

M E M O R A N D U M

January 5, 1998

**RECEIVED**  
JAN 05 1998  
4:35  
FPSC - Records/Reporting

TO: DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (VACCARO) *ew*

RE: DOCKET NO. 971504-WS - INVESTIGATION OF RATES OF A.P. UTILITIES, INC. IN MARION COUNTY FOR POSSIBLE OVEREARNINGS.

PSC-98-0044-PCO-WS

Attached is an ORDER INITIATING INVESTIGATION INTO RATES AND CHARGES, MAKING REVENUES SUBJECT TO REFUND AND REQUIRING ESCROW OF REGULATORY ASSESSMENT FEES, to be issued in the above-referenced docket.

(Number of pages in order - 12)

TV/der

Attachment

cc: Division of Water and Wastewater (Merchant, Edwards, Kaproth)

I:971504-o.tv

*0/1*  
*1 copy sent*  
*made copies RAN*

00139-98

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation of rates of  
A.P. Utilities, Inc. in Marion  
County for possible  
overearnings.

DOCKET NO. 971504-WS  
ORDER NO. PSC-98-0044-PCO-WS  
ISSUED: January 6, 1998

The following Commissioners participated in the disposition of  
this matter:

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

ORDER INITIATING INVESTIGATION INTO RATES AND CHARGES,  
MAKING REVENUES SUBJECT TO REFUND AND  
REQUIRING ESCROW OF REGULATORY ASSESSMENT FEES

BY THE COMMISSION:

BACKGROUND

A.P. Utilities, Inc. (APU or utility) is a Class B utility providing water service to 1,090 water customers in Marion County. For the test year ended December 31, 1996, the utility reported water operating revenues of \$244,277 and operating expenses of \$176,413, which resulted in a net operating income of \$67,874.

North Central Florida Utilities, Inc. was transferred to APU in Order No. 21762, issued on August 21, 1989, in Docket No. 881063-WU. Mr. Phillip Woods purchased APU, and we approved the transfer of majority organizational control by Order No. 24977, issued August 26, 1991, in Docket No. 910117-WU. This purchase also included the Aqua Pure Water Company (Aqua Pure) and Marico Properties, Inc. (Marico). Aqua Pure Water Company was transferred to APU by Order No. 25075, issued on September 17, 1991, in Docket No. 910118-WU. Marico was transferred to APU by Order No. 25063, issued on September 13, 1991, in Docket No. 910119-WU.

DOCUMENT NUMBER-DATE

00139 JAN-6 88

FPSC-RECORDS/REPORTING

By Order No. PSC-97-0286-FOF-WU, issued on March 13, 1997 in Docket No. 961141-WU, we ordered the utility to show cause why it should not be fined for failure to pay its 1991-1995 regulatory assessment fees and failure to file several years of annual reports. By Order No. PSC-97-1556-PCO-WU, issued on December 11, 1997 in Docket No. 971076-WS, we ordered APU to show cause why it should not be fined for failure to pay its 1996 regulatory assessment fees and for untimely filing of its 1996 annual report.

INITIATION OF OVEREARNINGS INVESTIGATION AND PLACING  
REVENUES SUBJECT TO REFUND

Based on a desk audit of the 1996 annual report for APU, we began an informal investigation into potential overearnings. The 1996 annual report indicated that APU was earning an overall rate of return of 25.35%. We requested an audit of the utility's books after the test year ended December 31, 1996. Our audit indicated that APU's achieved overall rate of return is 23.32%. Based on this, we find it appropriate that this docket be opened to investigate the potential overearnings of the utility. Furthermore, we find it appropriate to establish APU's rate base, because it has not been established since the transfer of majority organizational control to the present owner.

Water operating revenues, as adjusted by our auditor, totaled \$222,370 for the year ended December 31, 1996. Our calculation of the annual water revenue requirement, based on the auditor's adjusted rate base and net operating income, totals \$191,333. After our investigation is complete, we will be able to determine if the utility is, in fact, overearning.

Accounting schedules are attached to illustrate the approved water rate base, capital structure, and test year operating income. Rate base is attached as Schedule No. 1. The capital structure is Schedule No. 2. Schedule No. 3 is reserved for the operating statement. Our adjustments are discussed below.

For purposes of this interim Order, the schedules reflect the test year ending balances per the auditor, as well as specific audit adjustments. Because there was no filing on the part of the utility, the amounts per audit do not necessarily reflect the utility's position.

RATE BASE

Section 367.082(5)(b)1, Florida Statutes, requires us to make adjustments consistent with those made in the utility's last rate proceeding, in calculating the amount to be held subject to refund. We have reviewed the utility's books and have determined that they do not reflect the Commission ordered adjustments per Orders Nos. 21762, 25063 and 25075, issued August 21, 1989, September 13, 1991 and September 17, 1991, respectively. Consequently, we have made adjustments to correct utility plant in service, land, accumulated depreciation and accumulated amortization of CIAC. Further, we have made an adjustment to correct \$9,637 in erroneously expensed capital additions.

