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FLORIDA PUBLIC SERVICE COMMISSION
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MEMORANDUM

JUNE 12, 1997

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF WATER & WASTEWATER (OKOME, EDWARDS) *low*
DIVISION OF LEGAL SERVICES (JAEGER) *low*

RE: DOCKET NO. 970645-WS - INVESTIGATION OF POSSIBLE
OVEREARNINGS BY J. SWIDERSKI UTILITIES, INC. (KINGS COVE)
COUNTY: LAKE

AGENDA: 06/24/97 - REGULAR AGENDA - DECISION ON INITIATING AN
INVESTIGATION AND SETTING REVENUES SUBJECT TO REFUND - ON
ISSUE NO. 1 INTERESTED PERSONS MAY PARTICIPATE - ON
ISSUES 2 & 3 PARTICIPATION IS LIMITED TO COMMISSIONERS
AND STAFF

CRITICAL DATES: NONE

LOCATION OF FILE: S:\PSC\WAW\WP\970645WS.RCM

CASE BACKGROUND

J. Swiderski Utilities, Inc. (JSUI or utility) is a Class C water and wastewater utility operating the Kings Cove systems in Lake County. The Kings Cove system serves approximately 147 water and 143 wastewater customers. For the year ending December 31, 1996, the utility reported water operating revenues of \$53,630 and wastewater operating revenues of \$60,650 and a net operating income of \$20,848 for water and \$13,082 for wastewater.

The utility's 1996 annual report, filed April 2, 1997, indicated that JSUI's (Kings Cove) water system was earning an overall rate of return of 26.85% and the wastewater system was earning an overall rate of return of 8.92%. Staff is filing this recommendation to hold possible overearnings subject to refund and to recommend initiation of an overearnings investigation.

DOCUMENT NUMBER - DATE

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The last staff assisted rate case for this utility was completed by Order No. PSC-95-0129-FOF-WS, issued January 26, 1995, in Docket No. 940496-WS.

Staff's preliminary analysis shows the utility will overearn by approximately \$18,991 or 15.77% on an annual basis. Issue No. 2 details how staff determined the amount of annual revenue which should be subject to refund. Issue No. 3 defines how much of the estimated overearnings should be held as security based on the estimated time frame of six months to complete the investigation.

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DISCUSSION OF ISSUES

ISSUE 1: Should the Commission initiate an overearnings investigation of J. Swiderski Utilities, Inc. (Kings Cove)?

RECOMMENDATION: Yes. The Commission should initiate an investigation of JSUI's (Kings Cove) earnings to determine potential overearnings. (OKOME)

STAFF ANALYSIS: Based on a desk audit of 1996 annual report for JSUI's (Kings Cove), staff is recommending a formal investigation for possible overearnings. Staff's preliminary analysis of the utility's 1996 annual report indicated that JSUI's (Kings Cove) was earning an overall rate of return of 26.85% for the water system and 8.92% for the wastewater system making a combined total earnings of 15.13%. Based on further analysis, staff estimated the utility was earning an overall rate of return of 24.62% for both systems. By Order No. PSC-95-0129-FOF-WS, issued January 26, 1995, the utility's authorized overall rate of return is 8.84% with a range of 8.83% to 8.85%. Using the high end of the authorized range of return, as required by Section 367.082(2)(b), Florida Statutes, staff estimates the utility is overearning by 15.77%. Because the utility appears to be earning outside the range of reasonableness on rate of return, staff believes that, pursuant to Section 367.082(1), Florida Statutes, an overearnings investigation is warranted. Based on the above findings, staff recommends that an investigation of the potential overearnings of the utility should be initiated.

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ISSUE 2: Should any amount of annual revenues be held subject to refund?

RECOMMENDATION: Yes. JSUI's (Kings Cove) should hold annual revenues of \$18,991 subject to refund. The following amounts are recommended: (OKOME)

	<u>Revenues</u>	Amount Subject <u>To Refund</u>	% Subject <u>To Refund</u>
1996 Revenue	\$114,280	\$18,991	15.19%

STAFF ANALYSIS Staff believes that JSUI's (Kings Cove) may be overearning. Our preliminary analysis reveals that the Kings Cove system is earning an overall rate of return of 24.62%. JSUI's rate of return of 8.84% was set in Order No. PSC-95-0129-FOF-WS. The utility's authorized range of rate of return was set at 8.83% to 8.85%.

