

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for a staff-) DOCKET NO. 940982-WS
assisted rate case in Volusia) ORDER NO. PSC-94-1463-FOF-WS
County by PINE ISLAND UTILITY) ISSUED: November 29, 1994
CORPORATION)
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The following Commissioners participated in the disposition of this matter:

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

ORDER HOLDING STAFF-ASSISTED RATE CASE IN ABEYANCE, CONDITIONALLY APPROVING PAYMENT PLAN FOR APPLICATION FILING FEES, CONDITIONALLY APPROVING PAYMENT PLAN FOR DELINQUENT REGULATORY ASSESSMENT FEE, DENYING REQUEST FOR WAIVER OF PENALTIES AND INTEREST, DENYING REINSTATEMENT OF SUSPENDED FINE, AND ORDER TO SHOW CAUSE

BY THE COMMISSION:

BACKGROUND

On September 15, 1994, Water Spectrum, Inc. (WSI or the Receiver) filed an application for a staff-assisted rate case on behalf of Pine Island Utility Corporation (Pine Island or the Utility). In addition to its staff-assisted rate case application, WSI also petitioned the Commission to (1) waive all penalties and interest fees for nonpayment of its regulatory assessment fee for 1993; (2) allow the Utility to pay the delinquent regulatory assessment fee over a twelve month period; and (3) allow the Utility time to pay the rate case application fees.

Pine Island is a Class C utility serving approximately 147 water and 91 wastewater customers in Volusia County. In 1993, Pine Island reported revenues of \$7,754 for the water system and \$8,455 for the wastewater system, and respective operating losses of \$24,979 and \$18,034. On December 29, 1992, the owner of Pine Island tendered a 60 day notice of abandonment. On July 15, 1993,

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FPSC-RECORDS/REPORTING

the Volusia County Circuit Court appointed WSI as the Receiver for the Utility.

On March 4, 1991, Pine Island applied for an earlier staff-assisted rate case in Docket No. 910276-WS. By Order No. 24643, issued June 10, 1991, we authorized Pine Island to collect increased rates, assessed and conditionally suspended a \$500 per system fine, ordered the Utility to comply with the requirements of Department of Environmental Regulation (DER) (now Department of Environmental Protection (DEP)) Consent Agreement, OGC Case No. 89-0855, February 2, 1990, concerning the water system and DER Notice of Violation and Orders for Corrective Actions, OGC Case No. 89-0823, August 28, 1989, concerning the wastewater system within six months, install meters, and provide security for the payment of power bills. The Utility's customers protested the Order, but, prior to the scheduled hearing, the Utility and customers reached a settlement, and the customers withdrew their protest. In Order No. PSC-92-0126-AS-WS, issued March 31, 1992, we approved the settlement and revived Order No. 24643. The time period for the Utility to meet the requirements of Order No. 24643 began to run when Order No. PSC-92-0126-AS-WS was issued.

In Order No. PSC-93-0049-FOF-WS, issued January 13, 1993, in the same docket, we found that Pine Island had failed to meet the DER Notice of Violation requirements concerning the wastewater system and we reinstated the \$500 wastewater system fine. However, we also suspended the fine on the water system and granted the Utility an extension of time to install meters and to obtain permits for its water system. The DER by that time had transferred the jurisdiction of the water program, including enforcement of the Consent Agreement directed to the Utility, to the Department of Health and Rehabilitative Services, Volusia County Public Health Unit (VCPHU). The Utility was also ordered to show why it should not be fined for failing to meet the compliance requirements for its wastewater system and to comply with previous Commission Orders 24643 and PSC-92-0126-AS-WS.

By Order No. PSC-94-0449-FOF-WS, issued April 14, 1994, we acknowledged the Utility's installation of meters for all of its customers, except one for whom the Utility was excused because of the installation complexity. This order also listed a number of improvements required to satisfy the DER Consent Agreement concerning the water system and the Notice of Violation concerning the wastewater system. The previously suspended water system fine was further suspended to allow the Utility an additional 60 days to submit an application to the VCPHU for a construction permit, and to allow it an additional 150 days to submit to the Commission a detailed plan for correcting any remaining water system

deficiencies, including time tables for completion and means of financing. Also, the suspended fine concerning the wastewater system deficiencies was further suspended to allow the Utility an additional 60 days to submit an application for renewal of its wastewater operating permit (a temporary operating permit expired on July 1, 1991), and an additional 150 days to submit to the Commission a detailed plan for correcting any remaining deficiencies, including time tables for completion and means of financing. These deadlines have passed and Pine Island has not complied with the requirements of the Order.

