

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for staff-)	DOCKET NO. 910276-WS
assisted rate case in Volusia)	
County by PINE ISLAND UTILITY)	
CORPORATION)	
<hr/>		
In Re: Application for staff-)	DOCKET NO. 940982-WS
assisted rate case in Volusia)	ORDER NO. PSC-95-0302-FOF-WS
county by PINE ISLAND UTILITY)	ISSUED: March 3, 1995
CORPORATION)	
<hr/>		

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 PERMANENTLY SUSPENDING SHOW CAUSE PROCEEDING, PERMANENTLY SUSPENDING A FINE, FINDING UTILITY NOT TO BE REQUIRED TO SHOW CAUSE, GRANTING EMERGENCY RATE RELIEF SUBJECT TO REFUND, CLOSING DOCKET NO. 910276-WS, AND MAINTAINING DOCKET NO. 940982-WS IN ABEYANCE

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). This was docketed as Docket No. 940982-WS. In addition to its staff-assisted rate case application, WSI also petitioned the Commission to (1) waive all penalties and interest for nonpayment of its regulatory assessment fees for 1993; (2) allow the Utility to pay the delinquent regulatory assessment fees over a twelve month period; and (3) allow the Utility time to pay the rate case application fees. In a separate petition, WSI also requested that this Commission grant interim rates. 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 the Commission to consider the preliminary matters raised in the separate petitions supplementing WSI's application for a staff-assisted rate case.

DOCUMENT NUMBER-DATE

02436 MAR-38

FPSC-RECORDS/REPORTING

Pine Island is a Class C utility serving approximately 87 water and 71 wastewater customers, 3 miles west of Seville, Florida, in northwest 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 original owner of Pine Island tendered a 60 day notice of abandonment. On July 15, 1993, the Volusia County Circuit Court, Judge C. McFerrin Smith, III, appointed WSI the receiver for the Utility.

On March 4, 1991, Pine Island applied for an earlier staff-assisted rate case. That application was docketed in Docket No. 910276. By Order No. 24643, issued June 10, 1991, the Commission 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 a February 2, 1990, Department of Environmental Regulation (DER) (now Department of Environmental Protection (DEP)) Consent Agreement, OGC Case No. 89-0855, concerning the water system, and an August 28, 1989, DER Notice of Violation and Orders for Corrective Actions, OGC Case No. 89-0823, 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, the Commission approved the settlement and revived Order No. 24643. The time period for the Utility to meet the compliance 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, we found that Pine Island had failed to meet DEP's Notice of Violation requirements concerning the wastewater system and, consequently, reinstated the \$500 wastewater system fine. 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 DEP, 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 DEP's compliance requirements for its wastewater system and to comply with previous Orders Nos. 24643 and PSC-92-0126-AS-WS.

On December 15, 1993, Landis Enterprises, Inc. (Landis) filed an application with the Commission for a transfer of Certificates

Nos. 326-W and 274-S from Pine Island to Landis. This filing followed the November 1, 1993, sale by Pine Island of its water and wastewater facilities to Landis and the November 30, 1993, termination by the Volusia County Circuit Court of WSI's receivership. During the pendency of the transfer proceeding, the court re-appointed WSI receiver for the Utility, and, by Order No. PSC-94-0776-FOF-WS, issued June 22, 1994, the Commission granted Landis' request to withdraw its application for transfer of Pine Island's certificates.

By Order No. PSC-94-0449-FOF-WS, issued April 14, 1994, again in Docket No. 910276-WS, the Commission acknowledged Pine Island'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 DEP 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. The show cause proceeding concerning the wastewater system deficiencies, initiated in Order No. PSC-93-0049-FOF-WS, was suspended in recognition of the abandonment and the Utility owner's failure to respond. Also, the suspended fine concerning the wastewater system deficiencies was further suspended to allow the Utility to submit an application for renewal of its wastewater operating permit (a temporary operating permit expired on July 1, 1991) within a reasonable time. The deadlines passed without Pine Island's compliance with the requirements of the order.

