

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application of MARCO)	DOCKET NO. 850151-WS
ISLAND UTILITIES, a division of)	ORDER NO. 23841
Deltona Utilities, Inc. for a)	ISSUED: 12-07-90
rate increase to its customers)	
in Collier County.)	
<hr/>		
)	

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD
GERALD L. GUNTER

ORDER ESTABLISHING COST OF DEBT, REVENUE
REQUIREMENT, FINAL RATES, AND REFUNDS

BY THE COMMISSION:

CASE BACKGROUND

Marco Island Utilities (Marco Island or Utility), a Division of Deltona Utilities, Inc. (Deltona), is a Class A water and wastewater utility located in Collier County, Florida. Deltona is a wholly owned subsidiary of the Topeka Group.

On February 28, 1985, Marco Island submitted an application for increased water and wastewater rates to the Collier County Utility Rate and Regulation Board (CCURRB). By resolution of the Collier County Commission dated April 16, 1985, this Commission was given jurisdiction over water and wastewater utilities in Collier County. Consequently, Marco Island requested this Commission to grant emergency interim rates based primarily on its application with the CCURRB. The request for emergency interim rates was granted by Order No. 14522, issued on June 28, 1985. On September 11, 1985, Marco Island completed its minimum filing requirements in this docket.

On June 6, 1986, this Commission issued Proposed Agency Action Order No. 16210. The Order was timely protested by the Utility and a formal hearing was held on January 21, 22, and 23, 1987. We issued actual Order No. 17600 on May 26, 1987, which established final rates and charges, and required a refund. The Utility petitioned for reconsideration of the Order. The Office of Public Counsel filed a cross-motion for reconsideration. Our reconsideration Order No. 18476, confirmed our determination that

DOCUMENT NUMBER-DATE

10896 DEC -7 1990

FPSC-RECORDS/REPORTING

ORDER NO. 23841
DOCKET NO. 850151-WS
PAGE 2

the cost of debt was 14.25 percent. Marco Island appealed Orders Nos. 18476 and 17600 to the First District Court of Appeal, and requested a partial stay pending appeal. The only issue on appeal was the calculation of the cost of debt. Pending the appeal, Marco Island requested that it be allowed to voluntarily reduce the rates charged to its customers to reflect the rates approved in Order No. 18476, as adjusted to allow a cost of long term debt of 16.1 percent, rather than the 14.25 percent granted by the Commission, and price indexes set out in Orders Nos. 17305 and 18233. The Utility's request was granted in Order No. 18860. The rates approved in that Order are now in effect.

In 1984, Marco Island and other operating divisions of Deltona entered into a first mortgage bond-financing in the amount of \$30,000,000. The primary purpose of this transaction was to retire an existing \$18,000,000 indebtedness that was in default, and to provide needed working capital. In Order No. 17600, we decided that the appropriate cost of long term debt was 14.25 percent, rather than the actual cost of 16.1 percent. During the refinancing in 1984, Marco Island entered into a financing contract that required bondholders' consent before the bonds could be refinanced. But for that contractual restriction, Marco Island could have refinanced these bonds as of December 1, 1984 and thereby reduced the cost of debt from 16.1 percent to 14.25 percent. We decided that it was imprudent for Marco Island to have agreed to a contractual provision that required bondholders' consent as a prerequisite to refinancing the bonds. We determined that December 1, 1984, should be the effective date of the financing and that if Marco Island had refinanced the debt then, the cost of debt would have been 14.25 percent. We relied upon a provision in Section 367.081(3), Florida Statutes (1985) that reads: "The Commission, in fixing rates, may determine the prudent cost of providing service" That section empowers us to pass on whether Marco Island acted prudently. We based our decision on this issue of prudence as one of a conflict in the evidence under what we perceived as our duty to determine the cost of debt within a range suggested by the evidence.

The Court of Appeals determined there was really no conflict in the evidence on this issue. The evidence consisted of testimony of two expert witnesses. No Commission rule nor any evidence of Commission policy disallowing bondholder-consent provisions was presented. Regarding our finding that it was not appropriate for Marco Island to have agreed to a contractual provision, the court

ORDER NO. 23841
DOCKET NO. 850151-WS
PAGE 3

found that there was no evidence in the record on which to base a finding of impropriety or inappropriateness. The court held that the bondholder consent provision was valid and enforceable and that we must consider the bond-financing contract as being fixed in its terms. The court also held that our selection of December 1, 1984, as the effective date of refinancing was not supported by the evidence. The court held that the record evidence established that the financing was negotiated during the summer of 1984 and that Marco Island and other operating divisions of Deltona became locked into the terms of the bond issue in August of 1984.

