

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for a rate) DOCKET NO. 921261-WS
increase in Lee County by HARBOR) ORDER NO. PSC-95-0884-FOF-WS
UTILITIES COMPANY, INC.) ISSUED: July 19, 1995
_____)

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK, Chairman
JOE GARCIA

ORDER APPROVING REFUND PLAN

AND

NOTICE OF PROPOSED AGENCY ACTION
ORDER IMPUTING UNSECURED REFUNDS TO CIAC

BY THE COMMISSION:

NOTICE IS HEREBY GIVEN by the Florida Public Service Commission that the action discussed herein imputing unsecured refunds to contributions in aid of construction 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

Harbor Utilities Company, Inc., (Harbor or utility) is a Class C utility located in Lee County serving 644 water customers and 439 wastewater customers. The 1993 annual report indicated that the utility received gross revenues of \$108,309 and \$50,430 from its respective water and wastewater systems.

On June 14, 1993, Harbor filed an application for approval of interim and permanent rate increases pursuant to Sections 367.081 and 367.082, Florida Statutes. However, the information submitted did not satisfy the minimum filing requirements (MFRs) for a general rate increase and the utility was advised of the deficiencies. Subsequently, on July 26, 1993, the utility satisfied the MFRs for a rate increase, and that date was designated the official filing date.

By Order No. PSC-93-1450-FOF-WS, issued October 5, 1993, Harbor was granted interim water and wastewater rates designed to

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generate annual revenues of \$135,235 and \$98,826, respectively. Those revenues exceeded test year water revenues by \$27,072 or 25.03% and \$48,361 or 95.83% for wastewater.

By proposed agency action Order No. PSC-94-0075-FOF-WS, issued January 21, 1994, we denied Harbor's request for an increase in final water and wastewater rates for Harbor. On February 11, 1994, Harbor timely filed a protest to Order No. PSC-94-0075-FOF-WS. An administrative hearing for this docket was scheduled for September 21-23, 1994.

On September 12, 1994, Harbor filed a Notice of Voluntary Dismissal of Rate Case Application, pursuant to Rule 25-22.0375, Florida Administrative Code, and Rule 1.420(a)(1), Florida Rules of Civil Procedure. Along with the Notice, Harbor filed revised tariff sheets reflecting the prior Commission approved rates. Those were the rates that were implemented prior to the utility's filing of the rate case. On September 13, 1994, the hearing was cancelled. In its notice, Harbor stated that the process of calculating the refund due to its customers, pursuant to Rule 25-30.360, Florida Administrative Code, was already in process. Accordingly, we issued Order No. PSC-94-1316-FOF-WS, on October 26, 1994 acknowledging Harbor's notice of voluntary dismissal and requiring the refund of interim rates. Order No. PSC-94-1316-FOF-WS specifically stated:

The utility shall refund all interim rates collected. The refund shall be made with interest in accordance with Rule 25-30.360, Florida Administrative Code. The utility shall file refund reports pursuant to Rule 25-30.360(7), Florida Administrative Code. Pursuant to Rule 25-30.360(8), Florida Administrative Code, the utility shall treat any unclaimed refunds as contributions in aid of construction.

On October 4, 1994, Harbor filed a Notice of Refund for its customers based upon its voluntary withdrawal of its rate case filed on September 12, 1994. This notice indicated that the previous approved rates would become effective and the customers would receive a credit on their bill in the amount that is due to them. Subsequently, Harbor failed to submit the computation of refunds, a proposed refund plan, or the required refund reports. Consequently, the noticed refund process never occurred. Upon further investigation, we determined that the Letter of Credit in the amount of \$42,000 expired on September 30, 1994. A new letter of credit covering a higher refund amount was never obtained.

On October 21, 1994, Mr. James J. Ryan, President of Harbor, filed a notice of abandonment with us and the Florida Department of Environmental Protection (DEP). Mr. Ryan stated that the utility did not have the required financial resources to bring the facility into compliance with DEP standards, which are too great for the existing utility. Mr. Ryan stated that the utility's efforts to obtain meaningful rate relief through the Commission had been unsuccessful, along with its efforts to secure funds from the Lee County Municipal Services Benefit Unit.

