BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation of rates of SUNSHINE UTILITIES in Marion County for possible overearnings	)	DOCKET NO. 881030-WU ORDER NO. 22969 ISSUED: 5-23-90

The following Commissioners participated in the disposition of this matter:

BETTY EASLEY
GERALD L. GUNTER

FINAL ORDER REQUIRING REFUND

BY THE COMMISSION:

I. Background

Sunshine Utilities (Sunshine or the Utility), a Class B Utility, provides water service to approximately 2000 customers in Marion County. The 1988 Annual Report reflected annual revenues in the amount of $407,722 and a net operating income of $60,128. The current rates in effect for the Utility were established in its last rate case, in Docket No. 810386-WU, culminating in the issuance of Order No. 13014 on February 20, 1984. We approved a 1988 price index for the Utility by Order No. 19416, issued June 20, 1988, in Docket No. 880638-WU.

On August 30, 1988, we initiated this investigation of Sunshine Utilities for possible overearnings for the twelve month period ended December 31, 1987. Subsequently, by Order No. 20038, issued on September 20, 1988, we required the Utility to file a corporate undertaking in the amount of $27,208 with this Commission to guarantee that funds would be available in the event a refund is required. In addition, we authorized the Utility to continue to collect its existing rates. The Utility, on October 3, 1988, filed a corporate undertaking in the amount of $30,000 to guarantee the potential refund liability.

On our own motion, this matter was set for an administrative hearing. The Prehearing Conference was held on January 26, 1990. The hearing was held and completed on Thursday, February 15, 1990, in Ocala, Florida.

II. Stipulations

The Utility and our Staff submitted the following stipulations at the hearing for our approval. These stipulations were listed in Prehearing Order No. 22482, issued on January 31, 1990. We find them to be reasonable and hereby approve them.

1. No adjustment is necessary to reflect the original cost of plant additions booked from 1983 to 1987. Based upon the information submitted by the Utility, the amount of plant additions booked during that time appear reasonable.

2. An adjustment should be made to remove amortization of contributed land. Accumulated amortization of contributions-in-aid-of-construction (CIAC) should be reduced by $4,550 and test year amortization of CIAC should be reduced by $1,108.

3. An adjustment should be made to working capital to correct the test year balance of accrued taxes. Working capital should be reduced by $8,626 and taxes other than income should be increased by $4,022.

4. An adjustment should be made to working capital to properly reflect miscellaneous assets. Working capital should be reduced by $1,455 and owner's equity should be increased by $1,455.

5. An adjustment should be made to working capital to include the average deferred balance of amortized expenses related to a territorial dispute. Working capital should be increased by $9,851. A corresponding adjustment should also be made to remove $15,759 in test year operation and maintenance expenses associated with the territorial dispute over a five year period.

6. The appropriate return on equity to use for refund purposes is 15.65 percent. Consistent with the refund provisions as stated in Section 367.082, Florida Statutes, the high-end of the last authorized return on equity should be used.

7. The appropriate overall cost of capital for refund purposes is 15.45 percent.

8. The Utility's regulatory assessment fees should be reduced by $25 to correctly reflect test year expenses.

9. The Utility's rates should not be reduced on a going-forward basis, at this time. Pending receipt of the 1989 Annual Report, staff will review that information and request another audit of the Utility's books and records to determine that the Utility is in compliance with the Uniform System of Accounts and the Commission's rules and orders. If, based upon that audit, the Utility's rates are generating revenues which reflect that the Utility is earning above its last authorized rate of return, then rates should be reduced at that time.

10. Two adjustments are necessary to remove from rate base the effect of the unrecovered loss on the Turnberry plant. The 13-month average of plant should be reduced by $38,859 and the 13-month average of advances for construction should be decreased by $11,723.

III. Quality of Service

Our determination of the Utility's overall quality of service is derived from our evaluation of three separate components: (1) the quality of the Utility's product; (2) the operational conditions of the Utility's plant of facilities; and (3) the level of customer satisfaction. We find that all three of the above listed criteria were adequately addressed

through testimony delivered at the February 15, 1990 hearing in Ocala, Florida. Although this Commission received 104 letters from customers, which we placed on the correspondence side of the file, there were only twelve people who actually testified on quality of service. Eleven were customers of the Utility, and one was a representative from the Department of Environmental Regulation (DER).

Mr. Gary Miller of DER testified that the Utility had no enforcement action with DER at the time of the hearing. Although there may be existing violations that DER is not aware of, there are no current citations, violations, or corrective orders. He also noted that the Utility's water treatment facilities are of sufficient size to serve its present customers, and that they could maintain the minimum required pressure of 20 psi. Also, Mr. Miller indicated that as of the time of the last sanitary surveys that were performed by DER, it appeared that the overall maintenance of the plants and equipment was satisfactory.

Of those customers who testified, five complained about outages; five complained about billing problems; five complained about poor maintenance and poor overall service and line breaks; four complained about low pressure; two complained about sediment in the water; and one customer complained about too much bleach in the water. There were three customers who cited problems with improper looping of their water system. They had experienced problems with known cross connections and complained that their system was overburdened with too many connections. Three customers noted improved service, and one customer was satisfied with the service he had received and the rates.