On August 28, 1990, the First District Court of Appeals, issued its opinion, affirming in part, reversing the Commission's ruling on the cost of debt, and remanding the case to us for further proceedings. This Order is in response to the remand.

COST OF DEBT AND REVENUE REQUIREMENT

Following the mandate of the Court of Appeals upon remand, and upon review of the record, we find that the appropriate cost of debt is 16.1 percent, which is the actual cost of debt. The overall cost of capital, using this debt cost, is 14.65 percent.

Order No. 18860 set forth revenue requirements for water and wastewater based upon an overall cost of capital of 14.65 percent and a cost of debt of 16.1 percent. That Order also included increases due to 1986 and 1987 indexes, as approved in Order No. 17305 and Order No. 18233, respectively. Since this is the overall cost of capital used to calculate the rates now in effect, no change in the revenue requirement is necessary. The revenue requirements of \$3,012,838 for water and \$943,950 for wastewater, as approved in Order No. 18860, are appropriate and are hereby affirmed as the Utility's final revenue requirements in this proceeding.

FINAL RATES

The rates set in Order No. 18860 were established by applying a cost of debt of 16.1 percent. Therefore, no adjustment to these rates will be made. The rates are as approved in current tariffs and are shown in Schedules Nos. 1 and 2.

ORDER NO. 23841
DOCKET NO. 850151-WS
PAGE 4

REFUND

The rates Marco Island is currently charging its customers are as ordered in Order No. 18860, issued February 15, 1988. The tariffs were approved effective February 18, 1988. The rates charged prior to that time were the interim rates specified in Order No. 14522, issued June 28, 1985. It is necessary that the Utility refund to its customers the difference between the interim rates set in Order No. 14552 and the rates set in Order No. 18860.

Normally, a multiplier could be calculated based upon the ratio of final rates to interim rates in order to determine the refund to each customer. However, in this proceeding, several things occurred during the pendency of interim rates which have an impact on the multiplier for this protracted refund period. The refund multipliers shown in Schedule No. 3 were calculated using as the denominator the interim revenue minus miscellaneous service charges. The numerator for each period was determined from adjustments to the final revenue to recognize revenue requirements based upon the old corporate income tax rate and a subsequent blended rate and two indexes which were agreed to be used as an offset to the refund. Marco Island shall apply the multiplier to customer bills for each period, as applicable. The interest calculation must be made in accordance with Rule 25-30.360(4), Florida Administrative Code. A multiplier is used in this refund calculation because of a structural change to the rates between interim and final rates. The interim rates were based upon those utilized when Marco Island was under Collier County's jurisdiction. If the refund is determined by applying the new rates to what should have been charged, a bias would result and the refund would not be uniform to each customer.

The refund will be in accordance with Rule 25-30.360, Florida Administrative Code, calculated on a per customer basis. The refund period shall commence on the date that interim rates began to be charged during July 1985 after the issuance of Order No. 14522. The refund calculation will depend on the period multiplier specified in this Order. Interest will be applied in accordance with 25-30.360(4)(a), (b) and (c), Florida Administrative Code. If Marco Island chooses to employ an interest multiplier pursuant to 25-30.360(d), Florida Administrative Code, it shall so state that it has utilized such a method and also indicate in its report of the refund process in accordance with subparagraph (7) of the referenced rule.

ORDER NO. 23841
DOCKET NO. 850151-WS
PAGE 5

Marco Island shall exercise its best efforts to refund all monies owed to all customers, including those no longer on the Utility's system. However, in the event that unclaimed funds remain after one year from the date of the final order in this Order, Marco Island shall automatically credit any unclaimed refunds to the Contributions-in-Aid-of-Construction accounts, appropriately apportioned between water and wastewater. Marco Island shall make reports to the Commission pursuant to subparagraph (7) of Rule 25-30.360, Florida Administrative Code.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the cost of long term debt for Marco Island Utilities, a division of Deltona Utilities, Inc., is 16.1 percent. It is further

ORDERED that the overall cost of capital in this proceeding is 14.65 percent. It is further

ORDERED that the revenue requirements of \$3,012,838 for water and \$943,950 for wastewater, as approved in Order No. 18860, are hereby affirmed as Marco Island Utilities' final revenue requirements. It is further

ORDERED that the rates established in Order No. 18860, as shown on Schedules Nos. 1 and 2, are hereby approved as Marco Island Utilities' final rates. It is further