By Order No. PSC-94-1463-FOF-WS, issued November 29, 1994, in Docket No. 940982-WS, the Commission ordered (1) that the application of WSI on behalf of the Utility for a staff-assisted rate case be held in abeyance for thirty days from the date of the Commission's vote, or until December 8, 1994; (2) that, if the Utility 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 eight monthly installments, beginning on January 3, 1995, contingent upon the final approval of the Florida Department of Banking and Finance; (3) that final rates not be implemented until the Utility makes payment in full of the staff-assisted rate case application filing fees; (4) that the Utility be permitted to pay its outstanding delinquent regulatory assessment fee for 1993 in four monthly installments, beginning on December 8, 1994, contingent upon the

final approval of the Florida Department of Banking and Finance; (5) that the Utility's request that the Commission waive the penalty and interest associated with its delinquent regulatory assessment fee be denied; (6) that the fine imposed upon the Utility for failure to remedy water system deficiencies delineated in the February 2, 1990, DEP Consent Agreement, OGC Case No. 89-0855, be permanently suspended; (7) that the Utility show cause why it should not be fined for failing to comply with the requirements of Order No. PSC-94-0449-FOF-WS, regarding the wastewater system deficiencies delineated in the August 28, 1989, DEP Notice of Violation and Orders for Corrective Actions, OGC Case No. 89-0823; (8) that, if the Utility fails to make any monthly payment under the approved installment plans for staff-assisted rate case application fees and the outstanding regulatory assessment fee, Docket No. 940982-WS be closed; and (9) that, if the Utility complies with Order No. PSC-94-0449-FOF-WS by December 8, 1994, this Commission will reactivate its consideration of the Utility's application for a staff-assisted rate case and petition for interim or emergency rates.

On December 8, 1994, WSI remitted the first installment of the delinquent regulatory assessment fee. The second installment, due January 3, 1995, and the third installment, due February 1, 1995, have, as of the date of this order, not been remitted. Neither has WSI remitted the first and second installments of the staff-assisted rate case application fees, also due, respectively, January 3, 1995, and February 1, 1995.

On December 23, 1994, WSI noticed to the Commission and to Volusia County its intention to abandon its receivership of the Utility on or before February 28, 1995. This order, first, addresses the Utility's response to the Commission's show cause order in Order No. PSC-94-1463-FOF-WS relating to the wastewater system deficiencies ordered to be corrected in Order No. PSC-94-0449-FOF-WS, as well as the compliance requirements of Order No. PSC-94-0449-FOF-WS still unmet concerning the water system. Second, it addresses WSI's failure to remit the first installment of the staff-assisted rate case application fees. Third, it addresses WSI's petition for interim rates in Docket No. 940982-WS. Last, it addresses the status of both Dockets Nos. 910276-WS and 940982-WS.

SHOW CAUSE PROCEEDING RESOLUTION

In Order No. PSC-93-0049-FOF-WS, we ordered Pine Island to show cause why it should not be fined for failing to meet the DEP compliance requirements for its wastewater system and for failing

to comply with the provisions of Orders Nos. 24643, and PSC-92-0126-AS-WS, which related to those requirements. The Utility was not then in receivership. In Order No. 24643, we noted that the Utility had not yet come into compliance with the Notice of Violation; that high turbidity persisted after clarification; and that the quality of the Utility's effluent jeopardized its ability to meet discharge requirements. Order No. PSC-92-0126-AS-WS revived Order No. 24643, following a settlement agreement reached by the Utility with its customers concerning the Commission's authorization, in the latter order, of increased water and wastewater rates. In Order No. PSC-93-0049-FOF-WS, we again noted the persistence of the high turbidity problem, while further noting that the Utility's temporary operating certificate had expired more than 18 months earlier. We found that the Utility had been unresponsive to several DEP warnings and that it had made no attempt to bring the wastewater system into compliance.

Fifteen months later, in Order No. PSC-94-0449-FOF-WS, following the appointment of WSI as the Utility's receiver on July 15, 1993, we found the Utility's wastewater system still to be non-compliant. The Utility had yet to address the problems of obtaining a current operating permit, high turbidity, inadequate treatment plant access security, and inadequate keeping of operating and maintenance logs. However, we suspended the show cause proceeding and permitted the Utility a reasonable period of time to submit an application for renewal of its expired operating permit.