Customers Yeaton, Clarke, Wiseman, and McGuirk were from the Oakhurst system. Mr. Yeaton said that for the first four of the six and a half years that he has lived at Oakhurst, "the water system was a joke." The water kept going off and the Utility responded poorly. Mr. Clarke has had meter and billing problems. He noted a cross-connection problem, and problems with the system not being properly looped. He also spoke of outages and pressure problems. He did say that the pressure has been stabilized. In that respect, there has been some improvement. He believes that, because the owner brought these problems on himself, the Utility should not recoup the rate case charges in this case.

Mrs. Clarke noted equipment and test violations. She believes that, when attempting to loop the system, the Utility did not use the proper right-of-ways, and also installed the wrong size pipe. Mrs. Clarke has been actively involved in the problems of the Oakhurst water supply for the past two years, and believes that the Utility has ignored its customers. She believes that the customers have a legal and moral right to expect a good, safe, reliable water supply.

In Exhibit 12 the Utility submitted a combined response to Mr. and Mrs. Clarke's direct testimony. That response basically included a service log of the Oakhurst system for the past two years. Contained within that log is information about improvements made related to the pressure problems, pump replacements and other plant repairs made, responses to customer complaints, contacts with the DER and PSC personnel, and other information about improvements made to the system. Also included is a report of a May 4, 1990, water pressure check conducted by the Utility's consulting engineer at the Clarkes' residence. The pressure reading was found to be 50 pounds per square inch (psi).

Customer Wiseman pointed out that, like the others, she too has experienced poor pressure and water outages without notification. She indicated that the Utility is providing poor maintenance, poor customer service, and an inferior quality product. She does not believe that the rate case expense should be borne by the customer. Finally, she wondered if the Utility was violating an individual's right to privacy for not enclosing the customer's bill inside an envelope.

In its response, the Utility claimed that there is no record of Mrs. Wiseman complaining about the water bill or sediment in the water. Because the Utility recognized that there had been six months with no water consumption by Mrs. Wiseman, it sent a service man to her residence who found that her meter was not working. The problem was corrected. In reference to the Utility's billing procedures, its mailing practices are not uncommon, and are acceptable to the Commission. To change this practice would likely increase mailing costs, which would ultimately be borne by the customers. Before changing its billing procedures, it would be appropriate for the Utility to conduct a study comparing its present billing practice with mailing the bills. This would more appropriately be pursued in the Utility's next general rate proceeding.

Witness McGuirk complained about outages and low pressure at the Oakhurst system. He stated that he has particles in his ice, the plant site looks terrible, and his rates are too high. In the Utility's response, it referred to corrective steps taken, as stated in the response made to the Clarkes' complaints.

Customers S. Blanchard and Larson are from the Carol Estates system. Mr. Blanchard had a billing problem several years ago, over which he took the Utility to court. The Utility was not found at fault. He has noted that in the last six months, the Utility has made a concerted effort to clean up the system. Prior to that time, he stated, the system had numerous outages and its service was terrible. He indicated that numerous line breaks have been left unrepaired for years, and that the service should be better. Mrs. Larson complained about water outages without warning and overbilling. Also, she was upset about the fee charged to become a customer of the Utility. In the Utility's response to Mr. Blanchard's comments, it noted that since July of 1989, eight different repairs have been made at the Carol Estates system, some of which were emergencies and some of which were scheduled. In its response to Mrs. Larson, the Utility indicated that according to its records, she was billed for what she had used. Although the Utility did not respond to Customer Larson's complaint about the connection fees, it appears that the correct fees, as allowed by the Utility's approved tariffs, have been charged.

Customer K. Blanchard, from the Ocala Heights system, commended the Utility on how good a job it is doing. He said that the Utility has given sufficient notice when there is to be a shutdown for service, the quality of water is very good, and the rates seem to be fair. Customer Taylor, from the Coventry Subdivision, was concerned about billing problems and water service being shutdown without proper notification. In its response, the Utility addressed Customer Taylor's billing problem only. Apparently, there were problems with contacting Mrs. Taylor by mail concerning her water bill. After several months, the problem was finally resolved. As to the water being shutdown without notification, apparently the outages were unplanned. In such cases, lack of notification would be unavoidable.

Customer Fenclau, from the Bellview Oaks system, complained about the water being dirty, a deposit which was

never returned to him, and deed restrictions which prevent him from constructing an irrigation well. The Utility responded by indicating that its records do not show that Mr. Fenclau had ever complained of dirty water. It also stated that it has flushed out the main lines of that system. The Utility did not comment on the problems with the deposit or the deed restriction. When asked if he ever requested the deposit back from the Utility, Mr. Fenclau said no. However, the record indicates that Mr. Fenclau was actually referring to his payment of a system capacity and meter installation charges which are tariffed charges that the Utility requires of all new customers. The Utility would have no obligation to return any portion of such charges. Concerning the deed restriction problem, the Commission has no jurisdiction in this matter. Therefore, if Mr. Fenclau wishes to pursue this matter, he will have to do so in the courts.

Customer Brown, from the Sunray Estates system, complained about water outages, lost or broken isolation valves, too much bleach in the water which damages fixtures, lime sediment, and high bills. He commented about an open storage tank which was left empty and unattended for more than a year. Also, he was concerned about the Utility connecting additional subdivisions to his system, and overburdening its pumping capability. It is his opinion that the customers have been paying for something that they have not been receiving, such as water that should be reasonably clean and not full of bleach. When asked if he had seen any recent improvement, Mr. Brown stated no. In the Utility's response, it noted that the records indicate that a call has never been received from Mr. Brown indicating he was having excessively high chlorine or that he had sediment in his water. Utility service personnel have been to his house twice in 12 years to repair gate valves. Also, the Utility indicated that steps have been taken to detect any main line breaks in that area in a timely manner.

