

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application of Section ) DOCKET NO. 970083-WS  
367.0816, F.S., Recovery of Rate ) ORDER NO. PSC-97-0284-FOF-WS  
Case Expense, to Southern States ) ISSUED: March 12, 1997  
Utilities, Inc. (Lehigh )  
Utilities, Inc.) in Lee County. )  
\_\_\_\_\_)

The following Commissioners participated in the disposition of this matter:

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

NOTICE OF PROPOSED AGENCY ACTION ORDER REQUIRING CERTAIN CAPBAND RATE REDUCTIONS RESULTING FROM REMOVAL OF PRIOR RATE CASE EXPENSE

BY THE COMMISSION:

NOTICE IS HEREBY GIVEN by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

BACKGROUND

Florida Water Services Corporation, formerly known as Southern States Utilities, Inc. (SSU), (hereinafter referred to as Florida Water or utility) is a Class A utility which provides water and wastewater service to 152 service areas in 25 counties. In 1995, the utility recorded total company operating revenues of \$23,919,123 and \$18,104,985 for water and wastewater, respectively. The resulting total company net operating income for 1995 was \$2,026,192 for water and \$1,760,078 for wastewater. In 1995, Florida Water reported that it had 85,559 total company water customers and 43,527 total company wastewater customers.

On June 28, 1995, Florida Water filed an application for approval of uniform interim and final water and wastewater rate increases for 141 service areas in 22 counties, pursuant to Sections 367.081 and 367.082, Florida Statutes. The utility also requested a uniform increase in service availability charges, approval of an allowance for funds used during construction (AFUDC)

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and an allowance for funds prudently invested (AFPI). By Order No. PSC-96-1320-FOF-WS, issued October 30, 1996, in Docket No. 950495-WS, the Commission disposed of these requests and established a combination capped and banded (capband) rate structure for the utility.

Lehigh Utilities, Inc., underwent a corporate reorganization by merger with Florida Water, as acknowledged by Order No. PSC-93-0500-FOF-WS, issued April 5, 1993, in Docket No. 930086-WS, and is now a facility of Florida Water known as Lehigh. As a result of Florida Water's capband rate structure, Lehigh is banded with Chuluota, Interlachen Lake Est./Park Manor, Marco Island, River Grove, Tropical Park, Samira Villas, and Windsong for water rates. For wastewater rates, Lehigh is banded with Buenaventura Lakes, Leilani Heights, Palm Terrace, and Salt Springs.

#### CAPBAND RATE REDUCTIONS

In its last rate case as a single system, Lehigh was allowed the recovery of rate case expense by Order No. PSC-93-0301-FOF-WS, issued February 25, 1993, in Docket No. 911188-WS. Section 367.0816, Florida Statutes, requires that rate case expense be apportioned for recovery over a period of four years. The statute further requires that the rates of the utility be reduced immediately by the amount of rate case expense previously included in rates. Schedules were provided in Order No. PSC-93-0301-FOF-WS, indicating the amount by which the rates were to be reduced. On reconsideration of Order No. PSC-93-0301-FOF-WS, by Order No. PSC-93-1023-FOF-WS, issued July 12, 1993, the Commission adjusted Lehigh's rates, and made corresponding adjustments to the rate reduction schedules to indicate the amount of rate reduction required from each meter size and gallonage rate.

Ordinarily, at the expiration of the four year recovery period, the rates are reduced by the amounts provided in the order. Simply, this would mean that Lehigh's rates should be reduced by the amounts indicated in Order No. PSC-93-1023-FOF-WS. However, Lehigh's rates are now included in a capband with other facilities of Florida Water. Therefore, a different methodology must be used to achieve the required rate reduction, as described below.

The capband rate structure was approved for Florida Water because it simplifies the rate structure by moving the utility closer to a uniform rate and minimizes the relative amount of subsidy paid by the customer. By Order No. PSC-96-1320-FOF-WS at 225-26, we found that the capband rate structure groups (bands) service areas of similar costs, thereby minimizing cross-subsidization. The bands are set at natural breaks designed to

group homogenous facilities and thus mitigate the subsidies in the customers' bills to the greatest extent. The capband rates were calculated by combining the revenue requirements of all of the facilities within a particular band. The combination of the billing determinants for the facilities in a band were used to determine rates.

