

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation into ) DOCKET NO. 920010-WU  
appropriate rate level for ) ORDER NO. PSC-92-0700-FOF-WU  
water service by JASMINE ) ISSUED: 07/22/92  
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 GRANTING IN PART  
MOTION FOR RECONSIDERATION  
AND DENYING REQUEST FOR HEARING

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. On December 20, 1990, the utility filed an application for a limited proceeding to receive a rate increase for bulk water service. By Order No. 24275, issued March 25, 1991, the utility was granted a \$36,933 annual rate increase to cover the increased purchased water rates. These rates became effective April 16, 1991.

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.

However, 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 the utility did not indicate in its application that it was withholding payment to the county. Further, it was determined

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that, although the increased rates had become effective April 16, 1991, the utility had been charging its customers the increased rates and at the same time had been withholding payment to the county.

Subsequently, in an effort to protect the customers whose rates were increased to cover the increased purchased water charge, this Commission issued two orders requiring the utility to place the revenues generated from the rate increase granted in Order No. 24275 subject to refund.

By Order No. 25790, issued February 24, 1992, we required the utility to make the \$40,630 of its revenues, which included the rate increase authorized by Order No. 24275 and interest, subject to refund on a prospective basis effective February 4, 1992.

Subsequently, by Order No. PSC-92-0260-FOF-WU, issued April 28, 1992, we required the utility to place an additional \$37,244, which includes interest, subject to refund, effective April 16, 1991, the date the new rates went into effect.

On May 13, 1992, Jasmine Lakes filed a motion for reconsideration and oral argument. We granted the utility's oral argument at our June 30, Agenda Conference. In its motion for reconsideration, the utility requests that this Commission reconsider certain factual and legal matters in Order No. PSC-92-0260-FOF-WU. The utility also alleges that this Order failed to accurately reflect our decision.

On May 19, 1992, the utility filed a petition for proposed agency action asserting that Order No. PSC-92-0260-FOF-WU contained several disputed legal and factual issues and, as a result, requested that this Commission grant the utility a hearing pursuant to the provisions of Section 120.57, Florida Statutes.

#### MOTION FOR RECONSIDERATION

The utility's motion seeks reconsideration on four issues. First it argues that Order No. PSC-92-0260-FOF-WU does not reflect this Commission's decision at our April 7th Agenda Conference. The utility asserts in its motion that the following language is contrary to our decision:

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.

The utility argues that this language fails to recognize that this Commission decided not to address the question of whether any maintenance and administrative costs associated with any refund would be borne by the utility or the customers.

We do not believe this language reflects any predetermination of the disposition of any refunds. However, because we find that this language could be interpreted to reflect such a predetermination, we find it appropriate to modify this language to read: "The money will be held subject to refund pending the outcome of litigation."

The second issue Jasmine Lakes argues in its motion is that Order No. PSC-92-0260-FOF-WU overlooked or misapprehended facts regarding the appropriate amount of revenues to be placed subject to refund. Jasmine Lakes asserts that the number of months to be included in the proposed refund under Order No. PSC-92-0260-FOF-WU should be eight or, at most, nine months, not eleven as stated in that Order. The 11-month period used in the Order is from April 1991 to February 1992. Order No. 24275, issued March 25, 1991, requires that the rate increase shall become effective for meter readings taken on or after the stamped approval date. Because the utility has informed us that the rates became effective for meter readings 30 days after the April 16, 1991, stamped approval date, we find it is not appropriate to include April 1991 in these calculations because the customers were not billed at the new rate until May 1991. Further, we find we should not include February 1992 because that month was included in Order No. 25790 calculations. Therefore, we find that the appropriate refund period is the nine-month period from May 1991 to January 1992 and hereby grant reconsideration of Order No. PSC-92-0260-FOF-WU on this point.

Further, Jasmine Lakes contends that the additional refund amount of \$37,244 required by Order No. PSC-92-0260-FOF-WU is excessive. Jasmine Lakes asserts that the actual revenues generated as a result of the rate increase granted in Order No.

24275 for the period from the implementation of that rate increase through January 1992 is substantially less than that proposed under Order No. PSC-92-0260-FOF-WU. To guarantee the potential refund of these additional revenues placed subject to refund, the utility was ordered to provide a bond, letter of credit, or escrow agreement. Jasmine Lakes has selected an escrow agreement. The utility submitted a listing of the number of gallons of water sold by meter size for the period between May 1991 and April 1992. This is the period over which rates have already been collected under the increase granted in Order No. 24275. Based on our review of this information, it appears that the utility experienced lower water sales and collected only \$24,943 in additional revenues.

Therefore, we find it appropriate to reconsider Order No. PSC-92-0260-FOF-WU on this point and we find the appropriate amount to be escrowed for the period from May 1991 through December 1991, is \$27,437, which includes 10 percent interest.

The third issue Jasmine Lakes raises is that the following statement on page three of Order No. PSC-92-0260-FOF-WU is an incorrect statement of fact:

Jasmine Lakes did not inform this Commission during the time the Limited Proceeding was being processed of the fact it was not and did not intend to pay Pasco County for the bulk water it was receiving.