The Utility has satisfactorily responded to the customers' comments in its Late-Filed Exhibit 12. It appears that, although there may have been problems in the past, the Utility has improved its service. As for any current problems, the Utility appears to be making a legitimate attempt to rectify them. Based on the evidence in the record, we find that the Utility's quality of service is satisfactory.

IV. Rate Base for Purposes of Refund

A. Adjustment to Contributions-in-Aid-of-Construction

By Order No. 13014, issued in Docket No. 810386-WU in which we processed the Utility's first rate case, which was a staff assisted rate case, we made an adjustment to rate base using an original cost study to value the assets of the company. This original cost study was necessary because of a complete lack of original cost records. The original cost study was done to value plant as of December 31, 1982, and resulted in a balance of $615,858. At that time, the Utility showed a book balance of $335,105. This resulted in a difference of $280,753. The Commission, at that time, increased plant-in-service to reflect the original cost study, but made no adjustment to reconcile the difference as to whether it was Utility investment. Staff Witness Wood testified that an error was made by the Commission in that docket. In this hearing, Witness Wood testified that because the Utility failed in that docket, and in this case, to prove that it had any investment in the $280,753 difference, that a corresponding adjustment to CIAC should have been made.

This issue was complicated at the hearing through material changes made by the Utility in Mr. Nixon's prefiled direct and rebuttal testimonies. This last second change in testimony made it very difficult, within the time given, to adequately cross-examine Utility Witness Nixon. There was also confusion because of Staff's incorrect assumption that the $280,753 amount was the difference between the original cost study and the balance of plant included in the tax return of the company.

However, regardless of the last minute changes in testimony by the Utility and the Staff's incorrect assumption as to the origin of the $280,753 adjustment, the evidence adduced in the record of this proceeding clearly supports the adjustment to CIAC proposed by Staff Witness Wood. The error in Order No. 13014 was discovered by Staff in its review of the Utility's 1987 annual report for overearnings. In its annual report, the Utility had reflected the difference as a negative acquisition adjustment. The Utility reflected this in its calculation of rate base as a reduction. Utility Witness Nixon testified that the difference was included as an acquisition adjustment by the Utility's outside CPA in 1984. He testified that it was his belief that it was made because of a lack of

understanding of regulatory accounting and Statement of Financial Accounting Standards No. 71. Mr. Nixon further testified that ". . . (a)fter investigation, the amount is merely a balancing entry made by a former CPA in an attempt to comply with the last rate order." He states further, ". . . (t)he amount is the difference between a trial balance started by the company in 1983, which only reflects plant added in 1981 and 1982, and the balances established in Order No. 13014." He states that the $280,753 acquisition adjustment was nothing more than a "plug entry" in an attempt to adjust to the original cost study.

Staff's position on this issue is that the Utility, in the prior cases and in this overearnings investigation, has failed to meet its burden to prove that it had any investment in the $280,753 "plug entry". Staff's view is that an error was made in the original case by not offsetting the $280,753 increase in plant with a matching credit to CIAC. In fact, Mr. Nixon testified that there was no support for investment in the $280,753 except for the original cost study. And as Witness Wood testified, the purpose of an original cost study is to determine the original cost of the total system, not to determine the amount of investment that a Utility has in those costs. The Utility did not produce, in that staff assisted rate case, any records or documentation whatsoever to support that it had any investment represented by that $280,753 adjustment. Witness Nixon testified that this was, indeed, the case and that the Utility has never proven any investment to support the inclusion of that $280,753 amount in its rate base. Witness Wood believes that it is wrong to continue to provide the Utility with a return on such a substantial portion of its rate base at the expense of the ratepayers, when it is clear that the Utility has never met its burden to prove that it is legally entitled to that return.

We believe that the record establishes that the Utility has failed to meet its burden of proof. We find Staff's position persuasive and recognize our legal authority and responsibility to correct this error.

In Reedy Creek Utilities v. Florida Public Service Commission, 418 So.2d 249 (1982), the Florida Supreme Court upheld our authority to modify our orders that derives from the nature of our ratemaking powers. In that case, the Commission issued an amendatory order 2 and 1/2 months after issuing an

original order. The Utility appealed on the basis of the doctrine of administrative finality. Although the Court noted that this Commission's inherent power to modify its orders is not without limitation, it stated at pages 253 and 254:

> The Commission is charged with the statutory duty of regulating and supervising public utilities with respect to their rates. When the Commission determined that it had erred to the detriment of the using public, it had the inherent power and the statutory duty to amend it order to protect the customer.
>
> An underlying purpose of the doctrine of finality is to protect those who rely on a judgment or ruling. We find that Reedy Creek did not change its position during the lapse of time between orders, and suffered no prejudice as a consequence.
>
> A change in a tax law should not result in a "windfall" to a utility, but in a refund to the customer who paid the revenue that translated into the tax saving.
>
> 418 So.2d 249

In another matter, involving a request for increased rates by Miles Grant Water and Sewer Company, this Commission issued Order No. 20066 on September 26, 1988, in Docket No. 870981-WS. That Order, setting final rates for that Utility, was affirmed by the First District Court of Appeal on May 9, 1989. In Order No. 20066, we made an adjustment to recognize additional accumulated depreciation which modified the figure recognized, in a previously issued order, as the "net book value" of the Utility's plant. Miles Grant Water and Sewer Company argued vehemently that the Commission was equitably and collaterally estopped from modifying its previous determination of the "net book value" of the water and sewer systems made at the time the Commission approved the application for transfer. The Commission found that the Utility was given adequate notice that, in the proceeding culminating in Order No. 20066, there would be an issue regarding accumulated depreciation and that the record supported the adjustment to accumulated depreciation as ". . . necessary to ensure just and reasonable rates, in the public interest."