A hearing for the appointment of a receiver was held December 9, 1994, in the Circuit Court of Lee County, Florida. The Court deferred appointing a receiver at that time. On December 22, 1994, the Circuit Court appointed Bonita Springs Utilities, Inc. (BSU) as receiver for Harbor. By Order No. PSC-95-1588-FOF-WS, issued December 22, 1994, we acknowledged the abandonment. On March 13, 1995, we issued Order No. PSC-95-0346-FOF-WS, acknowledging the appointment of BSU as receiver for Harbor. Further, we addressed the interim refunds in Order No. PSC-95-0346-FOF-WS, by stating:

In Order No. PSC-94-1316-FOF-WS, issued October 26, 1994, we required the utility to refund the interim rates collected in the docket. The utility shall continue to make the refunds as required in Order No. PSC-94-1316-FOF-WS, issued October 26, 1994. Pursuant to the foregoing, we find it appropriate to acknowledge BSU as the receiver of the utility.

On March 3, 1995, Capital City Bank issued a personal money order in the amount of \$43,521.20 to BSU. This was the amount, plus interest, Mr. James Ryan was required to post in order to obtain the necessary letter of credit. On March 14, 1995, BSU sent a letter to us indicating that they were in the process of obtaining information in order to begin the interim rate refund process. On April 28, 1995, BSU, filed an Interim Rate Refund Plan as court appointed receiver of the water and wastewater utility assets of Harbor. The total amount subject to refund plus interest was \$58,466.49.

REFUND PLAN

The refund plan submitted is only for the amount that was secured by the letter of credit plus interest accrued, which was \$43,521.20. This was transferred to BSU by a money order dated March 3, 1995, via Capital City Bank of Tallahassee. The \$43,521.20 is only 74.44% of the total \$58,466.49 subject to refund and the receiver proposed to refund only such amount as was

provided from Mr. Ryan's posted security, plus any accrued interest.

In its refund plan, Harbor, with BSU as its receiver, proposes to credit all of the customers' bills still on the system for the amount of the refund. In the event the refund amount is greater than the amount of the bill on which the initial refund is originally credited, the remainder of the credit will be carried forward until the refund is fully paid. Customers requesting a check for any credit balances will be paid within ten days of their request. Customers that are entitled to a refund, but are no longer customers of the system, will be paid by a refund check mailed to the last known billing address, except that no refund for less than \$1 will be made to those customers.

We believe that the refund plan submitted by Harbor, with BSU as its receiver, with regard to the \$43,521.20 is reasonable and consistent with current practice and Rule 25-30.360, Florida Administrative Code. Therefore, we hereby approve the refund plan as it relates to the \$43,521.20. The refund shall be made with interest in accordance with Rule 25-30.360, Florida Administrative Code. Further, Harbor, with BSU as its receiver, shall credit all customers' bills remaining on the system for the amount of refund, pay customers requesting a credit balance within ten days, and file refund reports pursuant to Rule 25-30.360(7), Florida Administrative Code. However, Harbor, with BSU as its receiver, shall apply any unclaimed refunds to contributions in aid of construction (CIAC), pursuant to Rule 25-30.360(8), Florida Administrative Code and Order No. PSC-94-1316-FOF-WS, issued October 26, 1994.

UNSECURED REFUNDS

As mentioned in the background, Harbor abandoned the utility before filing a refund plan. By Order No. PSC-94-1316-FOF-WS, we ordered Harbor to refund the interim rates. Order No. PSC-94-1558-FOF-WS acknowledged the abandonment of Harbor. Order No. PSC-95-0346-FOF-WS acknowledged BSU as receiver of Harbor, and ordered BSU, as receiver, to complete the refunds required by Order No. PSC-94-1316-FOF-WS. At the time Order No. PSC-95-0346-FOF-WS was issued, it was anticipated that the letter of credit would cover the total amount of the refunds. However, after reviewing BSU's refund plan, it was determined that the letter of credit would only cover 74.44% of the amount of refund due. The remaining refunds were unsecured. We were uninformed about the lack of security when we issued Order No. PSC-95-0346-FOF-WS, ordering BSU, as Harbor's receiver, to complete the refunds pursuant to Order No. PSC-94-

1316-FOF-WS. When this matter was considered, we did not know that the letter of credit did not secure the entire refund amount.

On February 3, 1995, we received a letter from Harbor, with BSU as its receiver, that Mr. Ryan had not turned over the funds needed to make the required refunds. We then contacted the bank which issued Harbor's letter of credit, and on March 3, 1995, Capital City Bank issued a personal money order in the amount of \$43,521.20 to BSU. On March 14, 1995, Harbor, with BSU as its receiver, sent us a letter indicating that it was in the process of obtaining information in order to begin the interim rate refund process.