In Order No. PSC-94-1463-FOF-WS, in the Utility's later staff-assisted rate case docket, Docket No. 940982-WS, we ordered the Utility to show cause by December 20, 1994, 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. On December 8, 1994, WSI filed its timely response to the show cause order. The receiver explained that the Utility failed to comply with the requirements of Order No. PSC-94-1463-FOF-WS because of its financial distress. The receiver stated that in its last inspection, June 16, 1994, DEP noted only the following deficiencies as still outstanding: (1) the expired operating permit; (2) the need for a back-flow preventive device on the treatment plant; (3) vegetation overgrowth; and (4) an unstable catwalk. The cost to correct these deficiencies the receiver estimated to be \$3,000 to \$3,150. In addition, the receiver stated that it is necessary to replace the blower timer and to install a backup blower, at an estimated cost of \$950 to \$1,000. Finally, the receiver estimated that all of these corrections could be accomplished within 120 days of the availability of funds.

WSI's response does not present an effective plan for the remediation of the wastewater system deficiencies, since the receiver apparently does not have recourse to the required funds. However, we find that the response was made in good faith and that it represents all that the receiver has the present capacity to do. We find that the Utility's failure to fully comply with the DEP and Commission orders does not rise to a level warranting that the Commission pursue the show cause proceeding. Our belief is based, in part, upon the Utility's revenues being insufficient. In view of the Utility's strapped financial condition, the receiver's efforts to make the necessary improvements to the utility plant have been in earnest and, to a degree, forthcoming, especially in respect to the water system. In Order No. PSC-94-1463-FOF-WS, we ordered that a fine assessed to the Utility for water system deficiencies be permanently suspended. In this order, we later address the matter of a fine assessed the Utility for wastewater system deficiencies, which at present is conditionally suspended, and order it permanently suspended. The receiver has recently noticed the Commission of its intent to abandon. Imposing further sanctions would be futile and also counterproductive to the need to correct the existing wastewater system deficiencies, which now threaten health risks. Thus, we find that the Commission shall not pursue the show cause proceeding against Pine Island Utility Corporation, which was initiated in Order No. PSC-94-1463-FOF-WS.

WASTEWATER SYSTEM FINE

On August 28, 1989, DEP issued a Notice of Violation and Orders for Corrective Actions, Case No. OGC 89-0823. By Order No. PSC-92-0126-AS-WS, we assessed Pine Island a \$500 fine for unsatisfactory quality of wastewater service, but, in order to encourage the Utility to comply with the DEP Notice of Violation, we suspended the fine for six months. In Order No. PSC-93-0049-FOF-WS, we found that Pine Island had failed to meet the DEP Notice of Violation requirements concerning the wastewater system and, consequently, reinstated the \$500 wastewater system fine. We also ordered the Utility to show cause why it should not be fined for failing to meet the DEP compliance requirements for its wastewater system and to comply with our previous orders.

In Order No. PSC-94-0449-FOF-WS, we found that the Utility had not achieved compliance, but we further suspended the fine to allow the receiver to apply for renewal of the Utility's wastewater operating permit within a reasonable time. Under the Notice of Violation, the Utility had yet to (1) obtain a valid operating permit; (2) correct plant operations and/or treatment facilities to correct turbidity standards; (3) provide adequate access control to

the wastewater treatment plant; and (4) properly maintain operations and maintenance logs.

As already noted, in Order No. PSC-94-1463-FOF-WS, we again ordered Pine Island to show cause why it should not be fined for failing to achieve wastewater system compliance with the DEP Notice of Violation and Orders for Corrective Actions and with our prior orders. In an earlier part of this Order, we ordered that the show cause proceeding be permanently suspended, even though the Utility's wastewater system remains substantially out of compliance. As with the show cause proceeding, we find that nothing is to be gained by reinstating or continuing the conditional suspension of the fine. We find it appropriate, therefore, to order that the \$500 fine, originally assessed to Pine Island by Order No. 24643, be permanently suspended.

APPLICATION FEES PAYMENT PLAN SHOW CAUSE PROCEEDING

As stated earlier, by Order No. PSC-94-1463-FOF-WS we ordered that, if the Utility fully met the compliance requirements of Order No. PSC-94-0449-FOF-WS by December 8, 1994, it would be permitted to pay the staff-assisted rate case application fees in eight monthly installments, beginning on January 3, 1995, contingent upon the final approval of the Florida Department of Banking and Finance. Further, we ordered that final rates not be implemented until the Utility made payment in full of the fees.

We have noted above that WSI's December 8, 1994, response to the show cause order issued in Order No. PSC-94-1463-FOF-WS represents, under the circumstances, sufficient compliance with Order No. PSC-94-0449-FOF-WS, even though it does not offer an effective plan for remediation. However, WSI failed to remit the first installment of the staff-assisted rate case application fees, which was due January 3, 1995, thus, violating a lawful order of the Commission.