Unlike Miles Grant Water and Sewer Company, Sunshine Utilities has not specifically argued the defenses of equitable and collateral estoppel in this case. However, Sunshine Utilities has pointed out in its brief that there are no changed circumstances present in this case that would justify a different finding by the Commission on this issue. The Utility's position is that the Commission's only opportunity to evaluate its rate base was when the Utility first came in for a rate case and the Commission issued the final order in that case, Order No. 13014, in 1984.

However, this is not the case. This Commission received jurisdiction over the utilities in Marion County on May 5, 1981. Subsequently, Sunshine Utilities applied to this Commission for certification on September 29, 1981, without benefit of adequate business records. For this reason, as well as the size of the Utility and its level of revenues, this Commission performed for the Utility its first staff assisted rate case. In other words, the Utility did not complete its own minimum filing requirements. At that time, the Commission found it necessary, because of the lack of any reliable records or documentation, to order an original cost study for the Utility to correct its deficiency in basic business records.

The following language from the Miles Grant Order is applicable to the circumstances present in this case:

> In 1933, the Florida Supreme Court held that even though a railroad commission's order denying an application for a bus company's certificate of convenience was quasi-judicial in character, it was not res judicata of a subsequent application of exactly the same nature:
>
> > Every promulgated order of an administrative tribunal, such as is the railroad commission, may be superceded by another order. Likewise, the commission has the power to modify, and, indeed, it is its duty to modify, its pre-existing orders, when new evidence is presented which warrants a change. Matthews v. State, 149 So. 648 (Fla. 1933) at 649.

The Supreme Court has recently observed that any precedential value that the Matthews case may have is limited to orders of the "now defunct railroad commission"! Thomson v. Department of Environmental Regulation, 511 So. 2d 989 (Fla. 1987) at 991. The Court nonetheless found that where a permit application has been denied, res judicata would apply only if the second application is not supported by "new facts, changed conditions, or additional submissions by the applicant."

The Commission may withdraw or modify its approval of an order only:

> after proper notice and hearing, and upon a specific finding based on adequate proof that such modification or withdrawal of approval is necessary in the public interest because of changed conditions or other circumstances not present in the proceedings which led to the order being modified. Peoples Gas Systems, Inc. v. Mason, 187 So. 2d 335 (Fla. 1966) at 339.

In a trucking certificate transfer case, while recognizing the Commission's limited inherent authority to modify its prior orders, the Supreme Court noted that a showing of significant change in circumstances or great public interest would be required to permit a prior Commission order to be superceded. Austin Tupler Trucking, Inc. v. Hawkins, 377 So. 2d 679 (Fla. 1979) at 681.

The Commission has the statutory obligation to establish rates which are "just, reasonable, compensatory and not unfairly discriminatory" and in every rate proceeding, is required to consider various factors, including depreciation. Sec. 367.081(2), Fla. Stat.

The utility has been given proper notice that the accumulated depreciation issue would be considered in this case. The utility and all other parties were given a hearing on this issue. There is adequate proof in the record of this hearing that the net book value "recognized" by the Commission was wrong, and that modification of the transfer order is necessary to ensure just and reasonable rates, in the public interest.

To the extent that prior staff audits did not identify the accumulated depreciation adjustment here at issue, such audits were simply in error. Where fraud, surprise, mistake or inadvertence is shown, the Commission must have the power to alter previously entered final rate orders under extraordinary circumstances. Richter v. Florida Power Corporation, 366 So. 2d 798 (2nd DCA 1979), at 800 Proof of a material mistake of fact may prevent the application of the doctrine of res judicata. Gator Shoe Corporation v. Mungia, 510 So. 2d 1192 (1st DCA 1987)

Given the strong record basis for the recommended adjustment to accumulated depreciation, we believe that the adjustment should withstand the expected appellate challenge.

The determination of the applicability of the res judicata doctrine is primarily within the province of the administrative body considering the matter in question and that body's determination may only be overturned upon a showing of a complete absence of any justification therefor .... or that the body has acted with "manifest" and "flagrant" abuse of discretion or by "arbitrary impulse, whim or caprice." Coral Reef Nurseries, Inc. v. The Babcock Company, 410 So. 2d 648 (3rd DCA 1982) at 655

> In that case, the court noted that where experience has shown that a prior agency decision was in error, it was within the agency's discretion to reject application of the principle of res judicata.

As is clear from the above language, this Commission has the authority to modify Order No. 13014 because it is in the public interest to do so and it is being done after hearing on the issue. There is no question that there was an error made in that Order in not classifying the $280,753 as CIAC. Sunshine Utilities has not changed its position, in reliance on Order No. 13014, beyond the fact that it has become accustomed to earning a return on the $280,753. It is simply inappropriate to allow this Utility's ratepayers to pay for an inadvertent mistake made by this Commission in Order No. 13014. The fundamental fact that must be remembered is that Sunshine Utilities had an opportunity, in its first staff assisted rate case, to establish its investment in this $280,753 amount and it has now had a second opportunity, in this full proceeding, to prove that it had any investment in the $280,753 that has been included in its rate base erroneously.

