

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Request to Establish) DOCKET NO. 960540-WS
Payment Plan for 1994 and 1995) ORDER NO. PSC-96-0834-FOF-WS
Regulatory Assessment Fees by J) ISSUED: July 1, 1996
& J Water and Sewer Corporation)
in 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 APPROVING PAYMENT PLAN

BY THE COMMISSION:

Background

J & J Water and Sewer Corporation (J & J or utility) is a Class "C" utility providing water and wastewater services to approximately 51 residential customers in Citrus County. On August 29, 1995, a Notice of Abandonment was filed with the Commission. On December 27, 1995, the Abandonment was stayed and on January 24, 1996, an application to transfer J & J to Meadows Utility Company, Inc., was filed with the Commission. The transfer application will be processed in Docket No. 951026-WS.

Although Mr. Paul LaFond, the present owner of the utility, did not purchase the utility until November 15, 1995, a statement submitted with the transfer application indicates that he is accepting the responsibility of any outstanding regulatory assessment fees, fines, or refunds owed by the utility. By correspondence dated April 17, 1996, Mr. LaFond requested a payment plan for the amounts owed for delinquent 1994 and 1995 regulatory assessment fees. Mr. LaFond requested that he be given the maximum amount of time to pay off the debt. The purpose of this order is to address the utility's request.

Based on the information in its 1993 annual report (the last annual report filed with the Commission), the utility reported gross operating revenues of \$8,474 for both water and wastewater, respectively. The previous owner of the utility failed to file an annual report for 1994 and Mr. LaFond has indicated that he does

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not have the data available to file an annual report for the period prior to when he became owner of the utility (January through November, 1995), therefore, revenues for 1994 and 1995 have been estimated by staff. In projecting revenues for 1994 and 1995, the revenues of 1993 were indexed forward using the price index inflation factors for 1994 and 1995. As a result, the utility owes regulatory assessment fees of \$782.18, plus penalty and interest of \$359.79, for a total amount of \$1,141.97 for 1994. For 1995, the utility owes regulatory assessment fees of \$797.44, plus penalty and interest of \$263.15, for a total amount of \$1,060.59.

Applicable Law and Policy

Section 350.113 (3), 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" 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, provides that "[r]egulatory assessment fees shall be filed ... on or before March 31 for the preceding year ended December 31." Rule 25-30.120 (2) (b), Florida Administrative Code, provides that "[e]ach utility shall have up to and including the due date in which to: 1. remit the total amount of its fee, or 2. Remit an amount which the utility estimates is its full fee, or 3. Seek and receive from the Division of Administration a 30-day extension of its due date" 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.

We have construed these provisions to bar waiver of regulatory assessment fees, penalties, and interest in three other dockets, but not to preclude a reasonable payment schedule to redress a utility's delinquency. The basic purpose of these provisions would appear to be to set forth the conditions for which penalties, interest and collection costs may be assessed against a delinquent regulated company.

In Docket No. 900961-SU, *In Re: Request for waiver of penalty and interest added to regulatory assessment fees for 1989, by St. George Island, Company, Ltd., in Franklin County*, the Commission, in Order No. 24290, *Order Denying Petition for Waiver of Penalties and Interest*, issued March 26, 1991, permitted the utility to submit a proposed payment schedule for its outstanding regulatory assessment fees, penalties and interest. We noted that we had no

statutory authority to grant a waiver, and that Section 350.113(5), Florida Statutes, permitted a fee deadline to be extended 30 days for good cause shown. In Order No. 24884, *Order Establishing Payment Schedule for 1988 and 1989 Regulatory Assessment Fees*, issued August 6, 1991, we rejected the utility's proposed payment schedule of \$250 per month for 52 months, but authorized a payment schedule of \$2,500 per month until the balance, then \$13,036, was paid.

In Docket No. 940974-WU, *Application for staff-assisted rate case in Putnam County by Landis Enterprises, Inc.*, the Commission, in Order No. PSC-94-1464-FOF-WU, *Order Establishing Payment Schedule for Application Filing Fees and Delinquent Regulatory Assessment Fees, Including Penalties and Interest*, issued November 29, 1994, permitted the utility to pay its delinquent 1992 and 1993 regulatory assessment fees, with penalties and interest, in four monthly installments. We found that a 12-month period beginning with the due date for the 1993 fee in which to remit the fees was reasonable in the circumstances.

1994 Regulatory Assessment Fees

On April 17, 1996, the Commission staff received a letter from Mr. LaFond explaining the necessity of a payment plan. Mr. LaFond stated in his letter that the utility was practically abandoned when he purchased it on November 15, 1995 and that he was unaware that regulatory assessment fees for 1994 had not been paid by the previous owner. Also, Mr. LaFond stated that the utility has not had a rate increase for several years and that the utility has a desperate cash flow problem. The utility's 1993 annual report indicates that the utility has been operating at a loss. Also, it should be noted that the utility's existing rates include only a 2.5% allowance for regulatory assessment fees and the last rate increase for J & J occurred in 1987 as a result of a price index rate adjustment. Mr. LaFond has filed an application for a staff assisted rate case.

As previously mentioned, in projecting revenues for 1994 and 1995, the revenues of 1993 were indexed forward using the price index inflation factors for 1994 and 1995. As a result, the utility owes regulatory assessment fees of \$782.18, plus penalty and interest of \$359.79, for a total amount of \$1,141.97 for 1994. For 1995, the utility owes regulatory assessment fees of \$797.44, plus penalty and interest of \$263.15, for a total amount of \$1,060.59. We conclude that a monthly payment of \$244.73 would be reasonable. At the rate of \$244.73 per month, regulatory assessment fees for 1994 and 1995, including penalty and interest

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shall be paid before regulatory assessment fees for 1996 are due (March 31, 1997).

Based on the above discussion, we find that the utility shall pay its 1994 and 1995 regulatory assessment fees, including penalty and interest, by March 31, 1997, at a minimum of \$244.73 per month until all fees for 1994 and 1995 have been paid. The first payment shall be due on July 10, 1996, and subsequent payments shall be made by the 10th of each month. Our approval of a payment plan for 1994 and 1995 regulatory assessment fees is subject to the final approval of the Department of Banking and Finance.

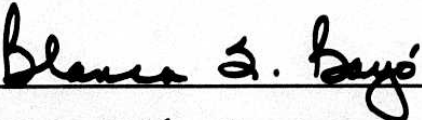
In addition, we place the Utility on notice that if 1996 regulatory assessment fees are not paid by the due date of March 31, 1997, a proceeding will be initiated to require the Utility to place into an interest bearing escrow account 4.5% of the total monthly service revenues billed by the Utility.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that J & J Water and Sewer Corporation, shall be permitted to discharge the balance owed of its 1994 and 1995 regulatory assessment fees according to the payment plan described herein, subject to the final approval of the Department of Banking and Finance. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission, this 1st day of July, 1996.



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.

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, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, 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/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.