

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation Into) DOCKET NO. 920010-WU
Appropriate Rate Level For) ORDER NO. PSC-92-0260-FOF-WU
Water Service by JASMINE) ISSUED: 04/28/92
LAKES UTILITIES CORPORATION)
in Pasco County)
_____)

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman
SUSAN F. CLARK
J. TERRY DEASON
BETTY EASLEY
LUIS J. LAUREDO

ORDER PLACING ADDITIONAL REVENUES
SUBJECT TO REFUND

BY THE COMMISSION:

BACKGROUND

Jasmine Lakes Utilities Corporation (Jasmine Lakes or utility), is a Class B utility that provides water and wastewater service to over 1,500 residential customers of Jasmine Lakes subdivision and approximately 69 commercial customers in Port Richey, Florida. The utility purchases water from Pasco County for resale to its customers. In April, 1989, the price for this purchased water increased more than 18.5%, from \$1.99 per thousand gallons to \$2.37 per thousand gallons. The utility then filed an application for a limited proceeding rate increase for bulk water service on December 20, 1990. On March 25, 1991, this Commission issued Order No. 24275 granting the utility a revenue increase of \$36,933. The utility was authorized to charge its customers \$3.33 per 1,000 gallons for water.

Seven months later, on November 6, 1991, we received a letter from Pasco County's assistant county attorney informing us that the utility had not paid Pasco County for purchased water since August 1990, because it claimed that Pasco County's rates discriminate against wholesale users. As of September 29, 1991, the unpaid balance totalled \$251,628.25, including \$16,076 in interest.

When the utility filed its application for a rate increase in December 1990, approximately four months had lapsed since the utility had stopped paying Pasco County for purchased water, but

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the utility did not indicate in its application that it was withholding payment to the county. Further, it was determined that, although the increased rates had become effective April 16, 1991, and the utility had been charging its customers the increased rates, it had withheld payment to the county. On November 20, 1991, we informed the utility about the county attorney's letter and asked the utility to respond by December 9, 1991. On December 9, 1991, the utility responded that it was involved in litigation against Pasco County regarding the disputed amount. The civil action which is pending in Pasco County Circuit Court was initiated July 1991. Docket No. 920010-WU was opened on January 3, 1992, to address our concerns about how to protect the customers in this situation. On February 24, 1992, this Commission issued Order No. 25790, finding that the revenue increase of \$36,933 granted in Order No. 24275 should be made subject to refund on a prospective basis beginning February 4, 1992. This Order addresses our investigation into whether this Commission would have the legal authority to make all revenues that were granted in Order No. 24275 subject to refund, back to April 16, 1991, the date the new rates went into effect.

ADDITIONAL REVENUES SUBJECT TO REFUND

Based on a letter dated December 9, 1991, beginning in August, 1990, the utility has asserted that the rates charged by Pasco County are discriminatory, unjust, and unreasonable, and Jasmine has refused to pay for the water it receives from the County. Jasmine informed us that the disputed amount is being maintained as an account payable until the litigation with Pasco County is resolved. Yet when the utility filed its application for a rate increase in December 1990 to account for Pasco County's increased rates, it never mentioned that it was withholding payment to the County, and this Commission thus allowed the increased rates to go into effect without knowing that the utility would keep the increased revenues itself.

If we had been informed of this material fact at the time our decision was made, it is unlikely that this Commission would have authorized the rates to be collected without placing them subject to refund for the ratepayers' protection. Jasmine has not changed its position in any way in reliance on this Commission's original rate order, and has suffered no prejudice as a consequence. If Jasmine prevails in its litigation against Pasco County, all monies collected for the express purpose of covering the increased county rates must be returned to the ratepayers. If Jasmine does not prevail, the money goes to the county.