Therefore, we find it appropriate to increase CIAC by a credit of $280,753. In addition, accumulated amortization of CIAC shall be increased by a debit of $35,095 and test year amortization expense shall be increased by a credit of $7,019.

B. Adjustment for Loss on Turnberry Plant

In 1986, Sunshine Utilities began construction of water treatment facilities for the Turnberry Subdivision. This subdivision was not in the Utility's service territory. The Utility installed wells, a water storage tank, water distribution lines and chlorination equipment. The developer of this Turnberry subdivision subsequently became insolvent, which left the Utility no option but to abandon its assets worth $42,097.

The Utility was able to salvage the water tank for $8,000 and retain a $12,700 developer's advance for construction. Taking accumulated depreciation of $526 into account, Sunshine Utilities was able to recover all but $20,871 of its investment in this project. The Utility charged the loss in total to 1987 expenses.

Staff Witness Wood testified that, since the Turnberry subdivision was not in the Utility's service area, the Utility was not required to serve the area. She testified that pursuant to Section 367.111, Florida Statutes, the Utility was required to serve only within its service territory. Since the Utility was not required to serve this subdivision, Witness Wood testified that it was the Utility's burden to ensure that proper financial arrangements were made to protect the Utility from incurring such a loss. Since the Utility assumed the risk of extending its territory to include a completely new customer base, Witness Wood asserts that this risk should be borne by the sole proprietor, not the customers.

Utility Witness Nixon argues that the customers should bear this loss for two reasons. The first is that such expansion results, in his opinion, in economies of scale through reduction of operating costs per customer. However, Witness Wood rebutted this when asked by a Commissioner whether she knew of any circumstance where the cost to the customer had gone down because of a new installation of a system. Witness Wood's response was no. Witness Nixon's second reason is that the additional revenue generated by new customers tends to dampen the need for regular rate increases. He, therefore, believes that the decision to expand the system to the new territory was in the customers' interest. However, he also agreed under cross examination that because of the risks involved, it may not turn out to be in the customers' best interest.

We agree with Witness Wood that the Utility was not required to extend service to this area. The testimony also shows that the Turnberry project was not in the current customers' interest. Therefore, we find that the loss should not be borne by the customers and shall not be included as a Utility expense.

Accordingly, using a thirteen-month average and our adjustments, we find it appropriate to establish an average rate base for water of $377,770. Our schedule for water rate base is attached to this Order as Schedule 1-A. Our schedule of adjustments to rate base is attached as Schedule 1-B.

V. Net Operating Income and Revenue Requirement for Purposes of Refund

Based on our previous adjustments, we find that the Utility's test year net operating income is $58,361. Our

operating statement is attached to this Order as Schedule 3-A and our adjustments are shown on Schedule 3-B.

Based on our adjustments, the Utility's revenue requirement for refund purposes is $319,757. This represents a decrease of $34,716, or 9.79% in annual revenues. Our calculation of the Utility's revenue requirement for refund purposes is shown on Schedule 3-A.

VI. Refund Required; "Customer of Record" Date

Based upon our review of the Utility's 1987 annual report and the appearance therein of overearnings, we required Sunshine Utilities, by proposed agency action Order No. 21629, issued July 31, 1989, to refund 7.68% of the revenues it had collected from August 30, 1988, and to reduce its rates by 16.97%. Order No. 21629 was subsequently protested by Sunshine Utilities on August 18, 1989.

Based on our audit and further analysis, we increased the amount of revenue placed subject to refund to $54,710, or 15.43%. On September 19, 1989, we increased the amount placed subject to refund to 15.43%, which is reflected in Order No. 21958.

Based on our findings herein, 9.79% of the revenues received by Sunshine Utilities from August 30, 1988, should be refunded. However, as mentioned above, only 7.68% of revenue collections were placed subject to refund from August 30, 1988, to September 18, 1989. Therefore, we may require the Utility to refund only 7.68% of its revenue collections for that period of time. From September 19, 1989, forward, the amount held subject to refund is sufficient to require the 9.79% refund.

The information provided from the test year utilized in this case, 1987, is readily becoming outdated. Utility Witness Nixon testified that additional expenses had been incurred by the company to improve quality of service. These expenses have not been considered in this proceeding. It is for this reason that we have found it appropriate to approve the stipulation that the rates should not be reduced on a going forward basis. We find that it would be inappropriate to extend the refund period further than December 31, 1989, due to the uncertainty of the Utility's current earnings posture resulting from the stale data at hand. Therefore, the period subject to refund shall end on December 31, 1989.

We also find it appropriate, in accordance with Rule 25-30.360(3), Florida Administrative Code, to establish a "Customer of Record" date. This rule provides that an overearnings refund shall be made to "Customers of Record" as of a date specified by this Commission. We hereby designate December 31, 1989, as the "Customer of Record" date.

VII. Rate Case Expense

The Utility contends, in its brief, that it is entitled to rate case expense of $37,690. That amount is comprised of $12,879 of legal expense for the Law Firm of Rose, Sundstrom & Bentley, $2,175 of legal expense from Michael J. Cooper, Attorney at Law, $3,550 of accounting fees from Purvis, Gray & Company and $19,086 of accounting fees from Cronin, Jackson, Nixon & Wilson for a total request of $37,690. The record does not indicate any duplication of activity between the legal firms or accounting firms. However, some areas will require adjustment.