Additionally, pursuant to Rule 25-30.433(2), Florida Administrative Code, we calculated working capital using the formula method, or 1/8 of operation and maintenance expenses, because the utility has not had a prior rate proceeding and is a Class B utility. Our calculation indicates that the appropriate amount for working capital is \$17,675. Based on the audited balances and the use of the formula method to calculate working capital, we find it appropriate to establish rate base for interim purposes at \$289,419.

COST OF CAPITAL

The capital structure is based on the utility's debt and customer deposits. The utility's equity balance is negative. Therefore, we have not considered this component in determining the interim cost of capital. We have included \$2,560 in customer deposits as indicated in the utility's 1996 annual report. The cost rate for customer deposits, as provided by Rule 25-30.311(4)(a), Florida Administrative Code, is 6%. Based on our audit we have determined the cost rate for APU's \$498,997 of debt is 9.64%. We have established an overall rate of return of 9.62% for interim purposes.

NET OPERATING INCOME

Due to numerous problems encountered with the utility's books and records, the staff auditor has proposed several adjustments to the utility's operating expenses. These adjustments correct errors, remove undocumented charges, remove non-utility charges, correct out of period charges, reclassify costs and disallow

charges. Section 367.082(5)(b)1, Florida Statutes, requires that all adjustments be consistent with those made in the utility's last rate proceeding. Because there has not been a prior rate proceeding to determine net operating income, we find that the auditor's adjustments are corrections of errors, which are appropriate until a further investigation can be conducted.

In addition, the auditor did not include an expense for income taxes or regulatory assessment fees. We have not included an allowance for income taxes until a further investigation can be conducted into the appropriateness of an income tax expense. Further, the utility has no equity; therefore, we do not find that an income tax expense is appropriate. We have included a \$10,007 expense for regulatory assessment fees. Even though the utility has not paid its 1996 regulatory assessment fees, this is a yearly expense that is required to be paid and needs to be included in the calculation of revenues subject to refund. Therefore, we have increased taxes other than income by \$10,007 for regulatory assessment fees.

#### Revenue Requirement

Our calculation indicates a water revenue requirement of \$191,333 for the interim test year, representing a decrease of \$31,037, or 13.96%. Accordingly, \$31,037 in water revenues shall be held subject to refund pending the final determination of any refund requirement.

#### SECURITY FOR REFUND

Pursuant to Section 367.082, Florida Statutes, the utility is authorized to continue collecting the previously authorized rates. As previously discussed, the amount of potential overearnings for APU is \$31,037 on an annual basis. Assuming a 9-month time frame, the potential refund amount is \$24,243. Therefore, \$24,243 in annual revenues should be collected under guarantee, subject to refund with interest.

Based on our analysis of the utility's financial statements, the utility cannot support a corporate undertaking for \$24,243 due to the utility's insufficient liquidity, negative owner's equity, inadequate interest coverage, and its highly leveraged capital structure. Therefore, the utility shall provide a letter of

credit, bond or escrow agreement to guarantee the funds collected subject to refund.

If the security provided is an escrow account, the account shall be established between the utility and an independent financial institution pursuant to a written escrow agreement. The Commission shall be a party to the written escrow agreement and a signatory to the escrow account. The written escrow agreement shall state the following: that the account is established at the direction of this Commission for the purpose set forth above; that no withdrawals of funds shall occur without the prior approval of the Commission through the Director of the Division of Records and Reporting; that the account shall be interest bearing; that information concerning that escrow account shall be available from the institution to the Commission or its representative at all times; that the amount of revenue subject to refund shall be deposited in the escrow account within seven days of receipt; and that pursuant to Cosentino v. Elson, 263 So. 2d 253 (Fla 3d. DCA 1972), escrow accounts are not subject to garnishments.

The utility shall deposit \$2,694 into the escrow account each month for possible overearnings. The escrow agreement shall also state the following: if a refund to the customers is required, all interest earned on the escrow account shall be distributed to the customers; and if a refund to the customers is not required, the interest earned on the escrow account shall revert to the utility.

If the security provided is a bond or a letter of credit, said instrument shall be in the amount of \$24,243. If the utility chooses a bond as security, the bond shall 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 shall 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.

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

interest and undertaken in accordance with Rule 25-30.360, Florida Administrative Code.

In no instance shall maintenance and administrative costs associated with any refund be borne by the customers. The costs are the responsibility of, and shall be borne by, the utility. If the utility fails to comply with the requirements stated in this Order, show cause proceedings will be initiated immediately after any missed action by APU.