ORDERED that, in accordance with Rule 25-30.360, Florida Administrative Code, Marco Island Utilities shall refund to its customers on a per customer basis, the appropriate monies by utilizing the applicable period multipliers as established in this Order as shown in Schedule 3, with interest as appropriate in accordance with Section 25-30.360(4), Florida Administrative Code. It is further

ORDERED that Marco Island Utilities shall report to the Commission in accordance with Rule 25-30.360(7), Florida Administrative Code. It is further

ORDERED that each finding in the body of this Order is hereby approved in every respect. It is further

ORDER NO. 23841
DOCKET NO. 850151-WS
PAGE 6

ORDERED that all matters contained in the Schedules attached hereto are by reference incorporated herein. It is further

ORDERED that after the refund has been completed and audited by Staff, that this docket shall be closed without further action by the Commission.

By ORDER of the Florida Public Service Commission this 7th
day of DECEMBER, 1990.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

TCP

by: Kay Flynn
Chief, Bureau of Records

ORDER NO. 23841
DOCKET NO. 850151-WS
PAGE 7

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.

ORDER NO. 23841
 DOCKET NO. 850151-WS
 PAGE 8

SCHEDULE 1

RATE SCHEDULES

WATER SYSTEM

BASE FACILITY CHARGE

	<u>RATES CURRENTLY IN EFFECT</u>
RESIDENTIAL & GENERAL SERVICE	
Multi-unit (indiv. metered)	- - -
5/8" x 3/4" meter	\$ 5.81
1" meter	\$ 13.01
1-1/2" meter	\$ 24.99
2" meter	\$ 39.38
3" meter	\$ 77.73
4" meter	\$120.90
6" meter	\$240.77
Gallonge Charge	
0 - 3,000 gallons	- - -
Over 3,000 gallons	- - -
Per 1,000 gallons	\$ 1.60
Multi-Family *	
Base Facility Charge, per unit	- - -
Gallonge Charge	
0 - 3,000 gallons	- - -
Over 3,000 gallons	- - -
Raw Water	
Base Facility Charge	\$ 99.50
Gallonge Charge per 1,000 gal.	\$ 0.53
Private Fire Protection	
2"	\$ 13.81
3"	\$ 26.59
4"	\$ 40.98
6"	\$ 80.94
8"	\$128.89
10"	\$184.83

* Multi-Family and Multi-Unit for both water and sewer will now be billed under Residential Service by meter size.

ORDER NO. 23841
 DOCKET NO. 850151-WS
 PAGE 9

SCHEDULE 2

RATE SCHEDULESWASTEWATER RATESBASE FACILITY CHARGE

	<u>RATES CURRENTLY IN EFFECT</u>
RESIDENTIAL & GENERAL SERVICE	
Residential	6.57
Multi-unit (indiv. metered)	\$ - - -
Gallage Charge:	
Per 1,000 Gallons of Water (6,000 gallon maximum)	\$ 1.11
COMMERCIAL RATE	
Base Facility Charge	
5/8" x 3/4" Meter	\$ 6.57
1" Meter	\$ 30.05
1-1/2" Meter	\$ 59.39
2" meter	\$ 94.60
3" meter	\$188.51
4" meter	\$294.15
6" meter	\$587.62
Gallage Charge	
Per 1,000 gallons of water	\$ 1.35
NORTH MARCO UTILITIES	
Base Facility Charge	\$294.15
Gallage Charge	
Per 1,000 gallons of water	\$ 1.41
SANITARY DISTRICT	
Base Facility Charge	\$294.15
Gallage Charge:	
Per 1,000 gallons of water	\$ 1.41

ORDER NO. 23841
 DOCKET NO. 850151-WS
 PAGE 10

SCHEDULE 3

Water Multipliers

From July, 1985 through April, 1987	1 - $\frac{3,003,233}{3,396,098}$ = <u>0.11568</u>
From May, 1987 through June, 1987	1 - $\frac{3,025,245}{3,396,098}$ = <u>0.10920</u>
From July, 1987 through October, 1987	1 - $\frac{2,974,448}{3,396,098}$ = <u>0.12416</u>
From November, 1987 through end of refund	1 - $\frac{2,994,284}{3,396,098}$ = <u>0.11832</u>

Wastewater Multipliers

From July, 1985 through April, 1987	1 - $\frac{929,344}{1,006,754}$ = <u>0.07689</u>
From May, 1987 through June, 1987	1 - $\frac{940,717}{1,006,754}$ = <u>0.06559</u>
From July, 1987 through October, 1987	1 - $\frac{928,018}{1,006,754}$ = <u>0.07821</u>
From November, 1987 through end of refund	1 - $\frac{940,005}{1,006,754}$ = <u>0.06630</u>