We believe that the cost of the second notice of hearing should be disallowed. The second notice was required by the Prehearing Officer because of the possibility of more than one illegible notice being sent out the first time. From Exhibit 11, it appears that only 2.4 hours, or $300 of legal cost, have been charged for the second notice. No other charges were found relating to the second hearing notice. We find it appropriate to disallow this $300 because of the fact that the second notice was due to the illegibility of the first notice issued by the Utility.

The Utility claimed $3,550 of expenses for its local CPA firm for work done on the overearnings investigation. The invoice attached to Exhibit 11 contains charges relating to the investigation, the 1988 tax return and the 1988 annual report. In many instances, it is impossible to tell which charges are for what. We reviewed the invoices for charges that could be identified as work performed on the investigation. These totaled $2,925, which is $625 less than requested by the Utility. We find it appropriate to disallow this $625 as unsubstantiated.

The Utility has also requested $19,086 in accounting fees from Cronin, Jackson, Nixon and Wilson. After review of the invoices attached to Exhibit 11, we found $1,940 of charges

related to February billings for which there was no explanation or detailed description of the work performed. Therefore, we find it appropriate to disallow this amount.

The total of our disallowances is $2,865. Based on the foregoing, we find it appropriate to allow $34,825 of rate case expense amortized over four years. However, it is important to note that the rate case expense allowed has no effect on this proceeding. This is a result of the stipulation that rates should not be changed on a going-forward basis. Our practice has been to apply rate case expense only to prospective rates and not to any refund calculation.

VII. Proposed Findings of Fact and Conclusions of Law

Based on the record of this proceeding, we find it appropriate to adopt the Proposed Findings of Fact Nos. 1, 2, 3, 4, 5, 8, 9, 10, and 13 and Proposed Conclusion of Law No. 2 submitted by Sunshine Utilities, Inc. We also find it appropriate to reject Sunshine Utilities, Inc.'s Proposed Findings of Fact Nos. 6, 7, 11, 12, and 14 and Proposed Conclusions of Law Nos. 1 and 3.

The Proposed Findings of Fact and Conclusions of Law that we hereby adopt are established in the record of this proceeding, although the conclusions that Sunshine Utilities, Inc., might draw from these are not necessarily those that this would make. The basis for our rejection of certain Proposed Findings of Fact and Conclusions of Law submitted by the Utility is set forth below.

Proposed Finding of Fact No. 6 - None of the water systems were written off or otherwise expenses on the owner's tax returns.

We find it appropriate to reject this Proposed Finding of Fact because, although the Utility takes the position that this is the case, the tax returns of the owner were not made part of the record and there is no way for the Commission to verify this statement.

Proposed Finding of Fact No. 7 - All CIAC received by Sunshine Utilities has been recorded by the Utility.

We find it appropriate to reject this Proposed Finding of Fact because we have found that the $280,753 amount should be

considered CIAC and because the inadequate records of the owner make it impossible to verify that all CIAC received by the Utility has been recorded.

Proposed Finding of Fact No. 11 - Amortizing an abandonment loss over seven years is an acceptable methodology for accounting for such loss.

We find it appropriate to reject this Proposed Finding of Fact. The record does not establish that seven years is necessarily an acceptable methodology for accounting for an abandonment loss. The record does, however, support that there are various acceptable methodologies, and that the Utility believes that a seven year amortization period is appropriate.

Proposed Finding of Fact No. 12 - It is generally in the interest of existing customers to expand the customer base.

We find it appropriate to reject this Proposed Finding of Fact. The record supports that it may or not be in the interest of existing customers to expand the customer base.

Proposed Finding of Fact No. 14 - Rate case expenses in this proceeding of $37,690 are reasonable.

We find it appropriate to reject this Proposed Finding of Fact because the record supports disallowance of portions of the requested rate case expense since they were either inappropriate or unsubstantiated.

Proposed Conclusion of Law No. 1 - The Staff has the burden of proving that the test year revenues of Sunshine Utilities result in it exceeding the high range of its last authorized rate of return (Balino v. Department of Health and Rehabilitative Services, 248 So.2d 349 (Fla. 1st DCA 1977).

We find it appropriate to reject this Proposed Conclusion of Law because the Utility always has the ultimate burden to prove that its rates are reasonable. See South Florida Natural Gas Company v. Florida Public Service Commission, Supreme Court of Florida, No. 71,035, December 8, 1988.

Proposed Conclusion of Law No. 3 - In order for there to be an error in a prior PSC Order, there must be information in existence today that was not present when the prior Order was entered (PSC Order No. 22605).

We find it appropriate to reject this Proposed Conclusion of Law because it is not true that new information must exist for there to be an error in a prior PSC Order. The legal criteria for such correction of a prior Order is discussed in the body of this Order.

VIII. Closing of Docket

Upon our verification of the refund, there will be no further need for this docket to remain open. Any further review of overearnings will be done through our normal overearnings review process at which time the Utility's 1989 Annual Report will be reviewed. If overearnings are indicated at that time, a new docket will be opened.

Based on the foregoing, it is, therefore

ORDERED by the Florida Public Service Commission that for service rendered on or after August 30, 1988, through September 18, 1989, Sunshine Utilities shall refund 7.68% of its revenues plus interest. For service rendered on or after September 19, 1989, through December 31, 1989, Sunshine Utilities shall refund 9.79% of its revenues plus interest. Those customers of record on December 31, 1989, shall receive this refund. It is further

ORDERED that Sunshine Utilities shall submit verification to this Commission of this refund within 30 days of its accomplishment. It is further

ORDERED that all the matters contained herein and attached hereto, whether in the form of discourse or schedules, are, by this reference, specifically made integral parts of this Order. It is further

ORDERED that this docket shall be closed upon verification that the refund has been performed.

