

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Initiation of Proceeding) DOCKET NO. 920318-WU
by Florida Public Service) ORDER NO. PSC-94-0088-FOF-WU
Commission to Require ST. GEORGE) ISSUED: January 25, 1994
ISLAND UTILITY COMPANY, LTD. in)
Franklin county to Escrow Funds)
for Payment of Regulatory)
Assessment Fees.)
_____)

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman
JULIA L. JOHNSON
LUIS J. LAUREDO

ORDER TO SHOW CAUSE

BY THE COMMISSION:

BACKGROUND

Pursuant to Section 367.145(1), Florida Statutes, the Commission is required to set a regulatory assessment fee that each utility must pay once a year in conjunction with filing its annual financial report. Rule 25-30.120(1), Florida Administrative Code, requires each utility to pay regulatory assessment fees based upon its gross operating revenue. Beginning January 1, 1991, each utility is required to pay a fee in the amount of four and one-half percent for the entire year.

Pursuant to Section 350.113(4), Florida Statutes, and Rule 25-30.120(5)(a), Florida Administrative Code, a penalty shall be assessed against any utility that fails to pay its regulatory assessment fees by March 31, in the following manner:

1. An assessment of 5 percent of the fee if the failure is for not more than 30 days, with an additional 5 percent for each additional 30 days or fraction thereof during the time in which the failure continues, not to exceed a total penalty of 25 percent.

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2. The amount of interest to be charged is 1% for each thirty days or fraction thereof, not to exceed a total of 12% per annum.

In addition, pursuant to Rule 25-30.120(5)(b), Florida Administrative Code, the Commission may impose an additional penalty upon a utility for failure to pay regulatory assessment fees in a timely manner in accordance with Section 367.161, Florida Statutes.

In the establishment of rates, this Commission includes in its determination of the revenue requirements for a utility the utility's obligation to pay regulatory assessment fees. In that way, the utility is authorized to collect the amount of regulatory assessment fees it must pay.

1988 - 1990 REGULATORY ASSESSMENT FEES

On January 30, 1990, St. George Island Utility Company, Ltd. (St. George or utility) paid the \$25 minimum regulatory assessment fees for 1989 for its wastewater system. However, no payment of regulatory assessment fees for 1989 was made for the water system. On November 14, 1990, St. George was notified that additional regulatory assessment fees were due for 1989, including penalties and interest. On December 6, 1990, the utility objected to the penalty and interest charges, and requested a waiver of the penalty and interest charges and of the payment schedule. In Order No. 24290, issued March 26, 1991, we denied the utility's request for waiver of penalties and interest. In addition, we ordered the utility to pay all outstanding regulatory assessment fees with penalties and interest according to a proposed payment schedule, within thirty days of the Order.

By Order No. 24884, issued August 6, 1991, this Commission established a \$2,500 monthly payment schedule for 1988 and 1989 regulatory assessment fees, including penalties and interest. Subsequently, the utility failed to pay the 1990 regulatory assessment fees, which continue to accrue penalties and interest. The amount of the delinquent fees, interest and penalties accrued through December 31, 1991, is \$26,550.54. After a diligent effort to collect the regulatory assessment fees with penalties and interest, by Order No. 25440, issued December 5, 1991, we found it appropriate to refer them to the Office of the Comptroller for further collection efforts. The Office of the Comptroller notified the Commission that it had, on January 17, 1992, assigned this matter to a collection agency.

1991 - 1993 REGULATORY ASSESSMENT FEES

The utility did not pay its outstanding 1991 regulatory assessment fees when they became due on March 31, 1992. However, the utility did file its 1991 regulatory assessment fees return indicating an outstanding regulatory assessment fee obligation of \$13,557.56. St. George did not indicate when it intended to pay these regulatory assessment fees. Until then, the utility had not complied with the Commission's ordered payment schedule. Therefore, to assure payment of its 1992 regulatory assessment fees, St. George was required by Order No. PSC-92-0478-FOF-WU, issued June 9, 1992, to establish an interest bearing escrow account for monthly deposits of 4.5 percent of its service billings.

Order No. PSC-92-0478-FOF-WU also required the utility to pay 1991 delinquent regulatory assessment fees by June 15, 1992. The utility paid \$15,997.92 on June 19, 1992, representing the 1991 delinquent regulatory assessment fees, penalties and interest. Along with its payment, the utility submitted a copy of its letter to the Comptroller's Office confirming that the utility will pay \$1,000 monthly towards past due regulatory assessment fees until the balance is paid in full.

As of May 28, 1992, the utility has made eleven monthly payments of \$1,000 to satisfy the balance owed that was referred to the Comptroller's Office. These payments satisfied both the 1988 and 1989 regulatory assessment fees balances, including \$2,383.60 toward the 1990 balance still outstanding.