#### ESCROW OF REGULATORY ASSESSMENT FEES

Pursuant to Section 367.145(1), Florida Statutes, each utility must pay regulatory assessment fees to this Commission. Rule 25-30.120(1), Florida Administrative Code, sets forth the regulatory assessment fee amount each utility must pay. In setting rates, we include revenues sufficient to provide for the utility's obligation to pay regulatory assessment fees. However, in this case, the utility has historically collected the regulatory assessment fees but not paid them. Regulatory assessment fees are intended to defray the costs incurred in Public Service Commission regulation of utilities.

The utility has not paid the majority of its regulatory assessment fees from 1991 through 1996. The utility now owes this Commission \$81,454.24, which includes penalties and interest for non-payment of its regulatory assessment fees. The utility did make a payment of \$2,000 in October, 1997 and another payment of \$2,000 in November, 1997. Of these payments, \$3,260 was applied to the amount owed for regulatory assessment fees. The remainder was retained by the collection agency for its services. As a result, we find it appropriate that the utility establish a separate interest-bearing escrow account for the purpose of depositing 4.5% of all monthly service billings (monthly service and miscellaneous service charges) for payment of regulatory assessment fees. This is consistent with Order No. PSC-92-0478-FOF-WU, issued June 9, 1992, in Docket No. 920318-WU, titled : In Re: Initiation of Proceeding by Florida Public Service Commission to Require St. George Island Utility Company, Ltd., in Franklin County to Escrow Funds for Payment of Regulatory Assessment Fees. By that order, we required St. George Island Utility Company, Ltd. to escrow its regulatory assessment fees based on the utility's failure to pay past regulatory assessment fees.

The escrow account shall be established between the utility and an independent financial institution pursuant to a written escrow agreement. The Commission shall be a party to the written escrow agreement and a signatory to the escrow account. The written escrow agreement shall state the following: that the account is established at the direction of this Commission for the purpose set forth above; that no withdrawals of funds shall occur without the prior approval of the Commission through the Director of the Division of Records and Reporting; that the account shall be interest-bearing; that information concerning that escrow account shall be available from the institution to the Commission or its representative at all times; and that pursuant to Cosentino v. Elson, 263 So. 2d 253 (Fla 3d. DCA 1972), escrow accounts are not subject to garnishments.

The following additional conditions shall be required to be part of the escrow agreement: the interest earned by the escrow account shall be maintained in the account and used to pay any penalties and interest associated with delinquent payment; the 4.5% of all service revenues and miscellaneous service charge billings for each month beginning in January, 1998, shall be deposited into the account within seven days of receipt. Further, a draft of the agreement shall be required to be submitted to this Commission for approval.

The utility shall also maintain record of the revenues billed for each month and the utility shall file a report with the Division of Water and Wastewater no later than 20 days after each monthly billing. These reports shall indicate the amount of revenue billed for the month under the categories of monthly service rates and miscellaneous service charges.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that an investigation of the water rates and charges of A.P. Utilities, Inc. shall be initiated. It is further

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

ORDER NO. PSC-98-0044-PCO-WS  
DOCKET NO. 971504-WS  
PAGE 8

ORDERED that A.P. Utilities, Inc. shall place \$31,037 annually of its revenues, subject to refund with interest in accordance with Rule 25-30.360, Florida Administrative Code, to the extent set forth in the body of this Order. It is further

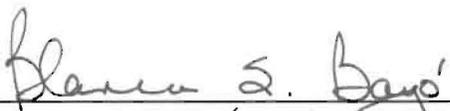
ORDERED that A.P. Utilities, Inc. shall provide the Commission with a bond or letter of credit in the amount of \$24,243, or an escrow agreement as set forth in the body of this Order as a guarantee of any potential refund of revenues collected subject to refund. It is further

ORDERED that A.P. Utilities, Inc. shall establish an interest bearing escrow account, consistent with the requirements set forth in the body of this Order, as security for payment of its regulatory assessment fees. It is further

ORDERED that by no later than the 20th of each month, A.P. Utilities, Inc. shall file monthly reports consistent with the requirements set forth in the body of this Order. It is further

ORDERED that this docket shall remain open.

By ORDER of the Florida Public Service Commission this 6th day of January, 1998.

  
\_\_\_\_\_  
BLANCA S. BAYÓ, Director  
Division of Records and Reporting

( S E A L )

TV

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), 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.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by the Commission's decision to initiate an investigation into overearnings in this matter, which is final action, 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.

For the decision making revenues subject to refund, which is preliminary, procedural, or intermediate in nature, any party adversely affected by this order may do (1) and (2) in the paragraph above. However judicial review of a preliminary, procedural or intermediate ruling or order is available only 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.