

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for staff-) DOCKET NO. 941107-WU
assisted rate case in Lake) ORDER NO. PSC-95-0347-FOF-WU
County for Forty-Eight Estates) ISSUED: March 13, 1995
Water System, by J. Swiderski)
Utilities, Inc., as receiver)
_____)

The following Commissioners participated in the disposition of this matter:

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

ORDER DENYING WAIVER OF SECURITY FOR EMERGENCY TEMPORARY RATES, BUT FINDING SECURITY REQUIREMENT FULFILLED

BY THE COMMISSION:

BACKGROUND

On December 28, 1994, J. Swiderski Utilities, Inc. (JSU), the receiver for Forty-Eight Estates Water System (48 Estates or Utility), requested that the Commission waive the security requirement imposed on the Utility for the collection of the emergency temporary rates granted in Order No. PSC-94-1556-FOF-WU, issued December 13, 1994.

Forty-Eight Estates, a Class C water utility, was organized in 1971 and serves 71 customers in Lake County. Although Lake County became subject to Commission jurisdiction on June 13, 1972, we were unaware of this Utility until a customer inquiry in December, 1986. Stanley Busk acquired ownership in 1985. On January 22, 1987, 48 Estates applied for a certificate for its water system and was granted Certificate No. 498-W by Order No. 18839, issued February 10, 1988.

The Utility has never submitted annual reports. We have brought show cause actions against the Utility for failure to file its 1988, 1989, 1990 and 1991 annual reports. Past due regulatory assessment fees total \$896.07 for 1988, 1992 and 1993.

DOCUMENT NUMBER-DATE

02726 MAR 13 88

FPSC-RECORDS/REPORTING

On August 9, 1994, Judge Jerry T. Lockett in the Circuit Court, Fifth Judicial Circuit, in and for Lake County, issued an order in Case No. 88-1353-CA-01, declaring 48 Estates abandoned and appointing JSU as receiver of the system. The abandonment was precipitated by a Department of Environmental Protection (DEP) suit brought for failure to maintain required operating standards. DEP issued an order requiring improvements to the water system within 30 days, which the Utility failed to accomplish.

The Commission acknowledged JSU as receiver by Order No. PSC-94-1356-FOF-WU, issued November 7, 1994. JSU is a utility operating two other systems in Lake County: Summit Chase, which serves 219 water and 218 wastewater customers, and Kings Cove, which serves 148 water and 143 wastewater customers. JSU, on behalf of 48 Estates, filed a staff assisted rate case on October 17, 1994. The original tariff for 48 Estates included no base facility charge, only a gallonage charge of \$1.16 per 1,000 gallons with a minimum charge of \$6.25. The rates had not changed since the Utility's certification.

By Order PSC-94-1556-FOF-WU, the Commission granted 48 Estates the following emergency rate relief, subject to refund:

WATER
MONTHLY RATES

Residential

Base Facility Charge

Meter Size
5/8" x 3/4"

Original
N/A

Emergency
Temporary
Approved
\$ 7.79

Gallonage Charge

Per 1,000 gallons
* Minimum Charge of \$6.25

\$ 1.16*

\$ 1.23

The increase in rates amounted to a 79.27% increase. The receiver was to provide security in the form of a bond, or escrow, or letter of credit in the amount of \$5,102. JSU stated, in its request for waiver, that it believed that it was not fair and reasonable to require it to provide \$5,102 of security when it had already obligated over \$9,000 of its own money to correct the deficiencies of the 48 Estates water system.

JSU's request for a waiver of the security is the subject of this Order.

SECURITY REQUIREMENT

As stated earlier, Forty-Eight Estates was required to provide security in the form of a bond, escrow, or letter of credit in the amount of \$5,102 prior to the implementation of the emergency temporary rates. JSU has asserted that it has invested over \$9,000 of its own money in 48 Estates "to keep the plant in operation," since its receivership appointment. We have verified that JSU has committed approximately \$8,100 of its funds to the Utility's obligations as of December 31, 1994.