The concept of the capband rate structure is that once facilities have been combined for ratemaking purposes, they should not be differentiated. See Order No. PSC-96-1320-FOF-WS at 241 (finding that for service areas that are part of a rate band, pass-throughs must be shared by all facilities within the band; that those service areas have been identified as having similar costs, at least in terms of their stand alone rates; and that the rates should not be differentiated once they have been combined for ratemaking purposes).

Pursuant to Order No. PSC-96-1320-FOF-WS, the amount of annual amortization of prior rate case expense included in Lehigh's revenue requirement was \$37,209 for water and \$28,567 for wastewater. Because the revenue requirements were combined for the facilities within a capband, the amount of annual amortization is shared by all of the facilities which are included in a capband with Lehigh. Therefore, we find that such facilities should equivalently share in the reduction resulting from the removal of that expense.

Accordingly, in order to remove the rate case expense, the total amount of annual rate case expense amortization for water, grossed-up for regulatory assessment fees, shall be divided by the total amount of the revenue requirements for the facilities in the capband with Lehigh. This methodology will yield a percentage by which the rates in a capband shall be reduced. The same methodology shall be used to determine the percentage reduction for wastewater. The calculations for the percentage reductions are shown on Schedules Nos. 1-A and 1-B for water and wastewater, respectively.

Based on the foregoing, the capband that includes Lehigh, Chuluota, Interlachen Lake Est./Park Manor, Marco Island, River Grove, Tropical Park, Samira Villas, and Windsong shall have its water rates reduced as shown in Schedule 1-A. The capband that includes Lehigh, Buenaventura Lakes, Leilani Heights, Palm Terrace, and Salt Springs, shall have its wastewater rates reduced as shown in Schedule 1-B. Because the effective date of the rate reduction is March 31, 1997, the utility shall file the proposed tariff sheets no later than 15 days from our March 4, 1997, decision as reflected herein. In addition, the utility shall file a proposed

customer notice setting forth the lower rates and the reason for the reduction.

We note that there are two other orders, issued in Dockets Nos. 920199-WS and 920655-WS, which concern annual amortization of prior rate case expense for facilities of Florida Water. Those reductions are effective in September, 1997. We hereby authorize our staff to administratively process the rate reductions in those dockets consistent with the methodology approved herein. We also note that Docket No. 920655-WS concerns the Marco Island facilities, which are located in Collier County. Because Collier County is now a non-jurisdictional County, and because that docket is closed, pursuant to Section 367.171(5), Florida Statutes, we do not retain jurisdiction to implement the rate reductions for Marco Island. Pursuant to Section 367.171(8), Florida Statutes, the County shall regulate Marco Island's rates as though it were the Commission. However, the other facilities that were placed in a capband with Marco Island are sharing Marco Island's rate case expense. Therefore, the rate reduction percentage shall be calculated in the same manner and removed from the other facilities in the capband with Marco Island. Our staff will send a copy of the order to Collier County, so that in its exercise of regulation, the county may act accordingly.

Because no further action is necessary, this docket shall be closed at the conclusion of the protest period, if no protest is filed, and upon staff's approval of the revised tariff sheets and the proposed customer notice.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the capband of Florida Water Services Corporation which includes Lehigh, Chuluota, Interlachen Lake Est./Park Manor, Marco Island, River Grove, Tropical Park, Samira Villas, and Windsong shall have its water rates reduced as set forth in the body of this Order. It is further

ORDERED that the capband of Florida Water Services Corporation which includes Lehigh, Buenaventura Lakes, Leilani Heights, Palm Terrace, and Salt Springs, shall have its wastewater rates reduced as set forth in the body of this Order. It is further

ORDERED that each of the findings made in the body of this Order is hereby approved in every respect. It is further

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

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ORDERED that Florida Water Services Corporation shall file proposed tariff sheets no later than 15 days from our March 4, 1997, decision as reflected herein, and a proposed customer notice setting forth the lower rates and the reason for the rate reductions. It is further

ORDERED that the rate reductions resulting from the removal of prior rate case expense in Dockets Nos. 920199-WS and 920655-WS shall be processed administratively, as set forth in the body of this Order. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective unless an appropriate petition, in the form provided by Rule 25-22.036, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings or Judicial Review" attached hereto. It is further

ORDERED that in the event this Order becomes final, this Docket shall be closed.

