



Public Service Commission

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RECORDS AND REPORTING

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DATE: OCTOBER 7, 1999

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

FROM: DIVISION OF WATER AND WASTEWATER (LINGO)
DIVISION OF LEGAL SERVICES (BRUBAKER)

RE: DOCKET NO. 981147-WS - HIGHLANDS RIDGE ASSOCIATES, INC.
COUNTY: HIGHLANDS

AGENDA: 10/19/99 - REGULAR AGENDA - DECISION ON SETTING ADDITIONAL REVENUES SUBJECT TO REFUND - PARTICIPATION IS LIMITED TO COMMISSIONERS AND STAFF

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\WAW\WP\981147A.RCM

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CASE BACKGROUND

Highlands Ridge Associates, Inc. (Highlands Ridge or utility) is a Class C water and wastewater utility located in Avon Park in Highlands County. The utility served approximately 302 water customers and 296 wastewater customers at December 31, 1997. According to the utility's 1997 Annual Report, the revenues were \$76,534 for the water system and \$77,867 for the wastewater system. The corresponding net operating incomes were \$20,870 and \$7,455 for the respective systems.

The utility was granted water and wastewater certificates in September 1992. The development served by the utility consists of site-built manufactured homes, single-family detached homes, a clubhouse, several golf courses and a pro shop. The utility had been in operation since October 1990, providing service without compensation to approximately 35 connections. By Order No. PSC-92-0954-FOF-WS, issued September 9, 1992, the utility was granted Certificates Nos. 544-W and 474-S, and had rates and charges

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established for its water and wastewater systems. The utility has never filed a rate case, but it has received price index rate adjustments for the years 1994-1998.

On February 3, 1998, Staff received from the utility a request for a refund of a portion of the regulatory assessment fees (RAFs) paid during the years 1994-1996, as well as corrected RAF returns for those corresponding years. The utility stated in its request that certain connection and meter installation fees were incorrectly recorded as revenues during those years, and that those fees are not subject to RAFs. As a result, the utility contends that it overpaid its RAFs during those years.

On February 19, 1998, Staff also received from the utility an application for a 1998 price index. As part of the index application review process, Staff contacted the utility, which stated that the Southwest Florida Water Management District (SWFWMD or District) had contacted the utility about the high per capita consumption of the utility's customers. According to the utility, the District indicated that the utility's Consumptive Use Permit would be reviewed 18 months early for the primary purpose of requiring the utility to implement a conservation-oriented rate structure.

Staff proceeded to review certain information from the utility's 1997 Annual Report in order to determine, on a preliminary basis, the utility's average monthly water consumption per customer. During this review, Staff discovered that the utility, while indicating the number of general service (GS) customers at the beginning of the year, failed to account for those GS customers at the end of the year. When Staff called the utility to inquire about the GS customers, we were told that all GS customers were related parties to the utility and, therefore, were not billed. Therefore, although the utility's 1997 Annual Report did not indicate that the utility achieved a return greater than what was authorized, due to the number of customers who had not been billed, Staff began an informal investigation into the potential overearnings of this utility.

Consequently, Staff requested an audit of the utility's rate base, capital structure and operating position for the test period ended December 31, 1997. During the course of the informal investigation, Staff learned that, in addition to the customers who are metered but not billed, the utility also has several unmetered customers. Based on this new information, Staff conducted two field investigations, during which a comprehensive billing analysis was performed for the year ended December 31, 1997. Based on the

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results of Staff's preliminary analysis, by Order No. PSC-98-1623-FOF-WS, dated December 7, 1998, the Commission ordered that a full investigation of the utility's earnings for water and wastewater service is appropriate. In the aforementioned Order, the Commission found that: a) the utility's water system is overearning by \$19,004 and its wastewater system is overearning by \$17,146; and b) based on the proposed time frame to complete this case, the utility shall guarantee funds collected subject to refund in the amount of \$18,576. The utility subsequently provided a letter of credit to guarantee the potential refund.

However, resolution of this case has exceeded the estimated period of time originally contemplated. Therefore, Staff believes it is both necessary and appropriate to require the utility to hold additional revenues subject to refund.

DISCUSSION OF ISSUES

ISSUE 1: Is it appropriate to require Highlands Ridge to provide additional security to guarantee refunds of revenues, and, if so, what is the appropriate amount?

RECOMMENDATION: Yes, Highlands Ridge should be required to provide additional security to guarantee refunds of revenues. The appropriate amount of additional security is \$22,937. (LINGO)

STAFF ANALYSIS: As discussed in the case background, by Order No. PSC-98-1623-FOF-WS, the Commission found that: a) the utility's water system is overearning by \$19,004 and its wastewater system is overearning by \$17,146; and b) based on the proposed time frame to complete this case, the utility shall guarantee funds collected subject to refund in the amount of \$18,576. The utility subsequently provided a letter of credit to guarantee the potential refund.