The temporary emergency rates granted 48 Estates are somewhat analogous to interim rates in that they are only effective until final rates are approved in the pending staff-assisted rate case. However, Section 367.082(2)(a), Florida Statutes, requires that the difference between interim rates and previously authorized rates be collected under bond, escrow, letter of credit, or corporate undertaking subject to refund with interest at a rate ordered by the commission. This condition is considered to be necessary to protect both the utility and the customers. The utility can collect increased rates earlier than it would if it had to wait until the end of the proceeding and the customers are protected by the secured refund provision. Interim rates, pursuant to Section 367.082, Florida Statutes, are unavailable in staff-assisted rate cases. However, recognizing that some temporary ratemaking vehicle is appropriate for the Class C utilities, we have found it appropriate in limited cases to approve emergency temporary rates, subject to refund. We have always recognized that such rates have no express statutory authority. We have authorized emergency rates sparingly -- only in exceptional circumstances -- in the exercise of the Commission's liberally construed police power, pursuant to Section 367.011(3), Florida Statutes, to protect the public health, safety and welfare.

Section 367.0814, Florida Statutes, provides the Commission with the statutory authority for the staff assisted rate case process. The statute does not authorize the implementation of emergency temporary rates without security. Even though we recognize that a refund may be unlikely in these cases, we must have the assurance, provided by security, that funds will be available for refund, should we find a refund necessary upon determining final rates.

In each instance, but one, where we have approved or denied emergency temporary rates, such rates have been held to be subject to refund, with security. See Order No. PSC-94-1053-FOF-WS, issued August 29, 1994; Order No. 94-1556-FOF-WU, issued December 13,

1994; Order No. PSC-93-1844-FOF-WS, issued December 28, 1993; and Order No. PSC-93-0633-FOF-SU, issued April 22, 1993.

The absence of security for the protection of customers is without Commission precedent until recently. By Order No. PSC-95-0098-FOF-WU, issued January 19, 1995, In Re: Application for Staff-Assisted Rate Case in Alachua County by LANDIS ENTERPRISES, INC., we approved emergency rate relief without the requirement for security. However, we made clear that our decision to authorize the collection of temporary emergency rates without a requirement for security was specific to the facts and circumstances pertaining to that particular utility and was not to have precedential value.

In this docket, we have already found that emergency temporary rates are warranted, subject to refund with interest. We are not persuaded that the imposition of a security requirement in this instance represents, for the receiver, an undue hardship.

However, we fully appreciate the significance of JSU's commitment of its own funds to the Utility's operating obligations. Accordingly, we find it appropriate to consider the \$8,100 of JSU's funds already committed to the Utility's obligations from August 9, 1994, to December 31, 1994, as sufficient security for potential refunds to 48 Estates' customers. Until the staff-assisted rate case is concluded and a determination is made that a refund to the customers is unnecessary, JSU shall have no claim for reimbursement of these funds. If we determine that a refund is necessary, JSU shall make the refunds by means of appropriate credits to the customers' bills over a reasonable period of time. If, upon satisfaction of the refunds, some of these funds remain, JSU may assert a claim for reimbursement. We shall so advise the Circuit Court for the Fifth Judicial Circuit, in and for Lake County. This docket shall remain open in order to complete the staff assisted rate case.

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that the request of J. Swiderski Utilities, Inc., as receiver for Forty-Eight Estates Water System, that the security required for the collection of the emergency temporary rates authorized in Order No. PSC-94-1556-FOF-WU be waived is denied. It is further

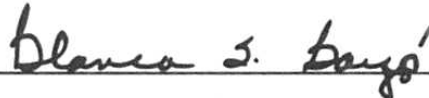
ORDERED that J. Swiderski Utilities, Inc., as receiver for Forty-Eight Estates Water System, shall collect the authorized emergency temporary rates, subject to refund with interest, as ordered in Order No. PSC-94-1556-FOF-WU. It is further

ORDER NO. PSC-95-0347-FOF-WU
DOCKET NO. 941107-WU
PAGE 5

ORDERED that the form of the security shall be the \$8,100 of the funds of J. Swiderski Utilities, Inc., that were committed to the obligations of Forty-Eight Estates Water System in the period August 9, 1994, to December 31, 1994, subject to the conditions set forth in the body of this Order. It is further

ORDERED that this docket shall remain open in order to conclude the staff-assisted rate case.

By ORDER of the Florida Public Service Commission, this 13th day of March, 1995.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

CJP

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.