By ORDER of the Florida Public Service Commission this 23rd day of MAY, 1990.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

SFS

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 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 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.

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SUNSHINE UTILITIES (REFUND CALCULATION)
SCHEDULE OF WATER RATE BASE
TEST YEAR ENDED DECEMBER 31, 1987

SCHEDULE NO. 1-A
DOCKET NO. 881030-WU

	COMPONENT	AVERAGE TEST YEAR PER UTILITY	ADJUSTMENTS TO THE TEST YEAR	ADJUSTED TEST YEAR	PRO FORMA ADJUSTMENTS	ADJUSTED TEST YEAR
	UTILITY (Updated schedules not provided)					
1	UTILITY PLANT IN SERVICE	$ 1,279,537	$ 0	$ 1,279,537	$ 0	$ 1,279,537
2	LAND	71,839	0	71,839	0	71,839
3	NON-USED & USEFUL COMPONENTS	0	0	0	0	0
4	CWIP	0	0	0	0	0
5	ACCUMULATED DEPRECIATION	(226,486)	0	(226,486)	0	(226,486)
6	CIAC	(458,389)	0	(458,389)	0	(458,389)
7	AMORTIZATION OF CIAC	35,842	0	35,842	0	35,842
8	ADVANCES FOR CONSTRUCTION	0	0	0	0	0
9	WORKING CAPITAL ALLOWANCE	40,336	0	40,336	22,995	63,331
10						
11	RATE BASE	$ 742,679	$ 0	$ 742,679	$ 22,995	$ 765,674
12						
13						
14	STAFF					
15						
16	UTILITY PLANT IN SERVICE	$ 1,279,537	$ 0	$ 1,279,537	$ (38,859)	$ 1,240,678
17	LAND	71,839	0	71,839	0	71,839
18	NON-USED & USEFUL COMPONENTS	0	0	0	0	0
19	CWIP	0	0	0	0	0
20	ACCUMULATED DEPRECIATION	(210,731)	0	(210,731)	0	(210,731)
21	CIAC	(458,389)	0	(458,389)	(280,753)	(739,142)
22	AMORTIZATION OF CIAC	38,241	0	38,241	30,545	68,786
23	ADVANCES FOR CONSTRUCTION	(105,719)	0	(105,719)	11,723	(93,996)
24	WORKING CAPITAL ALLOWANCE	40,454	0	40,454	(118)	40,336
25						
26	RATE BASE	$ 655,232	$ 0	$ 655,232	$ (277,462)	$ 377,770
27						

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SUNSHINE UTILITIES (REFUND CALCULATION)
ADJUSTMENTS TO RATE BASE
TEST YEAR ENDED DECEMBER 31, 1987

SCHEDULE NO. 1-B
PAGE 1 OF 1
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	EXPLANATION	WATER
(1)	UTILITY PLANT IN SERVICE	
	To correct 13-month avg. balance for Turnberry Plant loss.	(38,859)
(2)	CONTRIBUTIONS IN AID OF CONSTUCTION	
	To reflect the incorrect booking of an acquisition adjustment as CIAC.	$ (280,753)
(3)	ACCUM. AMORTIZATION. OF CIAC	
	A) Amortization related to the imputation of CIAC.	$ 35,095
	B) To remove the utility's incorrect amortization of contributed land.	(4,550)
	TOTAL	$ 30,545
(4)	ADVANCES FOR CONSTRUCTION	
	To correct 13-month avg. balance for Turnberry Plant loss.	11,723
(5)	WORKING CAPITAL ALLOWANCE	
	A) To properly reflect accrued taxes.	$ (8,626)
	B) To properly reflect miscellaneous current assets.	(1,343)
	C) To include average deferred balance of amortized expenses.	9,851
	TOTAL	$ (118)

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SUNSHINE UTILITIES (REFUND CALCULATION)
CAPITAL STRUCTURE (Stipulated)
TEST YEAR ENDED DECEMBER 31, 1987

SCHEDULE NO. 2-A
DOCKET NO. 881030-WU

	DESCRIPTION	ADJUSTED TEST YEAR PER UTILITY	WEIGHT	COST	UTILITY WEIGHTED COST	STAFF RECONC. ADJ. TO UTILITY EXHIBIT	ADJUSTED BALANCE	WEIGHT	COST	WEIGHTED COST
1	LONG TERM DEBT	$ 8,732	2.06%	9.86%	0.20%	$ (1,143)	$ 7,589	2.01%	9.69%	0.19%
2										
3	SHORT TERM DEBT	0	0.00%	0.00%	0.00%	0	0	0.00%	0.00%	0.00%
4										
5	ADVANCES FROM PARENT	0	0.00%	0.00%	0.00%	0	0	0.00%	0.00%	0.00%
6										
7	CUSTOMER DEPOSITS	4,621	1.09%	8.00%	0.09%	(605)	4,016	1.06%	8.00%	0.09%
8										
9	COMMON EQUITY	411,368	96.86%	15.65%	15.16%	(45,203)	366,165	96.93%	15.65%	15.17%
10										
11	INVESTMENT TAX CREDITS	0	0.00%	0.00%	0.00%	0	0	0.00%	0.00%	0.00%
12										
13	DEFERRED TAXES	0	0.00%	0.00%	0.00%	0	0	0.00%	0.00%	0.00%
14										
15	TOTAL CAPITAL	$ 424,721	100.00%		15.45%	$ (46,951)	$ 377,770	100.00%		15.45%
16										
17										
18					RANGE OF REASONABLENESS				LOW	HIGH
19										
20										
21					RETURN ON EQUITY				13.65%	15.65%
22										
23										
24					OVERALL RATE OF RETURN				13.51%	15.45%
25										

