

## BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation into the effect ) DOCKET NO. 861145-PU  
of 1986 Federal Tax Reform on Revenue ) ORDER NO. 20975  
Requirements for regulated utilities. ) ISSUED: 4-3-89

The following Commissioners participated in the disposition of this matter:

MICHAEL MCK. WILSON, CHAIRMAN  
THOMAS M. BEARD  
BETTY EASLEY  
GERALD L. GUNTER  
JOHN T. HERNDON

NOTICE OF PROPOSED AGENCY ACTION  
ORDER ACCEPTING STIPULATION

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for formal proceeding pursuant to Rule 25-22.029, Florida Administrative Code.

On August 22, 1988, we issued Proposed Agency Action Order No. 19837 in which we required Lindrick Service Corporation (Lindrick) to refund \$27,600 in water revenues and \$173,956 in sewer revenues and to place \$37,848 for the water division and \$238,555 for the sewer division subject to refund, pending the outcome of our investigation. We initiated our investigation into Lindrick as a result of our Water and Sewer Division's routine review of annual reports filed by utilities.

Rule 25-14.003(4), Florida Administrative Code, requires utilities to file a report demonstrating the effect of a change in the income tax rate on or before March 1st of the year following the effectiveness of such change. Lindrick filed a letter stating that it has no tax savings because it is an S corporation.

In the Division's review of annual reports, it was discovered that Lindrick received tax expense in its last rate case (Docket No. 830062-WS, Order No. 12691) since it was a C corporation at that time. Subsequently, Lindrick changed status from a C to an S corporation under the Internal Revenue Code. It is this Commission's policy not to allow income tax expense in the cost of service for S corporations.

Order No. 19837 found that Lindrick's change to an S corporation resulted in a change in tax rate (from 46% to 0%) and, pursuant to Rule 25-14.003, Florida Administrative Code, Lindrick should refund to its customers the income tax expense for 1987 and 1988, currently embedded in its rates and charges. Lindrick timely protested Order No. 19837 and the matter was set for hearing.

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Subsequently, our Staff held a preliminary prehearing conference in which Lindrick presented a financial statement for the ten months ended October 31, 1988. This financial statement indicated that Lindrick was not overearning for 1988. Lindrick then filed a Motion for Continuance in an effort to reach a settlement of this matter. The Motion for Continuance was granted. Additional information was received from Lindrick, including its letter to the Internal Revenue Service revoking its Chapter S election. Our Staff's review of the information indicates that Lindrick's excess earnings are a result of its Chapter S non-taxable standing in 1987. A review of the financial information for all twelve months of 1988 indicates that Lindrick's combined water and sewer earnings for 1988 are within the range of its last authorized rate of return.

In light of the above, our Staff supports, and the utility agrees, to the following:

1. No prospective change in rates as a result of this investigation.
2. Adjustments to record \$24,962 in 1987 excess earnings as an increase to sewer accumulated depreciation.
3. Lindrick will not apply for a rate increase utilizing any historic test year prior to and including a test year ended December 31, 1989. This does not pertain to index and pass-through applications.

Upon consideration, we find the above stated three items to be reasonable resolutions to the matter before us and therefore accept them. The ratepayers will receive a continuing benefit from the reduction to rate base and the utility, its ratepayers and the Commission will be spared the cost of hearing.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the settlement relating to the 1987 overearnings of Lindrick Service Corporation as set forth in the body of this Order is hereby approved. It is further

ORDERED that the provisions of this Order issued as proposed agency action, shall become final unless an appropriate petition in the form provided by Rule 25-22.036, Florida Administrative Code, is received by the Director of Records and Reporting at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on April 24, 1989.

By ORDER of the Florida Public Service Commission this 3rd day of APRIL, 1989.

  
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STEVE TRIBBLE, 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.

The action proposed herein is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on April 24, 1989. In the absence of such a petition, this order shall become effective April 25, 1989 as provided by Rule 25-22.029(6), Florida Administrative Code, and as reflected in a subsequent order.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If this order becomes final and effective on April 25, 1989, any party adversely affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by 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 of the effective date 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.