

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Investigation of) DOCKET NO. 960814-WS
possible overearnings in Manatee) ORDER NO. PSC-96-1415-FOF-WS
County by KEITH & CLARA STARKEY) ISSUED: November 20, 1996
D/B/A HEATHER HILLS ESTATES)
_____)

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK, Chairman
JOE GARCIA
DIANE K. KIESLING

ORDER REQUIRING ESCROWING OF OVERTURNINGS
REVENUES COLLECTED SUBJECT TO REFUND

BY THE COMMISSION:

BACKGROUND

On October 10, 1995, the Manatee County Board of County Commissioners adopted Resolution No. R-95-109, pursuant to Section 367.171, Florida Statutes, subjecting privately owned water and wastewater utilities in Manatee County to the provisions of Chapter 367, Florida Statutes. We acknowledged the County's resolution by Order No. PSC-95-1393-FOF-WS, issued November 9, 1995.

Keith & Clara Starkey d/b/a Heather Hills Estates (Heather Hills or utility) serves 355 water and 354 wastewater customers within Heather Hills Estates in Manatee County, Florida. The golf course water customer has a septic tank for wastewater service. Water use in the utility's service area is under the jurisdiction of the Southwest Florida Water Management District (SWFWMD). The utility is a consecutive system, purchasing water for resale, considered non-jurisdictional by the SWFWMD.

The utility filed its application for a grandfather certificate on December 7, 1995. Water Certificate No. 577-W and Wastewater Certificate No. 498-S were granted to the utility by Order No. PSC-96-0434-FOF-WS, issued March 28, 1996.

During our consideration of the grandfather certificate application at the March 5, 1996 agenda conference, two customers of Heather Hills expressed their concern about possible overearnings by the utility, and dissatisfaction with the existing minimum gallonage charge for water and wastewater. Our review of

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the utility's 1995 annual report revealed possible overearnings. We then opened an investigation of possible overearnings by the utility.

In Order No. PSC-96-1126-FOF-WS, issued September 5, 1996, we found that the utility was overearning by \$1,826 on the water system and not overearning on the wastewater system. In lieu of ordering a reduction in water rates, we ordered the utility to initiate a meter replacement program which would negate any water system overearnings. In addition, we ordered a revenue neutral rate structure change in the existing rate structure of the utility to eliminate the minimum gallonage charge for water and wastewater.

A timely protest to the proposed agency action (PAA) order was filed by fourteen utility customers on September 25, 1996. Because the protest nullified the PAA Order, the utility is not required to begin the meter replacement program pending the final outcome of this proceeding. Furthermore, the proposed new rate structure approved in Order No. PSC-96-1126-FOF-WS will not be implemented pending the final outcome of this proceeding. As a result, the utility will overearn \$1,826 annually. We now address placing the overearnings subject to refund.

ESCROW OF MONIES

In order to protect the ratepayers in the event the utility is found to be overearning, we authorize the utility to collect the former rates, on a temporary basis, subject to refund provided that the utility first furnish security and have it approved by Commission staff. 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. Assuming a nine-month time-frame to complete the hearing process and make a final decision, the potential refund amount is \$1,370. Interest calculated in accordance with Rule 25-30.360, Florida Administrative Code, is \$50, resulting in a total of \$1,420, which shall be collected under guarantee, subject to refund with interest.

The security shall be in a form of a bond, or letter of credit in the amount of \$1,420, or an escrow account with an independent financial institution. If the utility chooses a bond as security, the bond shall contain wording to the effect that it will be terminated only under the following conditions:

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

If the utility 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 the security is provided through an escrow agreement, the Utility shall escrow 4.22 percent of its quarterly revenues (customers billed quarterly), and 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) This 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 shall be borne by, the utility. Irrespective of the form of security chosen by the utility, an account of all monies received as a result of the rate increase shall be maintained by the utility. 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.

In addition, the utility shall file reports with the Division of Water and Water no later than 20 days after each monthly billing. These reports shall indicate the amount of revenue collected under the former rates.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that each of the findings made in the body of this Order is hereby approved in every respect. It is further

ORDERED that 4.22 percent of quarterly revenues or \$1,824 in total annual revenues is the amount subject to refund. It is further

ORDERED that, Keith & Clara Starkey d/b/a Heather Hills Estates shall submit and have approved a bond or letter of credit in the amount of \$1,420 or an escrow agreement as a guarantee of any potential refund of revenues collected on a temporary basis. It is further

ORDERED that if Keith & Clara Starkey d/b/a Heather Hills Estates submits an escrow agreement as a guarantee of any potential refund of revenues collected on a temporary basis, Keith & Clara Starkey d/b/a Heather Hills Estates shall escrow a total of 4.22 percent of its quarterly revenues in an appropriate escrow account in accordance with the body of this Order. It is further

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ORDERED that these escrowed funds will be removed from this escrow account only upon approval of this Commission. It is further

ORDERED that, Keith & Clara Starkey d/b/a Heather Hills Estates is authorized to collect the current rates on a temporary basis, subject to refund in accordance with Section 367.082, Florida Statutes, provided that Keith & Clara Starkey d/b/a Heather Hills Estates has furnished satisfactory security for any potential refund. It is further

ORDERED that this docket shall remain open pending completion of the hearing process.

By ORDER of the Florida Public Service Commission, this 20th day of November, 1996.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

by: Kay Flynn
Chief, Bureau of Records

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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, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, 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 and/or wastewater 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.