BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of MEADOWBROOK UTILITY SYSTEMS, INC. for interim and permanent rate increase in Palm Beach County	DOCKET NO.	850062-WS
	ORDER NO.	21596
	ISSUED:	7-21-89

The following Commissioners participated in the disposition of this matter:

BETTY EASLEY
JOHN T. HERNDON

ORDER DENYING MOTIONS FOR RECONSIDERATION AND TO DISMISS

BY THE COMMISSION:

CASE BACKGROUND

By Order No. 13664, issued September 10, 1984, this Commission initiated an investigation into the level of earnings of Meadowbrook Utility Systems, Inc. (Meadowbrook). On May 31, 1985, during the pendency of the overearnings investigation, Meadowbrook filed an application for increased water and sewer rates. By Order No. 14656, issued July 30, 1985, we suspended Meadowbrook's proposed rates, denied any interim increase and consolidated the overearnings investigation into the rate case docket.

On April 21, 1986, Meadowbrook gave notice of its intent to place its proposed rates into effect, pursuant to Section 367.081(6), Florida Statutes. On July 1, 1986, on its own motion, this Commission set the consolidated rate application and overearnings investigation for a formal hearing. The hearing was held on December 11 and 12, 1986, and January 9 and 26, 1987.

By Order No. 17304, issued March 19, 1987, we reduced Meadowbrook's rates and ordered it to refund, with interest, $65,435 in excessive annual water revenues collected between August 21, 1984 and April 21, 1986, and $416,690 in excessive annual water and sewer revenues collected under the proposed rates between April 21, 1986 and such time as the refund was completed.

On April 6, 1987, Meadowbrook filed a Motion for Stay of Order No. 17304, pursuant to Rule 25-22.061(1), Florida Administrative Code, pending judicial review of the Order by

the First District Court of Appeal (DCA). By Order No. 17567, issued May 20, 1987, we granted Meadowbrook's request for a stay, subject to its providing security in the amount of $983,455 to cover its potential refund liability through March of 1988. Meadowbrook filed a corporate undertaking and a letter of credit in the amount of $460,000.

On December 10, 1987, the First DCA affirmed Order No. 17304 in all respects. Meadowbrook Utility Systems, Inc. v The Florida Public Service Commission, 518 So. 2d 326 (Fla. 1st DCA 1987). On December 23, 1987, Meadowbrook filed a motion for rehearing with the First DCA. Meadowbrook's motion was denied on February 1, 1988.

On February 26, 1988, Meadowbrook petitioned the Supreme Court of Florida to review the decision of the First DCA. On June 20, 1988, the Supreme Court denied Meadowbrook's petition for review and granted this Commission's motion for attorney's fees. Meadowbrook Utility Systems, Inc. v The Florida Public Service Commission, 529 So. 2d 694 (Fla. 1988).

On April 25, 1988, Kelly Tractor Company, Inc. (Kelly Tractor), filed a complaint against Meadowbrook. The basis of Kelly Tractor's complaint was that Meadowbrook misread its water meter for some seven years, with the result that Meadowbrook overcharged Kelly Tractor by $168,902.58 for both water and sewer service. Kelly Tractor requested that we order Meadowbrook to refund the overcharges, plus interest. The Kelly Tractor matter was processed under Docket No. 880606-WS.

On July 29, 1988, Meadowbrook filed a motion, requesting that this Commission "adjust" the amount of the required refund. Meadowbrook argued that, before we ordered it to fulfill its refund requirement, we should reconsider certain pro forma plant additions which were disallowed in the rate case and give initial consideration to certain unanticipated plant additions and expenses, to Meadowbrook's overcharging of Kelly Tractor and to Meadowbrook's contention that such a refund would cause it to go bankrupt. By Order No. 20135, issued October 10, 1988, we found that, with regard to the previously disallowed pro forma plant additions, Meadowbrook's motion was an untimely motion for reconsideration. In addition, we found that the remaining issues raised by Meadowbrook were completely outside of the record of the consolidated rate application and overearnings investigation. Accordingly, by Order No. 20135, we denied Meadowbrook's motion.

On November 7, 1988, by Order No. 20287, this Commission lifted the stay of Order No. 17304, recalculated Meadowbrook's rates to account for the 1987 price index and pass-through rate increases and required Meadowbrook to comply with the refund provisions of Order No. 17304.