The Utility's act was "willful" in the sense intended by Section 367.161, Florida Statutes. The Utility's failure to adhere to the payment installment plan, which it requested, would meet the standard for a "willful violation." In Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL, In Re: Investigation Into The Proper Application of Rule 25-14.003, F.A.C., Relating To Tax Savings Refund for 1988 and 1989 For GTE Florida, Inc., the Commission, having found that the company had not intended to violate the rule, nevertheless found it appropriate to order it to show cause why it should not be fined, stating that "[i]n our view,

'willful' implies an intent to do an act, and this is distinct from an intent to violate a statute or rule." Id. at 6.

The failure of the Utility to adhere to the approved payment installment plan can be ascribed to its financial distress. WSI has noticed its intention to abandon its receivership appointment. Later in this order, we address the status of Docket No. 940982-WS, and order that the docket remain in abeyance status until a new receiver or owner should demonstrate an intention to pursue the staff-assisted rate case with payment of the application fees. A show cause proceeding against the Utility for failing to adhere to the payment plan we authorized is unlikely to result in any constructive outcome. Moreover, such a proceeding would place an additional obstacle in the new receiver's or owner's path. Although regulated utilities are charged with knowledge of Chapter 367, Florida Statutes, we find that the Utility's apparent violation of the Commission's order does not rise in these circumstances to the level of warranting that a show cause order be issued. We, therefore, find it appropriate not to initiate a show cause proceeding for Pine Island's failing to adhere to the payment installment plan we approved in Order No. PSC-94-1463-FOF-WS.

EMERGENCY RATES

Water Spectrum, Inc., as receiver for the Utility, requested interim rates for Pine Island. Interim rates are not available in staff-assisted rate cases; however, we usually consider such petitions for interim rates as petitions for emergency rate relief. In its petition, the receiver represents that the Utility's existing rates are inadequate to cover operation and maintenance expenses.

In most staff-assisted rate case proceedings, emergency rates would not be considered. The main reasons for not considering emergency rate relief are the Commission's position of encouraging utilities to timely seek rate relief, the lack of financial data required to set rates, and the problems often associated with the ability of Class C utilities to refund. However, we have considered permitting emergency temporary rates for a utility in receivership. See, e.g., Order No. PSC-93-1844-FOF-WS, Order Granting Emergency Rates and Charges, In Re: Application for Staff-Assisted Rate Case in Marion County by ASTOR WEST, INC., 93 FSPC 12:528, December 28, 1993. Whether emergency temporary rates are appropriate is a determination we make on a case-by-case basis. See, e.g., Order No. PSC-93-0633-FOF-SU, Order Granting Emergency Temporary Rates and Placing Docket in Monitor Status, In Re: Application for Staff-Assisted Rate Case by L.C.M. Sewer Authority

in Lee County, 93 FPSC 4:608, April 22, 1993. We will permit a utility to collect emergency temporary rates, subject to refund, in order to preserve the public health, safety, and welfare. See, e.g., Order No. 25711, Order Granting Emergency Temporary Wastewater Rate Increase, Subject to Refund, and Establishing Provisions for Deposit and Release of Escrow Funds, In Re: Petition for Emergency Limited Proceedings on Wastewater Service in Pasco County by MAD HATTER UTILITY, INC., 92 FPSC 2:276, February 12, 1992.

When a utility notices its intent to abandon, and there is a pending staff-assisted rate case for that utility, the docket is usually held in abeyance pending resolution of the abandonment. However, we conclude that there are extraordinary circumstances in this docket warranting consideration of emergency rate relief. Nevertheless, we find that emergency rate relief shall not be implemented until a new receiver is appointed, or a new owner is recognized by the court, and demonstrates an intention to pursue the staff-assisted rate case by paying the application fees in full. As noted earlier, we find below that the staff-assisted rate case in Docket No. 940982-WS shall be kept in abeyance until a receiver is appointed or a new owner is recognized.

Usually, emergency rates are set to cover only operating and maintenance expenses, otherwise known as cash expenses. Emergency rates typically do not include depreciation expense nor return on rate base. In this case, we do not follow this convention because the emergency rates we grant are based on the revenue requirements for the water and wastewater systems established in Order No. 24643. Consequently, the rates include the provisions for depreciation and return on rate base established in that order.