By ORDER of the Florida Public Service Commission, this 12th day of March, 1997.

BLANCA S. BAYÓ, Director  
Division of Records and Reporting

by: Kay Flynn  
Chief, Bureau of Records

( S E A L )

RGC

DISSENTS

Commissioner J. Terry Deason dissents from the Commission's decision herein, with the following opinion:

I respectfully dissent from the majority decision to flow back the rate case expense originally built into the rates of Lehigh customers by spreading the reduction over all customers within the same "capband". The basis for my dissent on the treatment of pass-throughs and indexes in the capband context is also applicable here. See Order No. PSC-96-1320-FOF-WS, issued October 30, 1996, in Docket No. 950495-WS at 266 (dissent). Additionally, the majority decision is contrary to the clear intent of the statute that the customers who paid the rate case expense should be the ones to have their rates reduced by the amount that they were originally increased. In this case, Lehigh's rates were set on a stand alone basis four years ago. Within a few months of the initiation of the flowback period, the Lehigh costs (including the rate case expense amortization) were combined with the costs of other facilities to yield a capband rate. As the majority sees it, the only way to maintain the uniformity of the rate within the band is to flow back the reduction to all customers of the band on the theory that the development of the capband rate involved common recovery of all costs including the Lehigh rate case expense. For the reasons set out below, I believe these assumptions and conclusions are flawed.

At the outset, Section 367.0816, Florida Statutes, which was last amended in 1990, predates the Commission's affirmative efforts to implement rate uniformity. Likewise, the allowance of rate case expense in the rates of Lehigh was done in 1993, prior to the development of the capband concept. Section 367.0816 requires in pertinent part that "[a]t the conclusion of the recovery period, the rate of the public utility shall be reduced immediately by the amount of rate case expense previously included in rates." Clearly the intent is that the customers who paid the rate case expense over the duration of the recovery period should see their rates reduced in a symmetrical fashion.

The question presented here is whether the phrase "previously included in rates" addresses inclusion in the Lehigh stand alone rates or the current capband rates. The majority seems to take the view that the theoretical inclusion of the cost in the 1996 establishment of the capband rate, rather than the initial 1993 stand alone rate, is what the legislature intended. For the water system, this factual assumption is faulty. As reflected on page 121 of the staff's recommendation filed on August 8, 1996, in Docket No. 950495-WS, Lehigh's stand alone rates are the lowest within the band. By definition, Lehigh is a subsidizer within the band. Lehigh customers are bearing all their own costs including the entire rate case expense plus a portion of the costs of all other systems. Under no circumstance can the other systems within the band be deemed to be bearing the burden of the last Lehigh rate

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case. Clearly these facts remove any basis for reducing the non-Lehigh rates under the most expansive reading of the statute.

Even if it could be sustained that the majority's reading that the decrease can be spread outside of the Lehigh customer base, the plain language of the statute would call for the rate reduction to be spread in such a case over the entire Florida Water system. No authority can be found to allow a selected portion of the utility's rates to be singled out if the reduction is not to be returned directly to the Lehigh customers. The plain meaning of the term "public utility" has to mean either Lehigh or all of Florida Water. This decision recognizes neither. Instead, the sanctity of uniformity within the capband is elevated above the substantive effect intended by the legislature. In my opinion, the majority approach does not comply with either the spirit or the letter of the law.

Commissioner Diane K. Kiesling dissents without opinion on the requirement that this Order be issued as proposed agency action.

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.

The action proposed herein is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on April 2, 1997.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If this order becomes final and effective on the date described above, any party substantially affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water 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 of the effective date 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.