In a separate petition, WSI also requested that this Commission grant interim rates in this docket. By letter dated October 10, 1994, WSI waived the deadline for the staff-assisted rate case acceptance or denial letter and the official filing date to allow us to consider the preliminary matters raised in the separate petitions supplementing WSI's application for staff-assisted rate case. This Order concerns the Utility's request for waiver of penalties and interest and for payment plans for the application fees and the delinquent regulatory assessment fee. We will consider at a later time WSI's petition for interim rates as one for emergency rates, as well as the application for staff-assisted rate case, if that remains appropriate in due course following the issuance of this Order.

STATUS OF STAFF-ASSISTED RATE CASE APPLICATION

We find that this docket, Docket No. 940982-WS, opened to address an application for a staff-assisted rate case, which includes the Utility's requests for payment plans for rate case application fees and its delinquent 1993 regulatory assessment fee, as well as emergency rates, shall be held in abeyance and the official filing date suspended for 30 days following our vote on this matter, or until December 8, 1994. The purpose of this is to allow the Utility a final opportunity to comply with all of the outstanding requirements of Order No. PSC-94-0449-FOF-WS, issued in Docket No. 910276-WS. Should the Utility fail to comply with those requirements by December 8, 1994, this docket, Docket No. 940982-WS, shall be closed.

APPLICATION FILING FEES PAYMENT PLAN

WSI requested a payment plan for staff-assisted rate case application filing fees on behalf of Pine Island due to the severe financial hardship experienced by WSI over the past twelve months, during which time it has operated the Utility in receivership. The

Commission has in some past dockets permitted time payment of regulatory assessment fees, but not of rate case application filing fees. See Order No. 24884, Docket No. 900961-WU, In re: Request for waiver of penalty and interest added to regulatory assessment fees for 1989, by St. George Island Utility Company, Ltd. in Franklin County (Commission found it appropriate to permit utility to pay regulatory assessment fees in arrears over approximately five months, beginning immediately). Moreover, Section 350.113 (5), Florida Statutes, provides that the Commission "for good cause shown by written request, may extend for a period not to exceed 30 days the time for paying any fee or for filing any report related thereto...." No other applicable statute or administrative rule expressly treats this subject matter. Nonetheless, based on the extreme financial condition of this utility, we find it appropriate to permit time payment of the application filing fees. To do otherwise in this instance would likely result in no payment at all. Our approval of a payment plan is subject to the final approval of the State of Florida Comptroller's Office, Department of Banking and Finance, as required by Rule 3A-21.003, Florida Administrative Code, implementing Sections 17.04, 17.29, and 215.34, Florida Statutes.

If the Utility complies with Order No. PSC-94-0449-FOF-WS within 30 days of our vote to hold the Utility's staff-assisted rate case application in abeyance for those 30 days, or by December 8, 1994, we find that, the timing provisions of Rule 25-30.445 (9), Florida Administrative Code, notwithstanding, the Utility shall be permitted to pay the staff-assisted rate case application fees of \$500 for the water system and \$200 for the wastewater system in eight monthly installments of \$87.50 each, the first payment becoming due and payable on January 3, 1995. The following seven payments shall be due and payable on the first working day of each month. Final rates shall not be implemented until the Utility makes payment in full of the filing fees. If the Utility fails to make any monthly payment by the first working day of the month, this docket shall be closed.

In allowing the payment plan under these circumstances, it is important to note that this decision is specific to the facts present in this docket and this decision should not be construed in future dockets to have the force of precedent in materially dissimilar circumstances.

DELINQUENT REGULATORY ASSESSMENT FEE

Rule 25-30.120 (1), Florida Administrative Code, requires utilities to pay a regulatory assessment fee in the amount of four and one-half per cent of gross revenues for the entire year. Rule 25-30.120 (2) (a), Florida Administrative Code, requires payment of the regulatory assessment fee by March 31 for the year preceding ending on December 31. Further, Rule 25-30.120 (2) (b), Florida Administrative Code, provides that "[f]ees are considered timely if ... postmarked no later than the due date." This subsection, in part 3., permits a utility to "[s]eek and receive from the Division of Administration a 30-day extension of its due date. Such an extension is subject to the provisions for charges in Section 350.113 (5), Florida Statutes. WSI did not timely pay its regulatory assessment fee for 1993 under these provisions. If a utility fails to timely pay the regulatory assessment fee as provided in Rule 25-30.120 (2) (b), Florida Administrative Code, a penalty shall be assessed and interest charged, as provided in Section 350.113 (4), Florida Statutes, and Rule 25-30.120 (5), Florida Administrative Code.