The revenue requirements that were established in Order No. 24643 for the water and wastewater systems were \$14,576 and \$16,867, respectively. Annualized revenues for 1994, based on the Utility's books, actual consumption and billing data, were \$11,332 and \$9,684 for the water and wastewater systems, respectively. The discrepancies in achieved revenues compared to those anticipated in Order No. 24643 largely result from using estimated consumption data to set the rates established in Order No. 24643. The estimation of consumption was necessary because the customers were not metered. One of the requirements of Order No. 24643, however, was for the Utility to install meters. The installation of meters was completed and actual consumption data has become available.

In Order No. 24643, we estimated annual consumption of 5,040,000 gallons for the water system. Actual consumption for the test year for the water system was 2,390,750 gallons. The

resulting difference between estimated and actual consumption for the test year was 2,649,250 gallons. It is apparent that consumption was seriously overestimated in the previous staff-assisted rate case, resulting in an understated gallonage charge. This consumption discrepancy has resulted in a severe revenue shortfall for this utility, which has contributed greatly to its operational decline. Therefore, we find it appropriate to set emergency rates for the Utility according to the actual consumption data, with the previously approved revenue requirements as starting points. This is reasonable because the Utility, for circumstances beyond its control, never achieved the Commission-approved revenue requirement. In addition, the Utility has not increased its rates through the price indexing procedure. Accordingly, we find it appropriate that the revenue requirements established in Order No. 24643 be indexed forward to 1994 to cover certain inflationary cost increases and that emergency temporary rates calculated on the basis of the indexed revenue requirement be granted. The resulting authorized emergency temporary rates are shown in Table 1.

TABLE 1

EXISTING MONTHLY WATER RATES

Residential and General Service

<u>Meter Sizes:</u>	<u>BASE FACILITY CHARGE</u>
5/8" x 3/4"	\$ 5.76
3/4"	8.64
1"	14.40
1 1/2"	28.80
2"	46.08
3"	92.16
4"	144.00
6"	288.00
<u>Gallonage Charge</u>	
Per 1,000 Gallons	\$ 1.15
Flat Rate	\$ 11.51

RECOMMENDED EMERGENCY MONTHLY WATER RATES

Residential and General Service

<u>Meter Sizes:</u>	<u>BASE FACILITY CHARGE</u>
5/8" x 3/4"	\$ 8.15
3/4"	12.22
1"	20.37
1 1/2"	40.75
2"	65.20
3"	130.40
4"	203.75
6"	407.50
 <u>Gallonage Charge</u>	
Per 1,000 Gallons	\$ 2.60
Flat Rate	\$ 13.28

EXISTING MONTHLY WASTEWATER RATES

Residential Service

<u>Meter Sizes:</u>	<u>Base Facility Charge</u>
All Meter Sizes	\$ 9.55
 <u>Gallonage Charge</u>	
Per 1,000 gallons	\$ 2.17
(Maximum charge of 6,000 gallons)	
Flat Rate -	\$20.37

General Service

<u>Meter Sizes:</u>	<u>Base Facility Charge</u>
5/8" x 3/4"	\$ 9.55
3/4"	14.33
1"	23.88
1 1/2"	47.75
2"	76.40
3"	152.80
4"	238.75
6"	477.50
<u>Gallonge Charge</u>	
Per 1,000 Gallons	\$ 2.60

RECOMMENDED EMERGENCY MONTHLY WASTEWATER RATES

Residential Service

<u>Meter Sizes:</u>	<u>Base Facility Charge</u>
All Meter Sizes	\$ 13.97
<u>Gallonge Charge</u>	
Per 1,000 gallons	\$ 4.03
(Maximum charge of 6,000 gallons)	
Flat Rate -	\$21.92

General Service

<u>Meter Sizes:</u>	<u>Base Facility Charge</u>
5/8" x 3/4"	\$ 13.97
3/4"	20.96
1"	34.93
1 1/2"	69.86
2"	111.77
3"	223.54
4"	349.28
6"	698.56
<u>Gallonge Charge</u>	
Per 1,000 Gallons	\$ 4.84

The average customer bills, on the basis of existing rates and consumption data, are \$8.67 for the water system and \$13.19 for the wastewater system. The average customer bills, on the basis of the approved emergency temporary rates, will be \$13.28 for the water system and \$21.92 for the wastewater system.