<b>FLORIDA WATER SERVICES CORPORATION</b>	<b>SCHEDULE 1-A</b>
<b>DOCKET NO. 970083-WS</b>	
<b>SCHEDULE OF FOUR YEAR RATE REDUCTION FOR WATER</b>	

	<b>Revenue Requirement</b>	<b>Annual Rate Case Expense for Water</b>	
Lehigh	\$2,507,821	\$37,209	
Chuluota	314,082	0.955 Gross-up	
Interlachen Lake Est/Park Manor	75,096	<u><b>\$38,962</b></u>	
Tropical Park	190,176	<b>Percentage Reduction</b>	
River Grove	43,037	\$38,962/\$12,728,297	
Samira Villas	5,129	<b>0.31%</b>	
Windsong	44,921		
Marco Island	9,548,035		
	<u><b>\$12,728,297</b></u>		
		<b>Commission Approved Rate Reduction</b>	<b>Commission Approved Rates After Reduction</b>
<b>Residential &amp; General Service</b>			
Base Facility Charge:			
Meter Size:			
5/8" x 3/4"	\$16.34	\$0.05	\$16.29
3/4"	\$24.51	\$0.08	\$24.43
1"	\$40.85	\$0.13	\$40.72
1-1/2"	\$81.70	\$0.25	\$81.45
2"	\$130.72	\$0.40	\$130.32
3"	\$261.44	\$0.80	\$260.64
4"	\$408.50	\$1.25	\$407.25
6"	\$817.00	\$2.50	\$814.50
8"	\$1,307.20	\$4.00	\$1,303.20
10"	\$1,879.10	\$5.75	\$1,873.35
Gallorage Charge per 1,000	\$2.85	\$0.01	\$2.84
<b>Private Fire Protection</b>			
(for Lehigh and Marco Island Only)			
5/8" x 3/4"	---	---	---
3/4"	---	---	---
1"	---	---	---
1-1/2"	---	---	---
2"	\$10.89	\$0.03	\$10.86
3"	\$21.79	\$0.07	\$21.72
4"	\$34.04	\$0.10	\$33.94
6"	\$68.08	\$0.21	\$67.87
8"	\$108.93	\$0.33	\$108.60
10"	\$156.56	\$0.48	\$156.08
<b>Bulk Raw Water</b>			
(for Marco Island Only)			
Gallorage Charge per 1,000	\$1.53	\$0.00	\$1.53

<b>FLORIDA WATER SERVICES CORPORATION</b>	<b>SCHEDULE 1-B</b>
<b>DOCKET NO. 970083-WS</b>	
<b>SCHEDULE OF FOUR YEAR RATE REDUCTION FOR WASTEWATER</b>	

	<b>Revenue Requirement</b>	
Lehigh	\$2,779,612	<b>Annual Rate Case Expense for Wastewater</b> \$28,567 0.955 Gross-up <u>\$29,913</u>  <b>Percentage Reduction</b> \$29,913/\$6,475,838 0.46%
Buenaventura Lakes	3,063,311	
Palm Terrace	348,970	
Salt Springs	89,482	
Leilani Heights	194,463	
	<u>\$6,475,838</u>	

	<b>Current Rates</b>	<b>Commission Approved Rate Reduction</b>	<b>Commission Approved Rates After Reduction</b>
<b>Residential</b>			
Base Facility Charge			
All meter sizes	\$13.18	\$0.06	\$13.12
Gallage Charge per 1,000	\$5.23	\$0.02	\$5.21
Gallage Capped at 6M			
Wastewater Only (for Buenaventura Lakes Only)			
Flat Rate	\$39.34	\$0.18	\$39.16
Wastewater Only (for Leilani Heights Only)			
Flat Rate	\$40.93	\$0.19	\$40.74
<b>General Service</b>			
Base Facility Charge:			
Meter Size:			
5/8" x 3/4"	\$13.18	\$0.06	\$13.12
3/4"	\$19.77	\$0.09	\$19.68
1"	\$32.95	\$0.15	\$32.80
1-1/2"	\$65.90	\$0.30	\$65.60
2"	\$105.44	\$0.49	\$104.95
3"	\$210.88	\$0.97	\$209.91
4"	\$329.50	\$1.52	\$327.98
6"	\$659.00	\$3.04	\$655.96
8"	\$1,054.40	\$4.87	\$1,049.53
10"	\$1,515.70	\$7.00	\$1,508.70
Gallage Charge per 1,000	\$6.28	\$0.03	\$6.25
(per 100 cubic ft)	\$3.46	\$0.02	\$3.44
<b>Effluent - EFF</b>			
(for Lehigh Only)			
Gallage Charge per 1,000	\$0.18	\$0.00	\$0.18