Therefore, we find that, the timing provisions of Rule 25-30.120 (2) (a), Florida Administrative Code, notwithstanding, the Utility shall be permitted to pay its outstanding delinquent regulatory assessment fee for 1993 in four monthly installments of \$101.05 each, the first installment due and payable on December 8, 1994. The remaining three monthly installments shall be due and payable by the first working day of each month. We grant the Utility's request for a time payment period of 12 months, but we find that it shall run from the date the fee was due and payable, i.e., March 31, 1994. The payment of the delinquent regulatory assessment fee, which, as of the date of this Order, amounts to \$404.21, with penalty and interest, shall be completed in any case by March 31, 1995. If the Utility fails to make the required monthly payment by the first working day of any month, this docket shall be closed. Our approval of this payment plan for the delinquent regulatory assessment fee is subject to the final approval of the State of Florida Comptroller's Office.

PENALTY AND INTEREST

We deny the Utility's request for waiver of the payment of the penalty and interest associated with its delinquent regulatory assessment fee, which, as of the date of this order, amounts to \$100.29. Pursuant to Sections 350.113 (4) and (5), and Section 367.161, Florida Statutes, and Rule 25-30.120 (5), Florida Administrative Code, the Commission is required to collect

interest, penalties and collection costs from a regulated utility that is delinquent in the payment of its regulatory assessment fee. Neither Florida statutes nor administrative rules provide the Commission discretion to waive penalties and interest.

SUSPENDED FINE REINSTATEMENT

We find that the fine we imposed upon the Utility for failure to remedy water system violations determined by the DER, first imposed and suspended on June 10, 1991, and suspended twice again on January 13, 1993 and April 14, 1994, shall not be reinstated. We note that the pre-receivership owner abandoned the Utility without satisfying the water system requirements of the DER Consent Agreement, and that since its appointment as the Receiver for the Utility, WSI has made commendable progress towards achieving full compliance with the DER Consent Agreement. The Utility has taken steps to install a properly-sized hydropneumatic tank and to implement a cross-connection control program, which is all that it must yet do in order to fully satisfy the Consent Agreement.

Although we further note that the Utility has failed to entirely satisfy the requirements of our Order No. PSC-94-0449-FOF-WS, we find that it would serve no constructive purpose to reinstate the presently suspended fine. Accordingly, the fine shall be permanently suspended.

SHOW CAUSE ACTION

In Order No. PSC-94-0449-FOF-WS, issued April 14, 1994, we suspended once again the fine concerning the wastewater system deficiencies, originally imposed, but conditionally suspended, in order No. 24643, issued June 10, 1991, and reinstated in Order No. PSC-94-0049-FOF-WS, issued January 13, 1993. In nine months under the management of the Receiver, the Utility had made sufficient progress in correcting the water system deficiencies. Furthermore, the DEP failed to notify the Receiver of the DER Notice of Violation concerning the wastewater system until very recently. We also suspended the show cause proceeding initiated in Order No. PSC-94-0049-FOF-WS. The Utility was ordered to submit an application for renewal of its wastewater operating permit, lapsed since July 1, 1991, within 60 days from the date of the Order, or by June 14, 1994. The Utility was also ordered to submit to this Commission a detailed plan for correcting the wastewater system deficiencies, to include time tables for completion and means of financing, within 150 days of the Order, or by September 12, 1994.

The Utility has neither submitted a permit application to the DEP nor a detailed plan for corrections to this Commission.

Therefore, and notwithstanding either our decision not to reinstate the water system fine or the DEP's delayed notice, we order the Utility to show cause as to why it should not be fined not more than \$5,000 per violation-day pursuant to Section 367.161, Florida Statutes, for failing to comply with our Order PSC-94-0449-FOF-WS, regarding the wastewater system deficiencies. The Utility shall present evidence containing specific allegations of fact and law and showing that it should not be fined.

Based on the foregoing, it is therefore

ORDERED by the Florida Public Service Commission that the application of Water Spectrum, Inc., as Receiver on behalf of Pine Island Utility Corporation, for a staff-assisted rate case shall be held in abeyance for thirty days from the date of the Commission's vote, or until December 8, 1994. It is further

ORDERED that, if Pine Island Utility Corporation fully complies with the requirements of Order No. PSC-94-0449-FOF-WS by December 8, 1994, it shall be permitted to pay the staff-assisted rate case application fees in this docket in eight monthly installments, with the first payment due and payable on January 3, 1995 and subsequent payments due and payable on the first working day of the month. It is further

ORDERED that approval of the staff-assisted rate case application fees payment plan is contingent upon the final approval of the State of Florida Department of Banking and Finance. It is further

