

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. PSC-92-0957-FOF-WU
ISSUED: 09/09/92

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK
BETTY EASLEY

ORDER DENYING PETITION FOR RELIEF FROM
REFUND AND ALLOWING EXTENDED REFUND PERIOD

BY THE COMMISSION:

Background

By Order No. 22969, issued May 23, 1990, this Commission found that for the test year ended December 31, 1987, Sunshine Utilities of Central Florida, Inc., (Sunshine or utility) had overearned. Because of the staleness of the test year data, we did not reduce Sunshine's rates, but ordered it to refund with interest 7.68% of its revenues for service rendered from August 30, 1988, through September 18, 1989, and 9.79% of its revenues for service rendered from September 19, 1989, to December 31, 1989, to customers of record as of December 31, 1989.

After we denied Sunshine's motion for reconsideration of Order No. 22969, Sunshine appealed the our Order to the First District Court of Appeal (DCA). By Order No. 23898, issued December 19, 1990, we stayed the required refund pending resolution of the appeal. The DCA upheld our decision, Sunshine Utilities v. Florida Public Service Commission, 577 So.2d 663 (Fla. 1st DCA 1991), and issued its mandate on May 29, 1991. The Florida Supreme Court denied Sunshine's request for review on October 2, 1991. 589 So.2d 293. By Order No. 25394, issued November 25, 1991, we stated that our earlier stay of the refund was lifted and that Sunshine should complete the required refund. On December 9, 1991, Sunshine filed a Motion for Reconsideration of the Order Lifting Stay. By Order No. 25644, issued January 27, 1992, we denied Sunshine's motion. On February 26, 1992, Sunshine filed a Notice of Appeal of the Order No. 25644. Sunshine moved the DCA to impose a stay of the

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subject refund, but by an Order entered April 2, 1992, the DCA denied a stay. Sunshine's appeal of this Order is still pending.

On July 16, 1992, Sunshine filed with the Commission a Petition for Emergency Relief From Refund Requirement or For Emergency Rate Relief. The Office of Public Counsel did not file a response. This Order addresses Sunshine's petition.

Petition

In its petition, Sunshine requests that we completely eliminate the refund we required. Although the title of the petition indicates Sunshine seeks some sort of alternative emergency rate relief, Sunshine made no prayer for rate relief in its petition and attached no supporting schedules or tariff sheets to its petition. Sunshine asserts the refund required in the overearnings case and the rates allowed in its recent rate case (Docket No. 900386-WU, Order No. 25722, issued February 13, 1992) have put Sunshine on the brink of financial ruin. Sunshine attached to its petition cash flow statements which it argues support its claim of financial distress, but Sunshine also states that it is willing to submit to an "independent audit to verify the accuracy of its financial projections."

In its petition, Sunshine alleges that our staff recently refused to support Sunshine's proposal for emergency relief because, in our staff's view, the financial statements attached to the proposal did not support Sunshine's claim of financial distress. Sunshine then opines as follows:

[Sunshine] can only surmise why staff questions the veracity of Sunshine's call for help. . . . One reason for staff's skepticism may be that testimony elicited during the rate case proceeding unfairly tainted staff's and the Commission's perception of the utility and the integrity of its owner.

The rate case proceeding referred to is a separate matter, Docket No. 900386-WU. Sunshine then urges this Commission to consider that Ms. Smith, who testified at the rate case hearing, "recently corrected her rate case testimony under oath in a separate legal proceeding." The petition continues:

It is also Sunshine's understanding and belief that other testimony presented during the rate case proceeding may not be credible and, thus the utility has taken the appropriate action to defend itself against false attacks.

Sunshine concludes with the statement that by taking (or threatening) legal action against certain parties who testified at the rate case hearing it is attempting to clear its reputation with the Commission.

Since the gravamen of Sunshine's request for relief is that it is in financial distress, we shall address that argument first.

The cash flow statements provided by the utility did not include sufficient information for us to make an accurate determination of the utility's financial condition. The utility only provided five months of data which included notes payable as an expense item rather than a component of the capital structure. Therefore, we used the utility's 1991 annual report to obtain additional necessary information. As is evident from the analysis below, we have evaluated the utility's financial condition using the rate-making formula prescribed by Chapter 367.