To date, the utility has satisfied its regulatory assessment fees obligation for 1988, 1989, and 1991, but has not satisfied its regulatory assessment fees obligation for 1990, for which it remains delinquent in an amount of \$7,653.53.

The utility has complied with Order No. PSC-92-0478-FOF-WU by making monthly deposits into the escrow account to pay for its 1992 regulatory assessment fees. Though the 1992 regulatory assessment fees were due on March 31, 1993, it was not until April 22, 1993, that the utility submitted its regulatory assessment fees report indicating a \$15,809 amount due with a payment of \$12,100, leaving an escrow balance of \$58.61. The utility did not submit the additional \$3,709.18 regulatory assessment fees amount still due. The utility also did not indicate when it would pay the balance of its 1992 regulatory assessment fees nor did it offer any explanation as to why it had not already paid the balance due.

The utility was notified on June 25, 1993, that 1992 regulatory assessment fees of \$3,709.18 remained due and that the Commission had not received copies of the February 1993 through May 1993 deposit slips verifying that the deposits had been made. The utility has continued to submit monthly billing reports for verification of the monthly amount to be placed into escrow, but according to our records, we have not received the validated deposit slips that verify the deposits were made.

Following the filing of a recommendation by our staff that we order the utility to show cause why it should not be fined for its failure to fund the escrow account and for its failure to fully pay its 1992 regulatory assessment fees obligation, the utility deposited the \$6,707.34 required in the escrow account. Subsequently, on August 30, 1993, the utility submitted a check for \$3,709.18 to satisfy the remaining 1992 delinquent regulatory assessment fees amount. As a result of the utility's last minute compliance, the show cause recommendation was deferred.

The utility was notified on November 17, 1993, of its failure to file monthly revenue reports since August 1993, of its failure to make deposits into the escrow account since July 1993, and its failure to pay the penalty and interest balance of \$927.29. On November 23, 1993, the utility submitted the \$927.29 amount that was due along with the September and October 1993 revenue reports.

Though the utility indicated that the \$3,375 regulatory assessment fees amount for August and September 1993 would be paid by November 26, 1993, and that the \$1,885.11 regulatory assessment fees amount for October 1993 would be paid by November 30, 1993, none have been paid. The utility deposited the August 1993 regulatory assessment fee amount of \$1,717.05 on December 14, 1993. Up until our January 4, 1994, Agenda Conference, at which we voted to order St. George to show cause why it should not be fined for not properly funding the escrow account, the account had a deficient balance of \$4,098.77. However, on January 4, 1994, the utility made a deposit of \$556.01 for the November 1993 regulatory assessment fees, reducing the 1993 regulatory assessment fees escrow account deficiency to \$3,542.77. St. George remains delinquent for its September, October, and December 1993 regulatory assessment fees amounts required to have been put into escrow pursuant to Order No. PSC-92-0478-FOF-WU.

This utility has historically collected its regulatory assessment fees through its rates and has failed to pay them to the Commission as required by law. Regulatory assessment fees are intended to defray the costs incurred in this Commission's regulation of utilities.

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Apparently, the utility has no inclination to pay the fees voluntarily, nor does it appear that the utility is making a good faith effort toward payment. As a result, we find it appropriate to order the utility to show cause why it should not be fined for its failure to fund the escrow account as required by Order No. PSC-92-0478-FOF-WU.

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that St. George Island Utility Company, Ltd., in Franklin County, shall show cause, in writing, within 20 days why it should not be fined pursuant to Sections 350.113(4) and 367.161, Florida Statutes. It is further

ORDERED that St. George Island Utility Company, Ltd.'s written response 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 February 14, 1994. It is further

ORDERED that St. George Island Utility Company, Ltd.'s response must contain specific allegations of fact and law. It is further

ORDERED that St. George Island Utility Company, Ltd.'s opportunity to file a written response shall constitute its opportunity to be heard prior to final determination of this matter. It is further

ORDERED that a failure to respond to this show cause 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 this docket shall remain open to monitor the funding of the escrow account and the disposition of this show cause proceeding.

By ORDER of the Florida Public Service Commission, this 25th day of January, 1994.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

JBL

by: Kay Flynn

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.

This order is preliminary, procedural or intermediate in nature. 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 25-22.037(1), 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 February 14, 1994.

Failure to respond within the time set forth above shall constitute an admission of all facts and a waiver of the right to a hearing pursuant to Rule 25-22.037(3), Florida Administrative Code, and a default pursuant to Rule 25-22.037(4), Florida Administrative Code. Such default shall be effective on the day subsequent to the above date.

If an adversely affected person fails to respond to this order within the time prescribed above, that party may request judicial review by the Florida Supreme Court in the case of any electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or wastewater 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.