ORDERED that final rates shall not be implemented until Pine Island Utility Corporation makes payment in full of the staff-assisted rate case application filing fees, and that this docket, Docket No. 940982-WS, shall be closed upon a failure to make any monthly payment of the said application fees. It is further

ORDERED that Pine Island Utility Corporation shall be permitted to pay its outstanding delinquent regulatory assessment fee for 1993 in four monthly installments, with the first payment due and payable on December 8, 1994 and subsequent payments due and payable on the first working day of the month, but in any case by March 31, 1995. It is further

ORDERED that approval of the outstanding delinquent regulatory assessment fee payment plan is contingent upon the final approval of the State of Florida Department of Banking and Finance. It is further

ORDERED that, if Pine Island Utility Corporation fails to make any monthly payment of the outstanding delinquent regulatory assessment fee, this docket, Docket No. 940982-WS, shall be closed. It is further

ORDERED that the request of Pine Island Utility Corporation that the Commission waive the penalty and interest associated with its delinquent regulatory assessment fee is denied. It is further

ORDERED that the fine imposed upon Pine Island Utility Corporation for failure to remedy water system deficiencies delineated in Department of Environmental Regulation (now Department of Environmental Protection) Consent Agreement OGC Case No. 89-0855, February 2, 1990, shall not be reinstated but shall be permanently suspended. It is further

ORDERED that Pine Island Utility Corporation shall, by the date shown in the "Notice of Further Proceedings or Judicial Review" following, show cause in writing why it should not, pursuant to Section 367.161, Florida Statutes, be fined not more than \$5,000 each violation-day for failing to comply with the requirements of Order No. PSC-94-0449-FOF-WS, regarding the wastewater system deficiencies delineated in Department of Environmental Regulation (now Department of Environmental Protection) Notice of Violation and Orders for Corrective Actions OGC Case No. 89-0823, August 28, 1989. It is further

ORDERED that Pine Island Utility Corporation's written response to this Order must be received as set forth in the "Notice of Further Proceedings or Judicial Review" following. It is further

ORDERED that Pine Island Utility Corporation's response to the show cause provisions of this Order must contain specific allegations of fact and law. It is further

ORDERED that Pine Island Utility Corporation's present opportunity to file a written response to this Order shall constitute its opportunity to be heard prior to a final determination of noncompliance and penalty by this Commission. It is further

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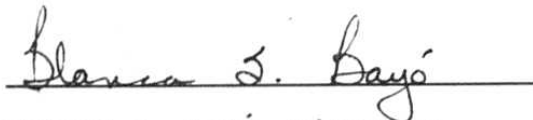
ORDERED that Pine Island Utility Corporation's failure to file a response to the show cause portions of this Order in the time and the manner specified shall constitute an admission of the facts alleged herein and a waiver of any right to a hearing, pursuant to Rule 25-22.037 (3), Florida Administrative Code, and a default pursuant to Rule 25-22.037 (4), Florida Administrative Code. It is further

ORDERED that, in the event that Pine Island Utility Corporation files a written response that raises material questions of fact and requests a hearing pursuant to Section 120.57, Florida Statutes, further proceedings may be scheduled before a final determination on this matter is made. It is further

ORDERED that this docket shall remain open until at least December 8, 1994 to permit Pine Island Utility Corporation an opportunity of 30 days from the Commission's vote on this matter to comply with Order No. PSC-94-0449-FOF-WS. It is further

ORDERED that, if Pine Island Utility Corporation complies with Order No. PSC-94-0449-FOF-WS by December 8, 1994, this Commission will reactivate its consideration of Pine Island Utility Corporation's application for a staff-assisted rate case and petition for emergency rates.

By ORDER of the Florida Public Service Commission, this 29th day of November, 1994.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

CJP

Chairman Deason and Commissioner Clark dissented without opinion on the matter of the reinstatement of the suspended fine for failure to meet the requirements of Order No. PSC-94-0449-FOF-WS.

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 the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting 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 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 Civil Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.

Any person whose substantial interests are affected by the show cause provisions of this order may file a petition for a formal proceeding, as provided by Rule 25-22.037(1), 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, 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on December 20, 1994.

Failure to respond to the show cause provisions of this order within the time set forth above shall constitute an admission of all facts and a waiver of the right to a hearing pursuant to Rule 25-22.037(3), Florida Administrative Code, and a default pursuant to Rule 25-22.037(4), Florida Administrative Code. Such default shall be effective on the day subsequent to the above date.

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If an adversely affected person fails to respond to the show cause provisions of this order within the time prescribed above, that party may request judicial review by the Florida Supreme Court in the case of any 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.