Staff is recommending holding 15.19% of projected annual revenues subject to refund. Once the staff audit is complete, we will be able to determine if the utility is, in fact, overearning. The calculation of refund liability would be determined as follows:

Overall Achieved Return	24.62%
High End of Authorized Rate of Return	<u>8.85%</u>
Reduction Required	15.77%
Multiplied by Estimated Rate Base	<u>\$120,422</u>
Estimated Annual Revenues Subject to Refund	\$ 18,991
Estimated Annual Revenues Subject to Refund	\$ 18,991
Projected Annual Revenues	\$125,036
Operating Revenue % Subject to Refund	15.19%

The utility was granted a 1995 price index, effective July 16, 1995, which increased water rates by 1.83% (\$741), and wastewater rates by 1.68% (\$814). The utility was also granted a 1996 index, effective June 26, 1996, which increased water rates by 1.77% (\$796), and wastewater rates by 1.82% (\$1,002). Pursuant to Section 367.081 (4)(d), Florida Statutes, "If, within 15 months after the filing of a utility's annual report required by s. 367.121, the commission finds that the utility exceeded the range of its last authorized rate of return on equity after an adjustment in rates as authorized by this subsection was implemented within the year for which the report was filed or was implemented in the preceding year, the commission may order the utility to refund,

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with interest, the difference to the ratepayers and adjust rates accordingly. This provision shall not be construed to require a bond or corporate undertaking not otherwise required."

In addition to holding funds subject to refund on a going-forward basis as recommended in this Issue, if staff determines the utility actually did overearn during the year of 1996, staff will recommend refund, with interest, of the 1995 and 1996 indexes to the extent they contributed to 1996 overearnings.

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ISSUE 3: What is the appropriate security to guarantee the amount subject to refund?

RECOMMENDATION: The security should be in the form of a bond or letter of credit in the amount of \$9,762. Alternatively, the utility could establish an escrow agreement with an independent financial institution. If security is provided through an escrow agreement, the utility should escrow 15.19% of its monthly revenues as detailed in Issue No. 2 (OKOME, JAEGER)

STAFF ANALYSIS: Pursuant to Section 367.082, Florida Statutes, when revenues are held subject to refund, the utility is authorized to continue collecting the previously authorized rates. As recommended in Issue No. 2, the amount of potential overearnings in the Kings Cove system is \$18,991 on an annual basis. Assuming a six-month time frame for staff to complete the investigation, the potential refund amount is \$9,496. Interest, calculated in accordance with Rule 25-30.360, Florida Administrative Code, is \$266, making the total \$9,762, which should be collected under guarantee, subject to refund with interest.

The security should be in the form of a bond or letter of credit in the amount of \$9,762. Alternatively, the utility could establish an escrow agreement with an independent financial institution.

If the utility chooses a bond as security, the bond should contain wording to the effect that it will be released or terminated only upon subsequent order of the Commission addressing overearnings or requiring a refund.

If the utility chooses a letter of credit as a security, it should contain the following conditions:

- 1) The letter of credit is irrevocable for the period it is in effect.
- 2) The letter of credit will be in effect until final Commission order is rendered, and the amount of refund, if any, is determined.

If security is provided through an escrow agreement, the utility should escrow 15.19% of its monthly revenues as detailed in Issue No. 2, and the following conditions should be part of the escrow agreement:

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- 1) No refunds in the escrow account may be withdrawn by the utility without the express approval of the Commission through the Director of the Division of Records and Reporting.
- 2) The escrow account shall be an interest bearing account.
- 3) That information concerning the escrow account should be available from the institution to the Commission or its representative at all times.
- 4) If a refund to the customers is required, all interest earned by the escrow account shall be distributed to the customers.
- 5) If a refund to the customers is not required, the interest earned by the escrow account shall revert to the utility.
- 6) All information on the escrow account shall be available from the holder of the escrow account to a Commission representative at all times.
- 7) The amount of revenue subject to refund shall be deposited in the escrow account within seven days of receipt.
- 8) This escrow account is established by the direction of the Florida Public Service Commission for the purpose(s) set forth in its order requiring such account. Pursuant to Cosentino v. Elson, 263 So. 2d 253 (Fla. 3d DCA 1972), escrow accounts are not subject to garnishments.
- 9) The Director of Records and Reporting must be a signatory to the escrow agreement.

Irrespective of the type of security provided, the utility should keep an accurate and detailed account of all monies it receives. In no instance should the maintenance and administrative costs associated with any refund be borne by the customers. These costs are the responsibility of, and should be borne by, the utility. Also, by no later than the twentieth (20) of each month, the utility should file a report showing the amount of revenues collected each month and the amount of revenues collected to date relating to the amount subject to refund. Should a refund be required, the refund should be with interest and undertaken in accordance with Rule 25-30.360, Florida Administrative Code.

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ISSUE 4: Should this docket be closed?

RECOMMENDATION: No, if the Commission approves Issue No. 1, this docket should remain open pending determination of whether the utility is overearning. (JAEGER, OKOME)

STAFF ANALYSIS: Staff believes J. Swiderski Utilities, Inc. (Kings Cove) may be overearning. A formal investigation has been recommended in Issue No. 1. A staff audit and engineering analysis will be performed and staff will return to Agenda with a recommendation regarding possible overearnings of JSUI's (Kings Cove). Therefore, the docket should remain open.