We calculated rate base using the amount reported in the utility's 1991 Annual report then adjusted that amount to agree with the adjustments we made in the utility's last rate case, Order No. 25722, Docket No. 900386-WS, which is currently on appeal to the First DCA. The utility has made minimal plant additions between the end of the rate case test year, May 30, 1990, and December 31, 1991. We calculate that rate base is \$99,831. Our calculation of rate base is attached to this Order as Schedule No. 1-A, and the schedule of adjustments to rate base is attached as Schedule No. 1-B.

We used the annual report to determine operating income, since that amount is close to the approved revenue requirement from the last rate case: annual report revenues were \$543,752, and the approved revenue requirement from the rate case is \$505,971. In our order, we allowed operating expenses of \$488,388, compared to annual report expenses of \$497,920. The cash flow statements and profit and loss statements, submitted by the utility in its petition are not correctly stated according to generally accepting

accounting principles (GAAP). Our calculation of net operating income is attached as Schedule No. 2.

We used the capital structure from the 1991 annual report with a rate of return on equity established in the last rate case of 11.89%, with a range of 10.89% to 12.89%. The overall rate of return is 11.33%, with a range of 10.80% to 12.09%. Our calculation of the capital structure is attached as Schedule No. 3. All of the schedules attached hereto are by reference incorporated herein.

Based on the above, we calculated that the utility's net operating income is \$45,832, which represents an overall rate of return of 45.91% on rate base, as opposed to the 6.91% return stated by the utility in its annual report. Therefore, we do not believe this utility is in financial distress.

Furthermore, we do not think that an "independent audit" is appropriate. If the utility thought this type of audit would support its claim, it should have had the audit incorporated as part of its petition. We would expect that the financial information in the petition and annual report would support Sunshine's claim since the information came from Sunshine directly; however, that is not the case here.

In addition, we find no merit whatsoever in Sunshine's argument that we are skeptical of its request to lift the refund requirement because Sunshine's veracity has been tarnished in a separate proceeding. Neither Sunshine's recourse against parties who testified at a subsequent rate case nor what Sunshine calls its "reputation" are, in our view, appropriate for consideration in evaluating the instant petition.

By virtue of our lawful authority in Chapter 367, we required that Sunshine refund certain revenues collected. Upon full and proper review, the DCA affirmed our decision. Now, by its petition, Sunshine seeks to have our action set aside because Sunshine disagrees with what we have done and what the DCA upheld. In addition, it is doubtful whether we have the legal authority to violate the DCA's mandate by granting Sunshine's petition even if we were inclined to do so. See, e.g., Vistaco, Inc. v. Prestige Properties, Inc., 597 So.2d 356 (Fla. 1st DCA 1992).

In consideration of the foregoing, we hereby deny Sunshine's petition.

Refund Period

Pursuant to Rule 25-30.360, Florida Administrative Code, Sunshine had ninety days to complete the refund. Measuring from the date of the DCA's mandate, we calculate that the refund should have been completed on August 29, 1991. Measuring from the date of the Commission's Order Lifting Stay, we calculate that the refund should have been completed on February 13, 1992. Sunshine has not filed any refund reports, as required by our Rules. Sunshine does not deny that it has not completed any of the ordered refund.

Over the last several months, our staff has worked diligently in an attempt to get Sunshine to complete the refund voluntarily without success. At the August 18, 1992, Agenda Conference at which we considered Sunshine's petition and the possibility of ordering Sunshine to show cause why it should not be fined, Sunshine agreed to complete the required refund over an eighteen-month period, beginning August 30, 1992. We think that allowing Sunshine to complete the refund over this period is in the public interest. Therefore, Sunshine is ordered to complete the refund as it agreed; and we shall not at this time order Sunshine to show cause why it should not be fined.

Based upon the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that the Petition for Emergency Relief From Refund Requirement or For Emergency Rate Relief filed by Sunshine Utilities of Central Florida, Inc., is hereby denied. It is further

ORDERED that Sunshine Utilities of Central Florida, Inc., shall refund with interest over an eighteen-month period, beginning August 30, 1992, the overearnings this Commission required be refunded by Order No. 22969.

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By ORDER of the Florida Public Service Commission this 9th day
of September, 1992.

(S E A L)

MJF

STEVE TRIBBLE, Director
Division of Records and Reporting

by: Kay Hegan
Chief, Bureau of Records

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 this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.038(2), Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) 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 wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.

