

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for a staff)
 assisted rate case in Volusia)
 County by Pine Island Utility)
 Corporation)
 _____)

DOCKET NO. 910276-WS
 ORDER NO. 24961
 ISSUED: 8/22/91

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman
 J. TERRY DEASON
 BETTY EASLEY
 MICHAEL McK. WILSON

ORDER TO CEASE AND DESIST THE CHARGING OF
 TEMPORARY RATES, TO SHOW CAUSE, AND TO CORRECT
 PRIOR COMMISSION ORDER

BY THE COMMISSION:

CASE BACKGROUND

Pine Island Utility Corporation (PIU or utility) is a class "C" water and wastewater utility whose service area is located in the northwestern portion of Volusia County, approximately three miles west of Seville, Florida. By Proposed Agency Action Order No. 24643, issued June 10, 1991, the Commission proposed to allow the utility to collect rates designed to produce \$14,576 in annual water system revenues and \$16,867 in annual wastewater system revenues. These approved revenue requirements represented an annual increase in revenues of \$4,916 (50.89%) for the water system and \$3,694 (28.04%) for the wastewater system.

On July 1, 1991, a timely protest to Order No. 24643 was filed by numerous customers and Ms. Reba Whited, individually and as President of the Pine Island Homeowners Association. The case is therefore scheduled for an administrative hearing on October 17 and 18, 1991.

By Order No. 24643, the Commission authorized PIU to charge higher rates on a temporary basis, subject to refund, in the event of a protest. In order to implement the temporary rates, PIU was

DOCUMENT NUMBER-DATE

08455 AUG 22 1991

FDCC-RECORDS/REPORTING

ORDER NO. 24961
DOCKET NO. 910276-WS
PAGE 2

to submit and have approved a proposed customer notice, revised tariff pages, and security for a refund.

This Order addresses PIU's implementation of the temporary rates prior to meeting the preconditions for doing so and an error in Order No. 24643.

CEASE AND DESIST

As previously stated, in order to implement the temporary rates, PIU was to submit and have approved a proposed customer notice, revised tariff pages, and security for a refund. In numerous telephone conversations and by letter dated July 2, 1991, our staff informed the utility that all three of these prerequisites must be met prior to implementation of the rates. Only one of these three prerequisites, the customer notice, has been met.

On August 2, 1991, the protestor in this action informed this Commission that PIU had that day billed its customers the increased rates for August, retroactively for July (which is clearly not allowed by the Order), and ahead of time for September, October, and November. By so doing, the utility has violated the terms of Order No. 24643 and Section 367.091, Florida Statutes, which allows a utility to assess only those rates and charges in its approved tariffs.

The customers could be irreparably harmed if the security for refund were ignored or improperly implemented by the utility. Therefore, in consideration of the foregoing, PIU is hereby ordered to immediately cease and desist from charging the temporary rates approved in Order No. 24643 until our Staff has determined that all of the preconditions for the implementation of those rates have been met. Our staff will prepare for distribution to the customers a notice of our action in this regard.

SHOW CAUSE

PIU has met only one of the preconditions necessary for the implementation of temporary rates, yet has implemented those rates. Because of the seriousness of the utility's transgression, we hereby order PIU to show cause in writing why it should not be fined up to \$5,000 a day for violating Order No. 24643 and Section

ORDER NO. 24961
DOCKET NO. 910276-WS
PAGE 3

367.091, Florida Statutes, by charging unauthorized and illegal rates to its customers.

CORRECTION TO ORDER NO. 24643

By Order No. 24643, we directed our staff to explore alternatives for ensuring that PIU pay its power bill regularly and in a timely manner, "whether it be by requiring the posting of a surety bond, by requiring the escrow of funds, or otherwise." That portion of the order was issued as proposed agency action when it was intended as final agency action. Therefore, we hereby reissue that portion of Order No. 24643 authorizing our staff to require security for the regular and timely payment of power bills so as to make it final agency action.

It is, therefore

ORDERED by the Florida Public Service Commission that Pine Island Utility Corporation shall immediately cease and desist from charging the temporary rates approved in Order No. 24643 until our Staff has determined that all of the preconditions for the implementation of those rates have been met. It is further

ORDERED that Pine Island Utility Corporation shall show cause in writing why it should not be fined up to \$5,000 a day for violating Order No. 24643 and Section 367.091, Florida Statutes, by charging unauthorized and illegal rates to its customers. It is further

ORDERED that Pine Island Utility Corporation's written response to the show cause portion of this Order must be received by the Director, Division of Records and Reporting, 101 East Gaines Street, Tallahassee, Florida, 32399-0870, by the close of business on September 11, 1991. It is further

ORDERED that Pine Island Utility Corporation's response to the show cause portion of this Order must contain specific allegations of fact and law. It is further

ORDERED that Pine Island Utility Corporation's opportunity to file a written response to the show cause portion of this Order shall constitute its opportunity to be heard prior to final determination of noncompliance and assessment of penalty by this Commission. It is further

ORDER NO. 24961
DOCKET NO. 910276-WS
PAGE 4

ORDERED that a failure to file a timely response to the show cause portion of this Order shall constitute an admission of the facts alleged in the body of this Order and a waiver of any right to a hearing. It is further

ORDERED that in the event that Pine Island Utility Corporation files a written response which raises material questions of fact and requests a hearing pursuant to Section 120.57, Florida Statutes, further proceedings may be scheduled before a final determination on these matters is made. It is further

ORDERED that the portion of Order No. 24643 whereby this Commission authorized its staff to require security from Pine Island Utility Corporation for the regular and timely payment of its power bills is hereby reissued as final agency action.

By ORDER of the Florida Public Service Commission, this
22nd day of AUGUST, 1991.



STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

MF

ORDER NO. 24961
DOCKET NO. 910276-WS
PAGE 5

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.