

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Request for staff-) DOCKET NO. 920767-WS
assisted rate case by INDIAN) ORDER NO. PSC-95-0343-FOF-WS
SPRINGS UTILITIES, INC., in) ISSUED: March 13, 1995
Citrus County)
_____)

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 GRANTING EXTENSION OF TIME IN WHICH TO FINALIZE TRANSFER OF WATER DISTRIBUTION SYSTEM

BY THE COMMISSION:

BACKGROUND

Indian Springs Utilities, Inc., (Indian Springs or utility) is a Class C water and wastewater facility located in Crystal River in Citrus County. The utility provides water service to 87 single-family residences and wastewater service to 60 single-family residences, a 37-unit apartment complex and a 106-room motel. The Eyster family purchased the Indian Springs water system in November, 1977, and has operated the system since that time.

On August 2, 1983, Indian Springs filed its application for a certificate to operate a water utility in Citrus County. By Order No. 13385, issued June 6, 1984, Indian Springs was granted Certificate No. 429-W. On July 24, 1987, NASI, Inc., and Indian Springs filed a joint application for a transfer of NASI's wastewater certificate. By Order No. 18907, issued February 22, 1988, the transfer of Certificate No. 136-S from NASI, Inc., to Indian Springs, was approved.

On June 29, 1990, Indian Springs filed an application for a staff-assisted rate case. At that time, it was recognized that the water provided by the utility did occasionally have salt water intrusion due to the well's proximity to the Gulf of Mexico. A permanent solution proposed in the rate case involved the utility interconnecting with the City of Crystal River (the City), or

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installing additional treatment facilities such as reverse osmosis. However, corrections were not required because of the expense involved and the effect it would have had on the rates. By Order No. 24211, issued March 11, 1991, the utility was granted an increase in its water and wastewater rates.

Subsequent to the last staff-assisted rate case, the Citrus County Health Department (CCHD) determined that unacceptable levels of bacteria exist in the utility's water. The CCHD has recommended that the utility find another water source. The utility began negotiating with the City to interconnect to the City's water supply. Recognizing the increases in expenses that would result from the interconnection, the utility applied for the instant staff-assisted rate case.

The City and the utility were initially unable to timely reach an agreement for the price of the purchased water. The utility therefore requested that the instant proceeding be placed in monitor status to allow additional time to negotiate a contract between the two parties. By Order No. PSC-93-0198-FOF-WS, issued February 9, 1993, the Commission placed the instant proceeding in monitor status until May 19, 1993. The Order further provided that if the utility had not obtained a signed contract with the City to purchase water by the end of the monitor period, the current staff-assisted rate case application would be deemed withdrawn, and the docket would be closed administratively. By letter dated May 12, 1993, the utility informed the Commission that it would not be purchasing water from the City. In addition, the utility's letter requested that the instant staff-assisted rate case continue, rather than having the docket close administratively. By Order No. PSC-93-0958-FOF-WS, issued June 28, 1993, the Commission reinstated the utility's staff-assisted rate case.

On December 23, 1993, the Commission issued proposed agency action Order No. PSC-93-1823-FOF-WS, approving Indian Springs's request for an increase in water and wastewater rates and granting temporary rates in the event of a protest. In the same Order, the Commission found the quality of service provided by Indian Springs for both water and wastewater to be unsatisfactory. Because the utility's water has excessive levels of bacteria, the Commission, by final action, ordered the utility to find an alternative water source. Even further, in an effort to ensure that the utility diligently pursue finding another source for water, the Commission ordered that the revenue increase associated with the water system be held in an escrow account until the utility obtains a contract for another water source. The Commission also imposed, and temporarily suspended, a fine of \$2,000 for the water system's unsatisfactory quality of service, to be deemed levied if a

contract were not signed within three months of the effective date of the Order. After certain customer objections were filed and later withdrawn, the Commission made Order No. PSC-93-1823-FOF-WS final by Order No. PSC-94-0878-FOF-WS, issued July 19, 1994, and effective July 5, 1994.

By motion dated April 18, 1994, Indian Springs requested additional time to find an alternative water source. By Order No. PSC-94-0748-FOF-WS, issued June 17, 1994, the Commission granted the utility's request for an extension of time, until July 5, 1994, to find an alternative water source.

On July 6, 1994, Indian Springs filed a second motion for extension of time, for an additional sixty days, in which to find an alternative water source. By Order No. PSC-94-1090-FOF-WS, issued September 6, 1994, the Commission granted the utility's request for an extension in which to find an alternative water source by allowing Indian Springs an additional 120 days from the effective date of that Order to finalize the transfer of its water distribution system to the City. The Commission ordered this docket to remain open pending the completion of all of the requirements of Order No. PSC-93-1823-FOF-WS, and to monitor the utility's progress in finding an alternative water source. Our staff has since provided the utility with an application for transfer of certificate of authorization to a governmental authority, which the utility understands must be submitted to this Commission pursuant to Section 367.071(1), Florida Statutes, and Rule 25-30.037(4), Florida Administrative Code, upon transfer of the water distribution system to the City.