On November 22, 1988, Meadowbrook filed a Motion for Reconsideration of Order No. 20287. In its motion, Meadowbrook argued again that, before we enforced Orders Nos. 17304 and 20287, we should consider the effect of its overcharging of Kelly Tractor. By Order No. 20488, issued December 20, 1988, this Commission found that Meadowbrook's motion neither raised any matter not previously considered nor pointed out any error or omission in our initial disposition of the matter. Accordingly, by Order No. 20488, we denied Meadowbrook's Motion For Reconsideration. Further, in an expression of our frustration with Meadowbrook's procrastinatory tactics concerning the refund, we ordered it to begin complying with the refund provisions of Order No. 17304 as of December 20, 1988.

Also on December 20, 1988, by Order No. 20474, issued in Docket No. 880606-WS, this Commission ordered Meadowbrook to refund to Kelly Tractor overcollections amounting to $168,902.58, plus interest.

On January 19, 1989, Meadowbrook served notice of its appeal of Orders Nos. 20287 and 20488. The basis of Meadowbrook's appeal is that, in failing to take Meadowbrook's overcharging of Kelly Tractor into consideration in this consolidated rate application and overearnings docket, we have "double-dipped." In other words, Meadowbrook believes that, because we have refused to take the Kelly Tractor matter into account in this proceeding, it will have to refund the amount refunded to Kelly Tractor twice. In addition to the notice of appeal, Meadowbrook also filed a motion for a partial stay of Orders Nos. 20287 and 20488 and a motion for clarification of the refund provisions of Order No. 20488.

By Order No. 21017, issued April 11, 1989, the Commission granted, in part, Meadowbrook's motion for partial stay, clarified the customers of record date, required further assurances of the availability of funds to meet Meadowbrook's refund liability, required Meadowbrook to begin making the refund immediately and ordered it to show cause why it should not be fined for not having already made the refund.

MOTION FOR RECONSIDERATION OF ORDER NO. 21017

On April 25, 1989, Meadowbrook filed a motion for reconsideration of Order No. 21017. On May 2, 1989, the Office of Public Counsel (OPC) filed a response to the motion for reconsideration.

In its motion, Meadowbrook argues first that our calculations of the appropriate amount to stay pending judicial review and the remaining customer refund amount are inaccurate. In its response, OPC responds that it has no reason to believe that there are any inaccuracies in the Commission's calculations. We believe that our calculations are as accurate as possible under the circumstances. If the First DCA were to rule in favor of Meadowbrook on its appeal, the proper way to account for the Kelly Tractor overbillings would be to remove these amounts from test year revenues and recalculate Meadowbrook's rates accordingly. This is what we did. We note that, in order to calculate the appropriate amount to stay, the Staff of this Commission (Staff) requested that Meadowbrook provide monthly revenue figures. Meadowbrook refused to supply such information. Therefore, we believe that any inaccuracies inherent in our calculations are not as a result of any error or omission of fact or law, but as a result of Meadowbrook's refusal to provide the requested information.

Second, Meadowbrook argues that Order No. 21017 does not clearly state the amount to be refunded and that there are insufficient facts to determine how we arrived at our estimate of the amount to be refunded. Our review of Order No. 21017 reveals no such deficiencies. In fact, it appears to state the percentages of total revenues collected which must be refunded to Meadowbrook's customers and the methodology and information used in calculating those percentages quite clearly. Again, any inaccuracies inherent in these figures are only as a result of Meadowbrook's refusal to provide information requested by Staff, not as a result of any error or omission of fact or law on the part of this Commission.

Third, Meadowbrook argues that our requirement that Meadowbrook deposit the amounts remaining to be refunded after the stay into its escrow account will cause it additional expense and problems. OPC responds that it does not foresee additional problems resulting from placing these funds in escrow. OPC also contends that, in light of Meadowbrook's contention that it does not have the money to pay any fine,

discussed below, the escrow requirement may be necessary in order to protect the refund. We agree with OPC that placing the revenues in escrow should not cause any additional problems or expense. The only thing that it could cause is one extra step in the refund process. Regardless, Meadowbrook's argument points out no error or omission of fact or law and is, therefore, rejected.

Fourth, Meadowbrook argues that our requirement that it begin making the refund as of April 11, 1989, the date of Order No. 21017, "is impossible because the total amount of refund has not been determined and is pending before the First District Court of Appeal." This argument ignores the clear intent of Order No. 21017, which was to grant, in part, Meadowbrook's request for a partial stay and require it to begin refunding the amounts not subject to the stay. Even if Meadowbrook refers here to its motion filed in the First DCA, to stay the effect of Order No. 21017, it has pointed to no error or omission of fact or law, since its motion to stay was not filed by the time we made our decision which is reflected by Order No. 21017. Further, we note that the First DCA rejected Meadowbrook's motion to stay on April 25, 1989.

