

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for a rate) DOCKET NO. 950387-SU
increase for North Ft. Myers) ORDER NO. PSC-96-1390-FOF-SU
Division in Lee County by) ISSUED: November 20, 1996
Florida Cities Water Company -)
Lee County Division.)
_____)

The following Commissioners participated in the disposition of this matter:

JOE GARCIA
JULIA L. JOHNSON
DIANE K. KIESLING

ORDER GRANTING STAY OF ORDER NO. PSC-96-1133-FOF-SU,
REQUIRING ADDITIONAL SECURITY, AND PLACING
ADDITIONAL REVENUES SUBJECT TO REFUND

BY THE COMMISSION:

BACKGROUND

Florida Cities Water Company (FCWC or utility) is a Class A utility that provides water and wastewater service to two communities in Ft. Myers: a northern sector and a southern sector. The North Ft. Myers service area is the applicant in this proceeding, and its application for increased wastewater rates was completed on May 19, 1995. The utility requested that this filing be processed under the proposed agency action (PAA) procedures identified in Section 367.081(8), Florida Statutes. Interim rates were not requested.

The utility's last rate case was finalized July 1, 1992 by Order No. PSC-92-0594-FOF-SU in Docket No. 910756-SU. In 1994, the utility's rates were increased due to an index proceeding.

In this case, we issued PAA Order No. PSC-95-1360-FOF-SU on November 2, 1995. The PAA Order was protested on November 27, 1995, and the matter was set for an April 24 and 25, 1996 hearing.

After the protest of the PAA Order, the utility requested, pursuant to Section 367.081(6), Florida Statutes, implementation of the rates tentatively approved in the PAA Order. This request was granted by Order No. PSC-96-0038-FOF-SU, issued January 10, 1996, which also made the rates subject to refund and provided for security through a corporate undertaking.

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Subsequent to the formal hearing, we issued Order No. PSC-96-1133-FOF-SU on September 10, 1996. That Order denied the requested wastewater rate increase, required FCWC to refund the revenues received as a result of the implementation of the PAA rates, and required FCWC to reduce its rates to a level below that authorized in its previous rate case (and as increased by the price index).

On October 7, 1996, FCWC filed its timely Notice of Administrative Appeal of Order No. PSC-96-1133-FOF-SU. Also, on that same date, FCWC filed its Motion for Stay Pending Judicial Review.

STAY OF ORDER NO. PSC-96-1133-FOF-SU

Order No. PSC-96-1133-FOF-SU requires FCWC to refund the rates that it implemented pursuant to Section 367.081(8), Florida Statutes, and also to reduce its rates below those rates approved in its last rate case. Rule 25-22.061(1)(a), Florida Administrative Code, provides that:

When the order being appealed involves the refund of moneys to customers or a decrease in rates charged to customers, the Commission shall, upon motion filed by the utility or company affected, grant a stay pending judicial proceedings. The stay shall be conditioned upon the posting of good and sufficient bond, or the posting of a corporate undertaking, and such other conditions as the Commission finds appropriate.

Order No. PSC-96-1133-FOF-SU clearly requires FCWC to make refunds and reduce its rates. Therefore, based upon this Rule, we must grant a stay upon request, if the utility posts sufficient security, and complies with such other conditions as we find appropriate. Therefore, upon FCWC submitting a corporate undertaking as set out below, the provisions of Order No. PSC-96-1133-FOF-SU shall be stayed, pending the resolution of the judicial proceedings.

ADDITIONAL FUNDS HELD SUBJECT TO REFUND

As discussed above, FCWC implemented the PAA rates set out in Order No. PSC-95-1360-FOF-SU. However, Order No. PSC-96-1133-FOF-SU, requires FCWC to refund the revenues collected through rates that it implemented pursuant to Section 367.081(8), Florida Statutes, and also to reduce its rates to a level below that authorized in its previous rate case.

With the stay of Order No. PSC-96-1133-FOF-SU, the refund and the reduction to rates are postponed until a decision is made by the courts through the appeal process. Therefore, not only the increase due to the implementation of the PAA rates shall be held subject to refund, but also the difference in the reduction in revenues from FCWC's original rates shall be held subject to refund. The total amount subject to refund is calculated by taking the difference of the revenue requirement of \$2,489,487 granted in the PAA Order No. PSC-95-1360-FOF-SU and the revenue requirement of \$2,003,347 granted in Order No. PSC-96-1133-FOF-SU, excluding any miscellaneous revenues, guaranteed revenues and reuse revenues. Based on this calculation, we have determined that 19.88% of the annual revenues collected shall be held subject to refund.

SECURITY FOR THE REFUND

The security amount deemed appropriate pursuant to Order No. PSC-96-0038-FOF-SU, issued January 10, 1996, considered the increase in revenues collected during an estimated period of time through the hearing process. However, with the utility's appeal and motion for stay, this security amount must be increased for two reasons. The amount deemed appropriate pursuant to Order No. PSC-96-0038-FOF-SU did not take into consideration the period of time necessary to resolve the utility's appeal. Secondly, the security amount did not include the reduction in rates required by Order No. PSC-96-1133-FOF-SU.

In its motion, filed October 7, 1996, the utility states that it will post a corporate undertaking. However, a review of the utility's financial statements indicates that, depending on how long the appeal takes, the utility may not be able to support a corporate undertaking for the duration of the appeal. Based on our review of FCWC's liquidity, ownership equity, profitability, and interest coverage, and noting that FCWC has an outstanding corporate undertaking in the amount of \$192,812 associated with Docket No. 951258-SU, we have determined that FCWC can support a corporate undertaking through at least September 1997.

Therefore, we will grant a stay of Order No. PSC-96-1133-FOF-SU, provided that FCWC submits a corporate undertaking in the amount of \$940,755. Further, if the appeal process has not been completed by August 15, 1997, FCWC shall file a request for the extension of the corporate undertaking or a proposal for other appropriate security on that date. We shall then determine what additional security is needed. Also, pursuant to Rule 25-30.360(6), Florida Administrative Code, FCWC shall file a report by the 20th of each month indicating the monthly and total revenue collected subject to refund.

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Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Florida Cities Water Company's Motion for Stay Pending Judicial Review is granted as set out in the body of this Order. It is further

ORDERED that each of the findings made within the body of this Order are hereby approved in every respect. It is further

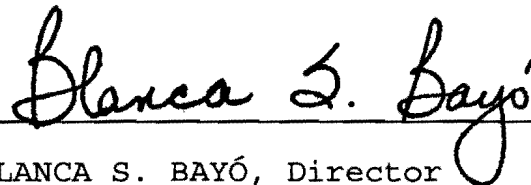
ORDERED that based on the proposed reduction in rates as shown in Order No. PSC-96-1133-FOF-SU, Florida Cities Water Company, North Fort Myers Division, shall collect and hold subject to refund 19.88 percent of all revenues collected pending the appeal of that Order. It is further

ORDERED that Florida Cities Water Company shall post a corporate undertaking in the amount of \$940,755. It is further

ORDERED that if the appeal process has not been completed by August 15, 1997, Florida Cities Water Company shall file a request for the extension of the corporate undertaking or a proposal for other appropriate security on that date. It is further

ORDERED that Florida Cities Water Company shall file a report by the 20th of each month indicating the monthly and total revenue collected subject to refund.

By ORDER of the Florida Public Service Commission, this 20th day of November, 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 this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, 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.