In its refund plan, Harbor, with BSU as its receiver, stated that it intended to refund only such amount as was provided from Harbor's posted security, plus any interest which has accrued on those funds. In support of its position, Harbor relies on Sections Five of the Circuit Court's Order appointing BSU receiver. Section Five states in part that:

The Receiver and its agents and employees are hereby held harmless and not legally responsible for any or all claims, liability, demands, damages, expenses, fees, fines, penalties, suits, proceedings, actions and fees, including attorney fees, that might have arisen or may arise out of (or be the result of) the past design, construction, operation, and maintenance of the Harbor Utilities Company, Inc. System.

Further, BSU stated that since the letter of credit was less than the actual refund, it is not responsible for the unsecured refunds. BSU claimed it was Harbor's responsibility to secure funds with a letter of credit to cover all revenue collected from interim rates. Harbor only secured \$42,000 with a letter of credit, when it should have known that additional security was necessary when the revenues exceeding that amount were collected. The interim rates were in effect until October 13, 1994. Therefore, since BSU became Harbor's receiver on December 22, 1994, we believe that the unsecured refund is a prior liability. Therefore, BSU shall not be held responsible for the past operation of Harbor's system.

There is no indication that there are any remaining funds available from the interim rates in the system. Additionally, after reviewing past annual reports submitted by Harbor, there is a strong indication that it is not earning enough to cover its own operating expenses. Based on its last annual report filed in 1993, Harbor's gross revenue was \$167,664, with operating expenses of \$194,678. This resulted in a net operating loss of \$27,014.

Therefore, it would be inequitable to force Harbor, with BSU as its receiver, to refund money from a utility which is having problems breaking even. If Harbor, with BSU as its receiver, were to take money out of its current operations to pay the customers the unsecured refunds which arose out of past operations, we find that it would possibly do three things: (1) harm the viability of the utility; (2) harm the health, safety, and welfare of all of Harbor's customers, not just those who would receive a refund; and (3) force BSU to borrow funds, or use its own money to support a system in which it is acting as its receiver. The Court Order appointing BSU as Harbor's receiver states that the receiver shall operate the utility with the revenues collected from the customers of the system.

Based on the foregoing, Harbor, with BSU acting as its receiver, shall not refund any unsecured refunds, which amount to \$14,945.20 plus additional interest. However, similar to the way unclaimed refunds are treated pursuant to Rule 25-30.360(8), Florida Administrative Code, the unsecured refunds, which amount to \$14,945.92, plus additional interest from April 28, 1995, shall be imputed to the utility's respective water and wastewater CIAC accounts.

Upon expiration of the protest period, if a timely protest is not filed, the docket shall be closed upon staff's verification that Harbor, with BSU as receiver, has completed the required refund.

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that Bonita Springs Utilities, Inc.'s refund plan is hereby approved as set forth herein. It is further

ORDERED that the refunds shall be made with interest in accordance with Rule 25-30.360, Florida Administrative Code. It is further

ORDERED that Harbor Utilities Company, Inc., with Bonita Springs Utilities, Inc. as its receiver, shall credit all customers' bills remaining on the system for the amount of refund, pay customers requesting a credit balance within ten days, and file refund reports pursuant to Rule 25-30.360(7), Florida Administrative Code. It is further

ORDERED that Harbor Utilities Company, Inc., with Bonita Springs Utilities, Inc. as its receiver, shall apply any unclaimed refunds to contributions in aid of construction, pursuant to Rule

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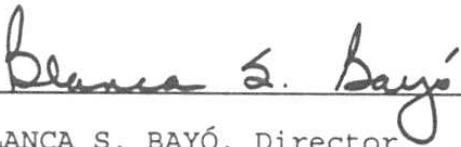
25-30.360(8), Florida Administrative Code and Order No. PSC-94-1316-FOF-WS. It is further

ORDERED that the unsecured refunds plus interest from April 28, 1995, shall be imputed to Harbor Utilities Company, Inc.'s respective water and wastewater contributions in aid of construction accounts. 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 should be closed upon staff's verification that Harbor, with BSU as receiver, has completed the required refund.

By ORDER of the Florida Public Service Commission, this 19th day of July, 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.

As identified in the body of this order, our action imputing unsecured refunds to contributions in aid of construction 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 August 9, 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.

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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.