Finally, Meadowbrook contends that the show cause provisions of Order No. 21017 are in error because Meadowbrook no longer exists and has no money to pay the fine. However, pursuant to Section 607.297, Florida Statutes, the dissolution of a corporation does "not take away or impair any remedy available to or against such corporation or its directors, officers, or shareholders for any right or claim existing, or any liability incurred, prior to such dissolution if action or other proceeding thereon is commenced within three years after the date of such dissolution." Based upon this provision, we do not believe that Meadowbrook has pointed to any error or omission of fact or law on our part regarding its corporate status. OPC had no response to this portion of Meadowbrook's motion because this issue is more fully delineated in Meadowbrook's motion to dismiss and response to Order No. 21017, discussed below.

Based upon the discussion above, we find that Meadowbrook has pointed out no error or omission of fact or law in our decision as reflected by Order No. 21017. Meadowbrook's motion for reconsideration is, therefore, denied.

MOTION TO DISMISS ORDER TO SHOW CAUSE

On May 1, 1989, Meadowbrook filed a motion to dismiss the show cause provisions of Order No. 21017. Meadowbrook argues that this Commission has jurisdiction only over "utilities" and that it is no longer a "utility" as defined by Section 367.021(3), Florida Statutes. Meadowbrook, therefore, contends that we have no jurisdiction to impose any fine or penalty and that we should, therefore, dismiss the show cause provisions.

We do not believe that Meadowbrook's sale of the utility system to a governmental agency strips this Commission of jurisdiction over proceedings which are still pending. To argue otherwise would lead to the absurd result that any utility could extricate itself from Commission-imposed liability simply by selling the system. In order to fully exercise its exclusive jurisdiction over utilities, this Commission's jurisdiction must extend until the completion of all pending proceedings. This is also consistent with Section 367.171(5), Florida Statutes, under which we retain jurisdiction over pending matters after the transfer of jurisdiction to a county.

At the very minimum, however, this Commission's jurisdiction must extend to liabilities incurred by Meadowbrook prior to the transfer. By Order No. 20488, we required Meadowbrook to begin making the refund as of December 20, 1988. The transfer did not take place until December 29, 1988. We, therefore, have jurisdiction over Meadowbrook's failure to comply with Order No. 20488. Based upon the discussion above, we hereby deny Meadowbrook's motion to dismiss.

RESPONSE TO ORDER TO SHOW CAUSE

Also on May 1, 1989, Meadowbrook filed a response to Order No. 21017. The basic thrust of Meadowbrook's response is that it has at all times acted in good faith and that, prior to its making the refund, it needed clarification of a number of matters. In addition, Meadowbrook argues that it has been working on the refund but that it was preoccupied for a time by the sale. Meadowbrook also contends that it was unable to work on the refund for a certain amount of time because the County had most of Meadowbrook's billing data. Meadowbrook further argues that it is not attempting to delay making the refund because the interest that it is able to earn on safe

investments is less than the amount that it will have to pay when making the refund. Meadowbrook argues that it is simply exercising its due process right to recover money it believes rightfully belongs to it. Finally, Meadowbrook states that it is ready and willing to start the refund process. Based upon its arguments above, Meadowbrook contends that none of its actions serve as a basis for imposing fines.

In its reply to Meadowbrook's response to Order No. 21017, OPC merely states that an immediate refund, as contemplated by Meadowbrook's response, would be an acceptable resolution of the situation.

Based upon the discussion above, we reluctantly agree that Meadowbrook's actions, while frustrating in their perseverance, are nevertheless legal. Accordingly, we decline to impose any penalty upon Meadowbrook for its failure to fulfill the refund as required by Order No. 20488 and hereby terminate the show cause proceeding associated with this docket.

Upon consideration of the above, it is

ORDERED by the Florida Public Service Commission that the motion for reconsideration of Order No. 21017, filed by Meadowbrook Utility Systems, Inc., is hereby denied, as set forth in the body of this Order. It is further

ORDERED that the motion to dismiss the show cause provisions of Order No. 21017, filed by Meadowbrook Utility Systems, Inc., is hereby denied, as set forth in the body of this Order.

By ORDER of the Florida Public Service Commission, this 21st day of JULY, 1989.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

RJP

NOTICE OF 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 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 sewer 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.