SECURITY

The increased emergency temporary rates, which we order herein, are subject to refund with interest pursuant to Rule 25-30.360, Florida Administrative Code. We find that the Utility shall collect these rates only upon the appointment of a new receiver, or the recognition of a new owner, if the new receiver or new owner represents to this Commission that the staff-assisted rate case should be reactivated and pays the application filing fees in full. We find further that the Utility shall then collect these rates subject to the refund provisions enumerated below.

The Utility shall be authorized to collect the temporary rates upon the Commission's approval of both the security elected for the potential refund and of the proposed customer notice. The security may be in the form of a bond or letter of credit in the amount of \$2,298. Alternatively, the Utility may establish an escrow agreement with an independent financial institution.

If the Utility chooses a bond as security, the bond shall 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 shall 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 security is provided through an escrow agreement, the following conditions shall be 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 Cosentino 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.

In no instance may the maintenance and administrative costs associated with the refund be borne by the customers. These costs are the responsibility of, and shall be borne by, the Utility. Irrespective of the form of security chosen by the Utility, an account of all monies received as a result of the rate increase shall be maintained by the Utility. This account must specify by whom and on whose behalf such monies were paid. If a refund is ultimately required, it shall be paid with interest calculated pursuant to Rule 25-30.360(4), Florida Administrative Code.

The Utility shall maintain a record of the amount of the bond, and the amount of revenues that are subject to refund. In addition, after the increased rates are in effect, the Utility shall file reports with the Division of Water and Wastewater no later than 20 days after each monthly billing. These reports shall indicate the amount of revenue collected under the increased rates.

CLOSING DOCKET NO. 910276-WS

By Order No. PSC-94-0449-FOF-WS, we permitted Pine Island 60 days to submit an application for a construction permit to the VCPHU and 150 days to submit to the Commission a detailed plan for remediation of any remaining water system deficiencies. In an earlier part of this Order, we disposed of those matters. Nothing further is required in this docket. Therefore, it shall be closed.

DOCKET NO. 940982-WS STATUS

Docket No. 940982-WS was opened upon the application of WSI for a staff-assisted rate case for Pine Island. In view of the impending WSI abandonment, the prudent course is to keep this docket open in abeyance status, pending WSI'S actual abandonment and the appointment of a new receiver, or the recognition of a new owner.

Therefore, we order that Docket No. 940982-WS be kept open, but held in abeyance, pending the actual abandonment by Water Spectrum, Inc., of its receivership appointment for Pine Island Utility Corporation and the appointment of a new receiver, or recognition of a new owner, by Volusia County Circuit Court.

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that the show cause proceeding initiated by Order No. 94-1463-FOF-WS shall be permanently suspended. It is further

ORDERED that the \$500 fine for wastewater system violations suspended in Order No. PSC-94-0449-FOF-WS shall be permanently suspended. It is further

ORDERED that Pine Island Utility Corporation shall not be required to show cause for its failure to pay the staff-assisted rate case application filing fees according to the payment installment plan approved in Order No. PSC-94-1463-FOF-WS. It is further

ORDERED that Pine Island Utility Corporation shall be granted emergency rate relief, rather than interim rates, designed to generate annual revenues of \$16,086 for the water system and \$18,675 for the wastewater system. It is further

ORDERED that the emergency rates herein approved shall be temporary and subject to refund, with interest. It is further

ORDER NO. PSC-95-0302-FOF-WS
DOCKETS NOS. 910276-WS, 940982-WS
PAGE 16

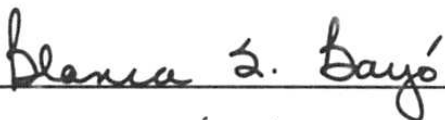
ORDERED that the emergency rates herein approved shall be implemented only upon the appointment of a new receiver for or the recognition of a new owner of Pine Island Utility Corporation and a representation to the Florida Public Service Commission that the staff-assisted rate case should be reactivated to include the payment in full of the staff-assisted rate case application filing fees. 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 Docket No. 910276-WS be closed. It is further

ORDERED that Docket No. 940982-WS shall remain in abeyance until the appointment of a new receiver for or the recognition of a new owner of Pine Island Utility Corporation and a representation to the Florida Public Service Commission that the staff-assisted rate case should be reactivated to include the payment in full of the staff-assisted rate case application filing fees.

By ORDER of the Florida Public Service Commission, this 3rd 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.