

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for staff-) DOCKET NO. 940982-WS
assisted rate case in Volusia) ORDER NO. PSC-95-0847-FOF-WS
County by Pine Island Utility) ISSUED: July 17, 1995
Corporation)
_____)

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

BY THE COMMISSION:

NOTICE OF PROPOSED AGENCY ACTION ORDER ESTABLISHING
RESPONSIBILITY FOR PAYMENT OF REGULATORY ASSESSMENT FEES

NOTICE IS HEREBY GIVEN by the Florida Public Service Commission that the action discussed herein requiring Water Spectrum, Inc., to pay the 1993 regulatory assessment fees 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

Pine Island Utility Corporation's Water and Wastewater Systems (Pine Island Utility) are class C utilities presently serving 86 water and 71 wastewater customers. In its 1993 annual report, the utility reported operating revenues for water of \$7,754 and for wastewater of \$8,456. It reported a net operating loss for water of \$24,979 and for wastewater, a net operating loss of \$18,034. On July 15, 1993, Judge C. McFerrin Smith, III, Circuit Court, Seventh Judicial Circuit, Volusia County, appointed Water Spectrum, Inc., (WSI) receiver for Pine Island Utility. WSI is an affiliate of Landis Enterprises, Inc., (LEI), providing management services.

The utility filed a staff-assisted rate case on March 4, 1991, which was docketed as Docket No. 910276-WS. In Order No. PSC-92-0126-AS-WS, issued March 31, 1992, we authorized the utility to collect increased rates for water and wastewater. In the same

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docket, in Order No. PSC-94-0449-FOF-WS, issued April 14, 1994, we later authorized rates for non-metered water and wastewater customers and ordered the docket be kept open in order to monitor the utility's efforts to correct a number of water and wastewater system deficiencies. Also in that docket, in Order No. PSC-94-1053-FOF-WS, issued August 29, 1994, we denied the utility's petition for further rate relief and again ordered the docket be kept open in order to monitor the utility's efforts to correct still-unaddressed system deficiencies.

On September 15, 1994, WSI filed an application for the instant staff-assisted rate case. In Order No. 94-1463-FOF-WS, issued November 29, 1994, in this docket, Docket No. 940982-WS, we permitted the utility to pay the staff-assisted rate case application filing fee and its delinquent 1993 regulatory assessment fees, based on revenues collected since July 15, 1993, the date of WSI's appointment, according to installment plans. We placed the docket in 30-days abeyance to allow the utility a further opportunity to address system deficiencies. WSI failed to remit any of the installment payments for the staff-assisted rate case application fees. WSI did, however, remit the first of the installment payments of the 1993 regulatory assessment fees on December 8, 1994, and two additional payments on February 23, 1995, leaving a final installment payment due.

Following WSI's December 23, 1994, notice of LEI's intention to abandon the utility, pursuant to Section 367.165, Florida Statutes, in Order No. PSC-95-0302-FOF-WS, issued March 3, 1995, we, in the instant docket, authorized emergency rate relief upon new evidence, but to be implemented only upon the appointment of a substitute receiver for the utility and the substitute receiver's decision to continue with the staff-assisted rate case. We ordered the earlier staff-assisted rate case docket, Docket No. 910276-WS, closed and Docket No. 940982-WS to remain in abeyance, again, until the appointment of a substitute receiver and the receiver's representation to the Commission that it wished to reactivate the staff-assisted rate case.

WSI's abandonment became effective on February 21, 1995. On February 28, 1995, Judge John W. Watson, III, Circuit Court, Seventh Judicial Circuit, Volusia County, appointed Volusia County substitute receiver for Pine Island Utility. On March 17, 1995, Volusia County requested that we find it exempt from our regulation pursuant to Section 367.022(2), Florida Statutes, and Rule 25-30.090(6), Florida Administrative Code. We have acknowledged the County's exempt status separately and, in this order, we have addressed the issue implicitly reserved in Order No. PSC-95-0302-FOF-WS, i.e., the status of Docket No. 940982-WS in light of the

County's appointment and the utility's still-unpaid 1993 regulatory assessment fees.

RESPONSIBILITY TO PAY 1993 REGULATORY ASSESSMENT FEES

As earlier noted, in Order No. PSC-94-1463-FOF-WS, we approved an installment payment plan for Pine Island Utility's delinquent regulatory assessment fees for 1993, together with penalties and interest, to be applied to revenues collected by WSI since its appointment on July 15, 1993, as the utility's receiver. The approved plan required Pine Island Utility to make four successive monthly installment payments of \$101.50, beginning December 8, 1994, to discharge the total obligation of \$404.20 by March 31, 1995. WSI remitted three of these payments.

In that order, we required that Docket No. 940982-WS be closed if any one of the installment payments of the staff-assisted rate case application fees or delinquent regulatory assessment fees were not timely made. However, under the new circumstances of WSI's abandonment, in Order No. PSC-95-0302-FOF-WU, we found it inappropriate to close the docket for either reason. Rather, as already noted, we ordered that the docket remain in abeyance, while we awaited the appointment of a substitute receiver for the utility, and the substitute receiver's representation to the Commission that it wished to reactivate the staff-assisted rate case, or not. We declined in that order to show cause the utility for its failure to pay the staff-assisted rate case application fee according to the approved installment payment plan, but did not expressly address the 1993 regulatory assessment fees, which had been paid only in part. However, it was our intention also to look once again at our decision in Order No. PSC-94-1463-FOF-WS, in which we ascribed the responsibility to pay the utility's 1993 regulatory assessment fees, with attendant penalties and interest, to Pine Island Utility, upon the appointment of a substitute receiver for the utility, and that receiver's representation to the Commission that it wished to re-activate the staff-assisted rate case, or not.