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SUNSHINE UTILITIES (REFUND CALCULATION)
ADJUSTMENTS TO CAPITAL STRUCTURE
TEST YEAR ENDED DECEMBER 31, 1987

SCHEDULE NO. 2-B
DOCKET NO. 881030-WU

	DESCRIPTION	ADJUST FOR ACCRUED TAXES	ADJUST FOR OWNER'S LOAN	PRO RATA RECONCILE	NET ADJUSTMENT
1	LONG TERM DEBT	$ 0	$ 0	$ (1,143)	$ (1,143)
2					
3	SHORT TERM DEBT	0	0	0	0
4					
5	CUSTOMER DEPOSITS	0	0	0	0
6					
7	PREFERRED STOCK	0	0	(605)	(605)
8					
9	COMMON EQUITY	8,626	1,343	(55,172)	(45,203)
10					
11	INVESTMENT TAX CREDITS	0	0	0	0
12					
13	DEFERRED INCOME TAXES	0	0	0	0
14					
15	TOTAL CAPITAL	$ 8,626	$ 1,343	$ (56,920)	$ (46,951)
16					

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SUNSHINE UTILITIES (REFUND CALCULATION)
STATEMENT OF WATER OPERATIONS
TEST YEAR ENDED DECEMBER 31, 1987

SCHEDULE NO. 3-A
DOCKET NO. 881030-WU

	DESCRIPTION	AVERAGE TEST YEAR PER UTILITY	ADJUSTMENTS TO THE TEST YEAR	ADJUSTED TEST YEAR	PRO FORMA ADJUSTMENTS	ADJUSTED TEST YEAR
	UTILITY (Updated schedules not provided)					
1	OPERATING REVENUES	$ 354,473	$ 0	$ 354,473	$ 48,702	$ 403,175
2						
3	OPERATING EXPENSES					
4	OPERATION AND MAINTENANCE	$ 222,153	$ 14,480	$ 236,633	$ 0	$ 236,633
5	DEPRECIATION	28,310	0	28,310	0	28,310
6	TAXES OTHER THAN INCOME	17,427	0	17,427	2,585	20,012
7	INCOME TAXES (SOLE PROPRIETOR)	0	0	0	0	0
8						
9	TOTAL OPERATING EXPENSES	$ 267,890	$ 14,480	$ 282,370	$ 2,585	$ 284,955
10						
11	OPERATING INCOME	$ 86,583	$ (14,480)	$ 72,103	$ 46,117	$ 118,220
12						
13	RATE BASE	$ 742,679	$	765,674	$	765,674
14						
15	RATE OF RETURN	11.66%		9.42%		15.44%
16						
17	STAFF					
18						
19	OPERATING REVENUES	$ 354,473	$ 0	$ 354,473	$ (34,716)	$ 319,757
20						
21	OPERATING EXPENSES					
22	OPERATION AND MAINTENANCE	$ 258,783	$ (36,630)	$ 222,153	$	$ 222,153
23	DEPRECIATION	27,202	(5,911)	21,291		21,291
24	TAXES OTHER THAN INCOME	14,773	4,047	18,820	(868)	17,952
25	INCOME TAXES (SOLE PROPRIETOR)	0	0	0	0	0
26						
27	TOTAL OPERATING EXPENSES	$ 300,758	$ (38,494)	$ 262,264	$ (868)	$ 261,396
28						
29	OPERATING INCOME	$ 53,715	$ 38,494	$ 92,209	$ (33,848)	$ 58,361
30						
31	RATE BASE	$ 655,232	$	377,770	$	377,770
32						
33	RATE OF RETURN	8.20%		24.41%		15.45%
34						

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SUNSHINE UTILITIES (REFUND CALCULATION)
ADJUSTMENTS TO OPERATING STATEMENTS
TEST YEAR ENDED DECEMBER 31, 1987

SCHEDULE NO. 3-B
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	EXPLANATION	WATER
(1)	OPERATION & MAINTENANCE EXPENSE	
	A) To remove expenses related to the loss on the Turnberry project.	$ (20,871)
	B) To amortize expenses associated with a territorial dispute over 5 years.	(15,759)
	TOTAL	$ (36,630)
(2)	DEPRECIATION EXPENSE	
	A) To amortize imputed CIAC.	(7,019)
	B) To remove amortization on contributed land.	1,108
	TOTAL	$ (5,911)
(3)	TAXES OTHER THAN INCOME	
	A) To reflect correct balance of accrued taxes.	$ 4,022
	B) To correct test year reg. assess. fees.	25
	TOTAL	4,047
(4)	OPERATING REVENUES	
	To adjust to reflect the level generated using the high end of the last authorized return on equity.	$ 48,702
(5)	TAXES OTHER THAN INCOME	
	To remove regulatory assess. fees (RAFs) on the revenue adjustment above.	$ 2,585