We believe our decision to place subject to refund all the revenues collected by authority of Order No. 24275 is supported by law. In Richter v. Florida Power Corporation, 366 So.2d 798 (Fla. 2d DCA 1979), the court recognized that an administrative agency may alter a final decision under extraordinary circumstances. The court in Richter held that when a substantial change in circumstances, or fraud, surprise, mistake, or inadvertence is shown . . . the Public Service Commission must have the power to alter previously entered final rate orders. In Reedy Creek Utilities v. Florida Public Service Commission, 418 So.2d 249 (Fla. 1982), the Florida Supreme Court again recognized the Commission's inherent ability to modify its prior orders. Though the Court held that this authority is not without limitation, an exception to the doctrine of administrative finality permits the agency the exercise of the authority to modify an order when a demonstrated public interest requires it. As the First District Court of Appeal said in Sunshine Utilities v. Florida Public Service Commission, 577 So.2d 663 (Fla. 1st DCA 1991), "[t]he PSC, under the pertinent statutes as construed by earlier decisions . . . has the authority to determine whether there are mistakes of this character in its prior orders and has a duty to correct them." (Citations omitted, emphasis supplied).

Extraordinary circumstances exist in this case because Jasmine Lakes did not inform this Commission during the time the limited proceeding was being processed of the fact that it was not and did not intend to pay Pasco County for the bulk water it was receiving. We were surprised to learn this on November 6, 1991. Further, the utility's customers have been required to pay for increased water rates while at the same time the utility has refused to pay Pasco County.

Therefore, based on the above, we find that all revenues collected for the purpose of paying increased Pasco County bulk water rates pursuant to Order No. 24275 shall be placed subject to refund for the ratepayers' protection pending the outcome of the Pasco County litigation. This, in effect, requires that the utility place an additional \$37,244 subject to refund. This amount reflects the increase based on the 11 months that have transpired since the date the new rates went into effect, plus interest of 10%.

PROPER SECURITY

On March 9, 1992, Jasmine submitted a draft escrow agreement which the utility proposes to utilize to comply with the requirements of Order No. 25790 placing the revenues authorized by Order No. 24275 and collected February 4, 1992, forward subject to refund. In that Order, we required Jasmine to provide a bond, letter of credit or escrow agreement of \$40,630 as a guarantee of any potential refunds of the water revenues collected. We find the following sentence in that agreement inappropriate:

These monies are being retained in escrow, pending final determination by the Commission of what overearnings, if any, are created by the Utility as a result of the cost of the operation of its water system.

This sentence inappropriately conditions refund of these monies on a determination of the utility's overearnings. Any "overearnings" of the utility constitutes a totally separate matter. The utility asserts that this Commission might not be authorized to require a refund of these monies if such a refund might cause its rate of return to fall below the minimum of its authorized range. However, this is not the case because the initial purpose for this revenue increase was not to address the utility's earnings level, but specifically to provide for the increased cost of the bulk water the utility was purchasing from Pasco County. If a utility is underearning, the appropriate method for addressing that problem is to file for a rate proceeding, which, in fact, Jasmine has done in Docket No. 920148-WS. The scope of Order No. 25790 and this Order is limited to the revenues that the utility received pursuant to Order No. 24275.

Further, to guarantee the potential refund of these additional revenues placed subject to refund herein, the utility shall provide a bond, letter of credit or escrow agreement of \$37,244.

If the utility chooses a bond as security, the bond should 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 a security, it should 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 utility chooses an escrow account, then this account should be established containing the following conditions as 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 Consentino 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.

This account must specify by whom and on whose behalf such monies were paid. Also pursuant to Rule 25-30.360(6), Florida

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Administrative Code, the utility shall provide a report by the 20th of each month indicating the monthly and total revenue collected subject to refund.

We shall monitor the Circuit Court litigation and we will take appropriate action based upon the outcome of that litigation.

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that Jasmine Lakes Utilities Corporation shall place an additional \$37,244 in revenues subject to refund. It is further

ORDERED that Jasmine Lakes Utilities Corporation, shall provide a bond, letter of credit or an escrow agreement of \$37,244 as guarantee of any potential refund of these additional water revenues placed subject to refund. Also, 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. It is further

ORDERED that Jasmine Lakes Utilities Corporation shall modify the escrow agreement submitted pursuant to Order No. 25790, as set forth in the body of this Order. It is further

ORDERED that this docket shall remain open pending the resolution of all outstanding issues.

By ORDER of the Florida Public Service Commission, this 28th, day of April, 1992.



STEVE TRIBBLE 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 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.