- *6 Estimated Rate Case Expense amortized over 4 years.
- *7 Includes \$293 for postage, \$180 for telephone, \$529 for office expenses, and \$438 for an operating permit amortized over 3 years.
- *8 Calculated using average customer usage/month obtained from the billing analysis during the 1986 audit and updated to the utility's present 72 customers.