WATER DISTRIBUTION SYSTEM PURCHASE AGREEMENT

On December 5, 1994, this Commission received a letter from the City's attorney, advising that the City had recently entered into a written Water Distribution System Purchase Agreement with the utility to acquire the Indian Springs water distribution system, subject to certain contingencies. In the letter, the City states that the utility has complied with all conditions of the Purchase Agreement to date. A copy of the Purchase Agreement was attached to the letter. By letter dated January 6, 1995, the utility advised that because it has entered into this Purchase Agreement with the City, it believes it has completed its obligation to effect the transfer. Nevertheless, the 120 day time limit which the Commission imposed upon the utility to finalize the transfer of the water distribution system expired on January 4, 1995. The utility continues to provide water service to its customers, and will not cease to provide this service unless all

contingencies under the Purchase Agreement are met and it closes its contract with the City.

The Purchase Agreement is subject to the City obtaining the appropriate Department of Environmental Protection (DEP) permits, and to the approval of the City Council after notice and public hearing, as required by Section 180.301, Florida Statutes. The City expects the DEP permit to be issued, as favorable indications have been received from both the City's consulting engineering firm and DEP staff. Further, the City Council has indicated a willingness to acquire the system. However, closing is subject to time restraints of the DEP permit. On January 18, 1995, the City informed our staff by telephone that its DEP permit application contains all information required by DEP for processing, and that the City speculates that the permit will be issued by mid- to late February, 1995. The required public hearing will take place shortly thereafter.

We note that the Purchase Agreement was executed on October 18, 1994, within the utility's Commission-imposed deadline for finding an alternative water source. The Purchase Agreement shows that the City accepts the water distribution system "As Is," and assumes all interconnection costs to the City's central water system. By obtaining a signed contract for an alternative water source, the utility has, indeed, complied in good faith, to the extent that it can, with Order No. PSC-93-1823-FOF-WS, and subsequent orders issued in this docket granting the utility certain extensions of time in which to find an alternative water source.

FINALIZATION OF THE TRANSFER

Because the parties will not close on the Purchase Agreement until the City obtains the DEP permits and approval of the City Council, as contingencies under the Agreement, we believe that the utility has failed to meet its obligation to finalize the transfer of its water distribution system by January 4, 1995, pursuant to Order No. PSC-94-1090-FOF-WS. The utility continues to provide water service to its customers, and will not cease to provide this service until after all contingencies under the Purchase Agreement have been met and it closes its contract with the City. The utility is therefore out of compliance with Order No. PSC-94-1090-FOF-WS.

We believe that the utility has made a good-faith effort to comply with Order No. PSC-94-1090-FOF-WS, by entering into the Water Distribution System Purchase Agreement with the City. Because the utility has done all that it can to comply with the

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terms of Order No. PSC-94-1090-FOF-WS, we shall allow the utility an additional ninety days from the issuance date of this Order in which to finalize the transfer of its system to the City.

We have already noted that by Order No. PSC-93-1823-FOF-WS, the Commission found the quality of service provided by Indian Springs for both water and wastewater to be unsatisfactory. This finding was based upon a thorough review of the utility's operations and its many documented problems. The Commission also found that the utility had taken no immediate or intensified action to secure an alternative water source, even after the distribution system was known to have passed along dangerous bacteria to the customers. The Commission imposed, and temporarily suspended, a \$2,000 fine to allow the utility a period of time to obtain a contract for an alternative water source. The Commission also approved a revenue increase for the water system, but ordered that increase held in escrow until the contract for an alternative water source is obtained. Nevertheless, the utility continues to serve the customers from a source of water that has a long history of bacterial content, and will continue to do so until the transfer of the water distribution system is finalized and the customers begin receiving City water. For these reasons, although the utility has obtained a contract with the City for the purchase of the water distribution system as required by Order No. PSC-93-1823-FOF-WS, as a precautionary measure, we hereby order that the \$2,000 fine shall remain temporarily suspended, and the monies held in escrow shall not be released, until all contingencies under the terms of the Purchase Agreement have been satisfied and the transfer of the water distribution system has been finalized as set forth by this Order.

This docket shall remain open to monitor the utility's progress in finalizing the transfer of its water distribution system to the City. Once the utility finalizes the transfer under the terms of this Order, we will address the disposition of the \$2,000 fine imposed for the water system's unsatisfactory quality of service, and the release of the revenue increase associated with the water system currently held in escrow.

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that Indian Springs Utilities, Inc. shall hereby be granted an additional ninety days from the issuance date of this Order in which to finalize the transfer of its water distribution system to the City of Crystal River. It is further

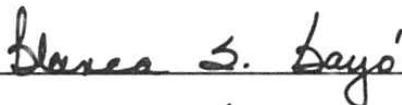
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ORDERED that the \$2,000 fine imposed and temporarily suspended by Order No. PSC-93-1823-FOF-WS shall remain temporarily suspended until all contingencies contained in the Water Distribution System Purchase Agreement are satisfied and the transfer of the water distribution system is finalized, as set forth by this Order. It is further

ORDERED that the monies currently being held in escrow under the terms of Order No. PSC-93-1823-FOF-WS shall not be released until all contingencies contained in the Water Distribution System Purchase Agreement have been satisfied and the transfer of the water distribution system is finalized, as set forth by this Order. It is further

ORDERED that this docket shall remain open to monitor the utility's progress in finalizing the transfer of its water distribution system to the City of Crystal River.

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



BLANCA S. BAYÓ, 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.

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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.