We find it appropriate to grant reconsideration on this point and modify the statement on page three of Order No. PSC-92-0260-FOF-WU to read:

Jasmine Lakes did not inform this Commission during the time the Limited Proceeding was being processed of the fact that it was not paying Pasco County for the bulk water it was receiving.

The fourth and final point the utility argues in its motion is that this Commission's action in Order No. PSC-92-0260-FOF-WU misapprehends our authority under Chapter 367, Florida Statutes, and under the case law cited. Order No. PSC-92-0260-FOF-WU cites three cases that demonstrate that, under the circumstances

involved, this Commission has authority to make the increased revenues that were authorized by Order No. 24275 subject to refund, effective April 16, 1991, the date the new rates went into effect.

Jasmine Lakes asserts that this decision to place revenues subject to refund back to the initial effective date of the rate increase constitutes retroactive ratemaking. As set out in Order No. PSC-92-0260-FOF-WU, this does not constitute retroactive ratemaking. This is an incorrect characterization. The utility filed an application for a rate increase on the basis that Pasco County had increased the utility's bulk water rates. The utility filed the limited proceeding for one specific purpose -- a revenue increase to allow the utility to recover additional expenses that it then had to pay Pasco County for the county's increased rates. This Commission's approval of the revenue increase was granted on the facts presented in the utility's application. The utility omitted the key information that it was not paying Pasco County. Because that key information was brought to light at a later date this Commission had the authority at that later date to act appropriately once we had been fully informed of the facts. Our authority to correct an error made based on a mistake or omission of a material fact in a prior ratemaking order is soundly supported by the case law cited in Order No. PSC-92-0260-FOF-WU, including Richter v. Florida Power Corporation, 366 So.2d 798 (Fla. 2d DCA 1979); Reedy Creek Utilities v. Florida Public Service Commission, 418 So.2d 249 (Fla. 1982); Sunshine Utilities v. Florida Public Service Commission, 577 So.2d 663 (Fla. 1st DCA 1991).

Clearly, this Commission has the authority to place additional revenues subject to refund to protect the utility's ratepayers whose rates were increased to cover Pasco's increased water costs, while at the same time Jasmine Lakes has withheld payment to the county.

Further, Jasmine Lakes asserts that this Commission does not have the authority pursuant to Chapter 367, Florida Statutes, to place revenues subject to refund in order to ultimately require a refund on some basis other than a fair rate of return standard. Even if we do have such authority, Jasmine Lake states we cannot require a refund which will effectively cause the utility to earn less than a reasonable rate of return during the period covered by such refund.

We have already clarified herein that we are not reaching the issue of the appropriate disposition of these monies placed subject to refund by Order No. PSC-92-0260-FOF-WU. We do not find that the placing of these revenues subject to refund in any way disposes of the issue as to the appropriate basis for any potential refund.

Therefore, we deny Jasmine Lakes' motion for reconsideration on this fourth and final issue.

PETITION ON PROPOSED AGENCY ACTION

On May 19, 1992, Jasmine Lakes filed a petition on Proposed Agency Action (PAA) asserting that Order No. PSC-92-0260-FOF-WU contained several disputed legal and factual issues, and requesting a hearing pursuant to the provisions of Section 120.57, Florida Statutes. Order No. PSC-92-0260-FOF-WU is not proposed agency action, but rather an order in the nature of an interim order. Interim decisions are non-final in nature. Placing revenues subject to refund protects the ratepayers, while not constituting a final agency action affecting the utility. Jasmine Lakes' opportunity for a hearing will be provided when this Commission issues its Proposed Agency Action Order determining the appropriate amount of a refund, if any. After our investigation is complete and the litigation between Pasco County and Jasmine Lakes is resolved this Commission will determine the appropriate disposition of the monies held subject to refund.

The utility cites Florida Public Service Commission vs. Central Corporation, 551 So.2d 568 (Fla 1st DCA 1989), to argue that the aforementioned Order is not an interim Order. The First District Court of Appeal held that Order No. 19095 was not an interim order, but was an invalidly promulgated rule and that this Commission's decision not to grant Central a hearing was, therefore, inappropriate. We believe that the instant case does not relate in any substantive fashion to the Central case. It is clearly distinguishable from the Central case because our decision in Order No. PSC-92-0260-FOF-WU does not have the effect of a rule nor does it have general applicability to an entire industry. Therefore, we find that the Central case is not relevant nor persuasive. Order No. PSC-92-0260-FOF-WU was in the nature of an interim order, not proposed agency action and, therefore, Jasmine Lakes is not entitled to a hearing at this time.

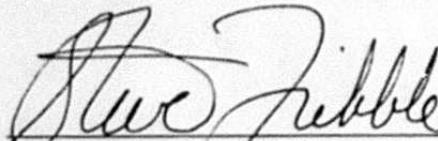
Based on the foregoing, it is, therefore,

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ORDERED by the Florida Public Service Commission that the Motion for Reconsideration of Order No. PSC-92-0260-FOF-WU, filed by Jasmine Lakes Utilities Corporation, is hereby granted in part and denied in part as set forth in the body of this Order. It is further

ORDERED that Jasmine Lakes Utilities Corporation's request for a hearing at this time is denied.

By ORDER of the Florida Public Service Commission this 22nd day of July, 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.