However, resolution of this case has exceeded the estimated period of time originally contemplated. Therefore, Staff believes it is both necessary and appropriate to require the utility to hold additional revenues subject to refund. Based on the current case schedule of a February 29, 2000 agenda date, we believe an additional seven months is adequate time in which to resolve all matters in this case.

The security to guarantee refunds of revenues in Order No. PSC-98-1623-FOF-WS of \$18,576 was based on a six-month time frame. Had the security in that Order been based on a 13-month period (six months plus an additional seven months), the total security required would have been \$41,513. Therefore, we believe the appropriate amount of additional security is \$22,937 (\$41,513 - \$18,576).

ISSUE 2: What is the appropriate security to guarantee the additional amount subject to refund?

RECOMMENDATION: The utility should be required to file a bond, letter of credit or escrow agreement to guarantee the amount subject to refund. The bond or letter of credit should be in the amount of \$22,937. In lieu of a letter of credit or bond, the utility should obtain an escrow agreement which requires the utility to deposit \$3,277 monthly, as discussed below, until completion of the overearnings investigation and the resolution of the other outstanding matters as discussed in Order No. PSC-98-1623-FOF-WS. Pursuant to Rule 25-30.360(6), Florida Administrative Code, the utility should be required to provide a report by the 20th of each month indicating the monthly and total revenue collected subject to refund. The utility should be put on notice that failure to comply with these requirements will result in the initiation of a show cause proceeding. (LINGO, BRUBAKER)

STAFF ANALYSIS: Pursuant to Section 367.082, Florida Statutes, when revenues are held subject to refund, the utility is authorized to continue collecting the previously authorized rates. As discussed in Order No. PSC-98-1623-FOF-WS, the utility was required originally to guarantee a potential refund amount of \$18,576. However, the resolution of this case has exceeded the estimated period of time originally contemplated. As discussed in Issue 1, Staff recommends that the utility be required to hold additional revenues of \$22,937 subject to refund.

The Commission also found in the aforementioned Order that, as a result of Staff's inability to perform a financial analysis of Highlands Ridge's financial statements due to insufficient data, the utility not be allowed a corporate undertaking. Therefore, Staff recommends that the utility provide a letter of credit, bond or escrow agreement to guarantee the additional funds collected subject to refund.

If the security provided is a bond or a letter of credit, said instrument should be in the amount of \$22,937. If the utility chooses a bond as security, the bond should state that it will be released or should terminate only upon subsequent order of the Commission addressing overearnings or requiring a refund. If the utility chooses to provide a letter of credit as security, the letter of credit should state that it is irrevocable for the period it is in effect and that it will be in effect until a final Commission order is rendered addressing overearnings or requiring a refund.

If the security provided is an escrow account, said account should be established between the utility and an independent financial institution pursuant to a written escrow agreement. The Commission should be a party to the written escrow agreement and a signatory to the escrow account. The written escrow agreement should state the following:

1. The account is established at the direction of this Commission for the purpose set forth above;
2. No withdrawals of funds shall occur without the prior approval of the Commission through the Director of the Division of Records and Reporting;
3. The account shall be interest bearing;
4. Information concerning that escrow account shall be available from the institution to the Commission or its representative at all times;
5. The amount of revenue subject to refund shall be deposited in the escrow account within seven days of receipt; and
6. Pursuant to Cosentino v. Elson, 263 So. 2d 253 (Fla 3d. DCA 1972), escrow accounts are not subject to garnishments.

As discussed in Issue 1, the utility should deposit \$3,277 into the escrow account each month for possible overearnings. The escrow agreement should also state the following:

1. If a refund to the customers is required, all interest earned on the escrow account shall be distributed to the customers; and
2. If a refund to the customers is not required, the interest earned on the escrow account shall revert to the utility.

Irrespective of the type of security provided, the utility should keep an accurate and detailed account of all monies it receives. Pursuant to Rule 25-30.360(6), Florida Administrative Code, the utility should provide a report by the 20th day of each month indicating the monthly and total revenue collected subject to refund. Should a refund be required, the refund should be with interest and undertaken in accordance with Rule 25-30.360, Florida Administrative Code.

In no instance should maintenance and administrative costs associated with any refund be borne by the customers. The costs are the responsibility of, and should be borne by, the utility. Finally, the utility should be put on notice that failure to comply

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with these requirements will result in the initiation of a show
cause proceeding.

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ISSUE 3: Should this docket be closed?

RECOMMENDATION: No, this docket should remain open pending Staff's investigation of the utility's earnings for 1997 and the results of Staff's investigation and analysis into all other outstanding matters. (LINGO, BRUBAKER)

STAFF ANALYSIS: Based on Staff's audit and subsequent revenue adjustments, Staff recommends that the utility's water system is overearning by \$19,004 and its wastewater system is overearning by \$17,146. Furthermore, as discussed previously, there are other issues pertaining to this utility that must be addressed. Therefore, this docket should remain open pending Staff's investigation of the utility's earnings for 1997 and the results of Staff's investigation and analysis into all other outstanding matters.