SUNSHINE UTILITIES, INC.
SCHEDULE OF WATER RATE BASE
AS OF DECEMBER 31, 1991

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

COMPONENT	PER 1991 ANNUAL RPT	COMMISSION ADJ PER RATE CASE	COMMISSION ADJUSTED BALANCE
1 PLANT IN SERVICE	\$ 1,889,411	\$ (405,071)	\$ 1,484,340
2 NON-USED & USEFUL COMPONENTS	(168,277)	0	(168,277)
3 ACCUMULATED DEPRECIATION	(412,710)	72,902	(339,808)
4 CIAC	(758,945)	(280,753)	(1,039,698)
5 AMORTIZATION OF CIAC	163,047	49,279	212,326
6 ADVANCES FOR CONSTRUCTION	(101,596)	0	(101,596)
7 WORKING CAPITAL ALLOWANCE	52,544	0	52,544
RATE BASE	\$ 663,474	\$ (563,643)	\$ 99,831

**SUNSHINE UTILITIES OF CENTRAL FL
ADJUSTMENTS TO RATE BASE**

**SCHEDULE NO. 1-B
DOCKET NO. 881030-WU**

EXPLANATION	ADJUSTMENTS
UTILITY PLANT IN SERVICE	
A. To adjust for exclusion of profit and mark-up on labor and materials. 1983-1987	\$ (187,379)
B. To adjust for exclusion of profit and mark-up on labor and materials. 1988-TY	(206,790)
C. To adjust to reflect shared facilities.	(6,536)
D. To adjust for retirement of utility vehicle.	(14,036)
E. To adjust for reclassification	9,670
NET ADJUSTMENT	\$ (405,071)
NON-USED & USEFUL COMPONENTS	
These adjustments were made by the utility and included in the 1991 Annual Report.	
ACCUMULATED DEPRECIATION	
A. To adjust for exclusion of plant 1983-87.	\$ 48,640
B. To adjust for exclusion of plant 1988-TY.	5,523
C. To adjust for shared use of facilities.	4,703
D. To adjust for retirement of vehicle.	14,036
E. To adjust for reclassification	(270)
NET ADJUSTMENT	\$ 72,902
C.I.A.C.	
To adjust for incese.	\$ (280,753)
ACCUMULATED AMORTIZATION	
To adjust CIAC.	\$ 49,279

SUNSHINE UTILITIES, INC.
 SCHEDULE OF WATER OPERATIONS
 AS OF DECEMBER 31, 1991

SCHEDULE NO. 2
 DOCKET NO. 881030-WU

DESCRIPTION	PER 1991 ANNUAL RPT	COMMISSION ADJ PER RATE CASE (1)	COMMISSION ADJUSTED BALANCE
1 OPERATING REVENUES	\$ 543,752	\$ 0	543,752

OPERATING EXPENSES			
2 OPERATION AND MAINTENANCE	\$ 425,077	\$ 0	425,077
3 DEPRECIATION	26,358	0	26,358
4 TAXES OTHER THAN INCOME	46,485	0	46,485

5 TOTAL OPERATING EXPENSES	\$ 497,920	\$ 0	497,920

6 OPERATING INCOME	\$ 45,832	\$ 0	45,832
=====			
7 RATE BASE	\$ 663,474	\$	99,831
=====			
RATE OF RETURN	6.91%		45.91%
=====			

NOTE 1: NO ADJUSTMENTS WERE MADE BECAUSE THE UTILITY'S AMOUNTS CLOSELY MATCHED THOSE ADJUSTMENTS MADE IN THE RATE CASE.

**SUNSHINE UTILITIES, INC.
CAPITAL STRUCTURE
AS OF DECEMBER 31, 1991**

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

DESCRIPTION	AMOUNT PER 1991 ANNUAL RPT	% OF TOTAL CAPITAL	ACTUAL COST RATES	WEIGHTED COST
1 COMMON EQUITY	\$ 469,049	\$ 62.22%	\$ 11.89%	\$ 7.40%
2 LONG TERM DEBT	280,300	37.18%	10.46%	3.89%
3 CUSTOMER DEPOSITS	4,542	0.00%	8.00%	0.05%
4 TAX CREDITS	0	0.00%	0.00%	0.00%
5 DEFERRED INCOME TAXES	0	0.00%	0.00%	0.00%
TOTAL CAPITAL	\$ 753,891	100.00%		11.33%
RANGE OF REASONABLENESS			LOW	HIGH
	EQUITY		10.89%	12.89%