

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for ) DOCKET NO. 930892-WU  
amendment of Certificate No. ) ORDER NO. PSC-95-0624-FOF-WU  
488-W in Marion County by ) ISSUED: May 22, 1995  
VENTURE ASSOCIATES UTILITIES )  
CORP. )  
\_\_\_\_\_ )

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON  
JOE GARCIA  
DIANE K. KIESLING

ORDER DENYING INTERIM RATES AND GRANTING TEMPORARY  
RATES SUBJECT TO REFUND

BY THE COMMISSION:

BACKGROUND

Venture Associates Utilities Corporation (Venture or utility) is a developer-owned class B water utility which presently provides service to the Palm Cay subdivision within Marion County. On September 9, 1993, Venture filed its application to amend its existing water certificate to include additional territory to provide service to the Ocala Palms Subdivision. This property, as well as the existing Palm Cay property, is being developed by Venture Associates, an affiliated company. Within the additional territory, Venture proposes to serve an additional 798 equivalent residential connections (ERCs) consisting of single family homes and townhouses as well as a club house and community center. Venture proposes to provide only water service. Wastewater service will be provided to individual customers directly by the City of Ocala. However, it is anticipated that, at some point in the future, the City of Ocala will provide water service to the individual homes within the new territory.

Venture provides service to its Palm Cay system through an on-site water treatment plant. To provide service to the Ocala Palms Subdivision, Venture will purchase water from the City of Ocala through a master meter and resell to the individual water users within the development.

DOCUMENT NUMBER-DATE  
04916 MAY 22 '95  
REGISTRATION/REPORTING

By Order No. PSC-94-1621-FOF-WU, issued December 30, 1994, we, by final action, amended Venture's certificate to include the additional territory (Ocala Palms Subdivision) and by proposed agency action, approved rates and charges for the Ocala Palms Subdivision. On January 20, 1995, six customers timely filed protests to Order No. PSC-94-1621-FOF-WU. On the same date, the utility timely filed a protest to the Order. Accordingly, this matter has been scheduled for an administrative hearing. On March 24, 1995, Venture filed a Motion for Interim Rates. The basis for this request is that the utility is presently providing service, without compensation, to 90 homes and would like to recover costs pending finalization of this docket scheduled for June of 1996. The parties did not file a response to Venture's Motion and the time for filing a response has expired.

INTERIM RATES

In support of its Motion, Venture basically asserts the following:

1. Under the provisions of Section 367.082, Florida Statutes, the Commission may, during any proceeding for a change in rates...authorize the collection of interim rates until the effective date of the final order...;
2. The utility believes that it has established a prima facie entitlement for interim relief pursuant to Section 367.082, Florida Statutes;
3. The customers are demanding service and entitled to service, while the new rates proposed by the Commission are under protest;
4. The utility currently has Commission-approved tariffs on file which were established in the utility's original certificate docket. The utility plans to notify its customers of its intent to begin charging at least those rates pending the outcome of the decision on the interim rate request;
5. "Failure of the Commission to grant interim rate authority will result in confiscatory rate setting and discriminatory treatment between customers and will impose devastating hardship on the Utility;" and

6. The utility is able to provide necessary security to secure any potential refunds.

Upon review of the utility's Motion, we find that Venture is not entitled to interim rates as set forth in Section 367.082, Florida Statutes. This proceeding originated as a request for an amendment of territory and approval for the respective rates and charges for the Ocala Palms Subdivision. The utility filed its request pursuant to Section 367.045, Florida Statutes. As we stated in Order No. PSC-94-1621-FOF-WU, normally in amendment applications, the utility's existing rates and charges are applied to customers within the amended territory. In this particular case, since Venture is serving the territory as a reseller without investing in treatment facilities, we set rates for the Ocala Palms territory as if it were an original certificate case. Interim rate relief is not available in certificate proceedings. Therefore, we deny Venture's Motion for Interim Rates.

However, in analyzing Venture's request, the crux of Venture's request appears to be the approval of the PAA rates, on a temporary basis, in light of the protest, pending the final outcome of the proceeding. To the best of our knowledge, we have never had such a request. However, we find that this type of a request is reasonable. In staff-assisted rate cases, Section 367.0814(5), Florida Statutes, allows us to authorize the collection of temporary rates in the event of a protest or an appeal by a party other than the utility. In file and suspend rate cases processed under the proposed agency action procedure, if a protest is filed by a party other than the utility, Section 367.081(8), Florida Statutes, allows the utility to place the requested rates into effect under bond, escrow, or corporate undertaking subject to refund, upon notice to us. We have recognized in these cases that a protest might delay what may be a justified rate increase resulting in an unrecoverable loss of revenue to the utility. We find that the same logic can be used here. Although Section 367.045, Florida Statutes, does not specifically provide such a vehicle, we find that we have the implicit authority to approve such a request in Section 367.011(3), Florida Statutes. Furthermore, Section 367.081(2)(a), Florida Statutes, provides that we, either upon request or upon our own motion, shall fix rates which are just, reasonable, compensatory, and not unfairly discriminatory.

We, by Order No. PSC-94-1621-FOF-WU, established rates and charges for the customers in Ocala Palms Subdivision. From a practical standpoint, at the outcome of this proceeding, we may

find that the utility is rightfully entitled to collect the same rates and charges. To refuse Venture's request to collect the rates now, subject to refund, could result in an unrecoverable loss of revenues to the utility. Since the utility is, in fact, proposing to collect the revenue subject to refund, the utility is protected, as well as the customers, if there were to be a refund.

The utility is currently serving approximately 90 customers within the Ocala Palms subdivision at no charge. While we find that the utility should be allowed to begin charging these customers the previously approved proposed agency action rates, the utility should not be allowed to charge them service availability charges since they are already connected to the system. The service availability charges shall be effective only for connections made on or after the approval date of the tariff.