Furthermore, WSI failed to pay by March 31, 1995, Pine Island Utility's 1994 regulatory assessment fees. Payment for the 1994 fees, with penalties and interest, remains outstanding and we have addressed this matter also separately.

Regulated utilities are required to remit regulatory assessment fees each year based upon gross operating revenues, pursuant to Sections 350.113 and 367.145, Florida Statutes, and Rule 25-30.120(1), Florida Administrative Code. In establishing rates, an amount equal to the regulatory assessment fee is included

in calculating the revenue requirements of a utility. Thus, the utility collects the regulatory assessment fee by means of its rates. The abandonment of the utility does not eliminate the utility owner's responsibility for payment of the fees, nor does the abandonment of the utility by a receiver eliminate the receiver's responsibility for payment of the fees assessable during the receiver's tenure.

We reject the suggestion that Volusia County, as the receiver for the utility, be held responsible for payment of the delinquent 1993 regulatory assessment fees, for which the utility had become fully obligated before LEI's abandonment. The suggestion rests upon characterizing the fees as a debt of the utility in the ordinary course of business. We recognize that the receiver could, in some cases, discharge the utility's accrued liability for regulatory assessment fees by advancing funds from its own resources, subsequently recovering them through increased rates. However, we believe it to be inappropriate to in any way encourage the receiver to take that step, because the unjust effect would be to tax the utility's customers a second time for those fees. Our essential interest is that the receiver provide uninterrupted efficient and effective water service to the utility's customers, while addressing those deficiencies that threaten the utility's viability. Moreover, we have, in this case, elsewhere acknowledged that Volusia County is exempt from Commission regulation, pursuant to Section 367.022(2), Florida Statutes, and Rule 25-30.090(6), Florida Administrative Code.

Section 367.145, Florida Statutes, provides that a governmental authority to whom control of a regulated utility passes is not liable for any fees owed the Commission by the utility as of the passing date. The court's order appointing Volusia County receiver provides that the receiver shall be held harmless and not legally responsible for liabilities and violations relating to the systems that were incurred prior to the receiver's appointment and that the receiver's liability in respect to operating the systems is limited to the revenues collected from the utility's customers. Since Volusia County is exempt from our regulation in this case, no regulatory assessment fees will be owing from the date the County was appointed receiver for Pine Island Utility, February 28, 1995.

As just noted, in Order No. PSC-94-1463-FOF-WS, we ordered Pine Island Utility Corporation to pay the Utility's delinquent 1993 regulatory assessment fees. Thus, pursuant to Section 367.165, Florida Statutes, the receiver, WSI was charged with remitting those fees, but assessable against only those revenues collected from July 15 through December 31, 1993, to the Commission

by March 31, 1995. That order was issued on November 29, 1994, before WSI filed notice of LEI's abandonment with the Commission on December 21, 1994. Thus, we find it appropriate to affirm our decision that WSI shall be responsible to pay the utility's delinquent 1993 regulatory assessment fees, together with penalties and interest. WSI shall remit these fees in full, with penalties and interest, within 60 days of the effective date of this order. Moreover, if these fees, penalties, and interest are not fully paid upon reasonable collection efforts, the matter shall be referred to the Comptroller's Office for disposition.

DOCKET STATUS

This docket, Docket No. 940982-WS, was opened to process the utility's application for a staff-assisted rate case, placed in abeyance by Order No. PSC-94-1463-FOF-WS, pending satisfactory compliance efforts, and held in abeyance by Order No. PSC-95-0302-FOF-WS, pending the appointment of a substitute receiver for the utility and the receiver's decision to proceed with the staff-assisted rate case, or not. Since we have acknowledged Volusia County's exemption from our regulation, pursuant to Section 367.0814(6), Florida Statutes, the utility's staff-assisted rate case is deemed to be withdrawn. The emergency rate relief we conditionally approved in Order No. PSC-95-0302-FOF-WS is, as a further consequence, a nullity.

Based on the foregoing, it is, therefore

ORDERED by the Florida Public Service Commission that Water Spectrum, Inc., shall be responsible for paying the still-outstanding regulatory assessment fees of Pine Island Utility Corporation for 1993, together with attendant penalties and interest, within 60 days of the effective date of this order. It is further

ORDERED that should Water Spectrum, Inc., fail to remit these fees, penalties, and interest upon reasonable collection efforts, the matter shall be referred to the Comptroller's Office for disposition. It is further

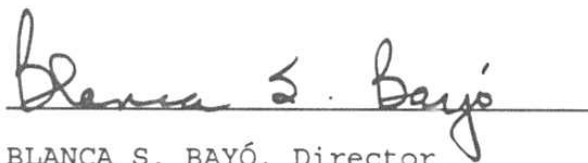
ORDERED that the provisions of this order, issued as proposed agency action, shall become final and effective unless an appropriate petition, in the form provided by Rule 25-22.036, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth

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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 17th day of July, 1995.

A handwritten signature in cursive script, reading "Blanca S. Bayó", is written over a horizontal line.

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.

As identified in the body of this order, our action requiring Water spectrum, Inc., to pay the 1993 regulatory assessment fees 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

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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 August 7, 1995. In the absence of such a petition, this order shall become effective on the date 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 the relevant portion of this order becomes final and effective on the date described above, any party adversely 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.

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 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 after the issuance 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.