In consideration of the foregoing, we find it appropriate to allow Venture to collect the previously approved proposed agency action rates and charges as temporary rates, subject to refund, with interest, pending the final outcome of this proceeding. Venture shall file revised tariff sheets consistent with our vote on this matter within 30 days of the issuance of this order, security for a potential refund, and a proposed customer notice for our Staff's approval. The rates shall be effective for meter readings made on or after the stamped approval date of the tariff sheets. The service availability charges shall be effective for connections made on or after the stamped approval date of the tariff sheets. The PAA rates and charges approved by Order PSC-94-1621-FOF-WU are as follows:

WATER  
Residential and General Service  
Monthly Service

<u>Base</u> <u>Facility</u> <u>Charge</u> <u>Meter Size</u>	<u>Commission</u> <u>Approved</u> (Ocala Palms)
5/8" x 3/4"	\$ 7.06
3/4"	10.59
1"	17.65
1-1/2"	35.30

2"	56.48
3"	112.96
4"	176.50
6"	353.00
8"	564.80

Gallonage Charge  
(per 100 cubic  
feet) \$ 1.31

Bill at 1,300  
cubic feet  
(9,724 gal.) \$ 24.09

Service Availability: Main Extension Charge - \$650.00  
Meter Installation Charge - \$100.00

Additionally, the tariff shall specify that the utility will collect and pass through to the city its impact fee of \$536.00 per ERC.

#### SECURITY

As stated earlier, the rates shall be approved subject to refund, with interest. The security shall be in the form of a bond or letter of credit in the amount of \$40,000. Alternatively, the utility may establish an escrow agreement with an independent financial institution.

If the utility chooses a bond as security, the bond shall contain wording to the effect that it will be terminated only under the following conditions:

- 1) The Commission approves the PAA rates and charges; or
- 2) If the Commission decreases the PAA rates and charges, the utility shall refund the amount collected that is in excess of the final rates and charges.

If the utility chooses a letter of credit as security, it shall contain the following conditions:

- 1) The letter of credit is irrevocable for the period it is in effect.
- 2) The letter of credit will be in effect until final Commission order is rendered, either approving or denying rates.

If security is provided through an escrow agreement, the following conditions shall be part of the agreement:

- 1) No refunds in the escrow account may be withdrawn by the utility without the express approval of the Commission.
- 2) The escrow account shall be an interest bearing account.
- 3) If a refund to the customers is required, all interest earned by the escrow account shall be distributed to the customers.
- 4) If a refund to the customers is not required, the interest earned by the escrow account shall revert to the utility.
- 5) All information on the escrow account shall be available from the holder of the escrow account to a Commission representative at all times.
- 6) The amount of revenue subject to refund shall be deposited in the escrow account within seven days of receipt.
- 7) This escrow account is established by the direction of the Florida Public Service Commission for the purpose(s) set forth in its order requiring such account. Pursuant to Cosentino v. Elson, 263 So. 2d 253 (Fla. 3d DCA 1972), escrow accounts are not subject to garnishments.
- 8) The Director of Records and Reporting must be a signatory to the escrow agreement.

In no instance shall the maintenance and administrative costs associated with the refund be borne by the customers. These costs are the responsibility of, and shall be borne by, the utility. Irrespective of the form of security chosen by the utility, an account of all monies received as result of the rate increase shall be maintained by the utility. This account must specify by whom and on whose behalf such monies were paid. If a refund is

ultimately required, it shall be paid with interest calculated pursuant to Rule 25-30.360(4), Florida Administrative Code.

The utility shall maintain a record of the amount of the bond, and the amount of revenues that are subject to refund. In addition, after the increased rates are in effect, the utility shall file reports with the Division of Water and Wastewater no later than 20 days after each monthly billing. These reports shall indicate the amount of revenue and CIAC collected under the temporary rates and charges.

In light of the protests, this docket has been scheduled for an administrative hearing. This docket shall remain open pending the outcome of the hearing and the disposition of the case.

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that Venture Associates Utilities Corp.'s Motion for Interim Rates is hereby denied. It is further

ORDERED that Venture Associates Utilities Corp. shall be allowed to collect the proposed agency action rates and charges previously approved by the Commission in Order No. PSC-94-1621-FOF-WU as temporary rates. It is further

ORDERED that the temporary rates shall be subject to refund, with interest, pending the final outcome of this docket. It is further

ORDERED that Venture Associates Utilities Corp. shall file revised tariff sheets for the approved rates and charge within thirty days of this Order. It is further

ORDERED that the rates and charges approved herein shall be for service rendered on or after the stamped approval date of the revised tariff sheets.

ORDERED that Venture Associates Utilities Corp. shall provide the Commission with a proposed customer notice for Staff's approval within thirty days of this Order. It is further

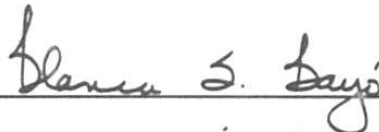
ORDERED that Venture Associates Utilities Corp. shall provide the Commission with a bond or letter of credit in the amount of \$40,000.00 or in the alternative shall provide an escrow agreement, as a guarantee of any potential refund of water revenues collected under temporary conditions. It is further

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ORDERED that by no later than the twentieth day of each month, Venture Associates Utilities Corp. shall file a report showing the amount of revenues collected each month and the amount of revenues collected to date relating to the amount subject to refund. It is further

ORDERED that this docket shall remain open.

By ORDER of the Florida Public Service Commission, this 22nd day of May, 1995.



BLANCA S. BAYÓ, Director  
Division of Records and Reporting

( S E A L )

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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.

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