

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for staff- ) DOCKET NO. 950641-WU  
assisted rate case in Palm Beach ) ORDER NO. PSC-95-1037-FOF-WU  
County by Lake Osborne Utilities ) ISSUED: August 21, 1995  
Company, Inc. )  
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The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK, Chairman  
J. TERRY DEASON  
JOE GARCIA  
JULIA L. JOHNSON  
DIANE K. KIESLING

ORDER GRANTING EMERGENCY RATES AND CHARGES

BY THE COMMISSION:

BACKGROUND

Lake Osborne Utilities Company, Inc. (LOU or utility) is a Class C water utility located in Palm Beach County. In October, 1972, this Commission granted a transfer of Certificate No. 53-W from Joseph D. Farish, Jr., d/b/a Lake Osborne Utility Company, to Lake Osborne Utility Company, Inc. On November 5, 1974, the utility connected its existing distribution system to the City of Lake Worth Water Authority. At this time, the utility ceased operating its own water treatment facility. The utility has had two general rate increases, one in 1974 (Order No. 6164) and the other in 1983 (Order No. 11967). The utility has also had several index increases (1978, 1991, 1992, 1993 and 1994). The utility currently provides water service to 464 customers.

On June 13, 1995, the utility applied for the instant staff assisted rate case and included in its application a request for an emergency rate increase. Until capital improvements can be thoroughly examined within the scope of this staff assisted rate case, the utility would like to recover at least its operating and maintenance costs, along with the related regulatory assessment fees.

EMERGENCY RATES

Upon our request, the utility submitted documentation of its operation and maintenance (O&M) expenses for the twelve month

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period ending December 31, 1994. During this twelve month period, LOU's O&M expenses have exceeded revenues by \$5,538. By following the time schedule of a typical staff assisted rate case, the earliest date at which LOU could hope to receive compensatory rates would be February 1, 1996. Therefore, we find it appropriate to approve emergency rates, subject to refund, to minimize operating losses while awaiting the outcome of the ongoing staff assisted rate case.

It has been our practice to deny the allowance of emergency rate relief in an attempt to encourage timely filing for rate relief. While this utility has not sought timely rate relief, we find it appropriate to provide adequate funds to provide coverage of day-to-day cash operating expenses. We find that this allowance is critical if the utility is to provide safe and reliable service and not be unduly penalized awaiting determination of final rates. While it is true that the financial data relied upon in this Order has not been audited, we find that the information provided to support the request for emergency rate relief, along with a comparison of similarly sized utilities, supports the allowance of intermediate recovery of day-to-day operational and maintenance expense. Should expenses such as testing, chemicals, or operator services, to name a few, go unpaid, the ratepayers could be placed at risk. While in the instant case public health, safety, and welfare are not at issue, we find that a policy against emergency rate relief hampers small utilities from doing the day-to-day maintenance that is required to maintain minimum levels of service. Based on our analysis of current operating expenses and the insufficient revenue to cover these expenses, we hereby grant LOU emergency rate relief.

The data submitted by the utility has been analyzed by us, adjusted where necessary, grossed-up for regulatory assessment fees, and netted with annual revenues. The percentage increase derived was then applied to the utility's existing rate schedules to develop the approved rates. These calculations do not include depreciation expense or rate of return, as is customary in the calculation of emergency rate relief. Calculations of the approved increases are contained on Schedule No. 1. The emergency rates approved herein are based solely on the shortfall of operation and maintenance expenses over revenues, grossed-up for regulatory assessment fees. The utility produced documentation of these expenses in a timely fashion upon our request. A thorough examination of the utility's quality of service, rate base, rates and charges is currently scheduled for the December 19, 1995, agenda conference. The approved rates, which will allow Lake Osborne Utilities Company, Inc. to recover its operating and

maintenance expenses, grossed-up for regulatory assessment fees, are as follows:

WATER  
MONTHLY RATES  
General and Residential

<u>Base Facility Charge</u>	<u>Existing</u>	<u>Emergency Temporary Approved</u>
<u>Meter Size</u>		
5/8" x 3/4"	\$ 2.78	\$ 3.04
1"	\$ 6.98	\$ 7.64
1 1/2"	\$ 13.96	\$ 15.27
2"	\$ 22.34	\$ 24.44
3"	\$ 44.68	\$ 48.88
4"	\$ 69.81	\$ 76.38
6"	\$139.59	\$ 152.73
 <u>Gallonage Charge</u>		
Per 1,000 gallons	\$ 1.75	\$ 1.91

SECURITY

In order to protect the customers in the event that the final rates are less than those received as a result of the emergency increase authorized, we find that the utility shall provide security in the amount of \$8,691. The approved rates collected by the utility shall be subject to the refund provisions discussed below.

The utility shall be authorized to collect the emergency rates after staff's approval of the security for potential refund, a copy of the proposed customer notice, and revised tariff sheets. The security shall be in the form of a letter of credit in the amount of \$8,691. Alternatively, the utility may establish an escrow agreement with an independent financial institution.

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 a final Commission order is rendered, either approving or denying the rate increase.

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

- 1) No funds 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 a 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 should 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 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 collected under the increased rates.

EFFECTIVE DATE

The approved emergency rates shall be effective for meter readings on or after thirty days from the stamped approval date on the revised tariff sheets.

The revised tariff sheets shall be approved upon staff's verification that the tariffs are consistent with the Commission's decision, that the proposed customer notice is adequate, and that security has been provided. This docket shall remain open for the processing of the staff assisted rate case.

Based on the foregoing, it is, therefore

ORDERED by the Florida Public Service Commission that Lake Osborne Utilities Company, Inc.'s request for an emergency rate increase is hereby approved as set forth in the body of this order. It is further

ORDERED that the increased rates shall be subject to refund in accordance Rule 25-30.360, Florida Administrative Code. It is further

ORDERED that, pursuant to Rule 25-30.360(6), Florida Administrative Code, Lake Osborne Utilities Company, Inc. shall provide a report by the twentieth day of each month, indicating the monthly and total revenues collected subject to refund. It is further

ORDERED that Lake Osborne Utilities Company, Inc. shall file revised tariff sheets in accordance with the provisions of this Order. It is further

ORDERED that Lake Utilities Company, Inc. shall file a proposed notice to its customers detailing the increased rates and the reasons therefor. This notice shall be submitted to this Commission for prior approval. It is further

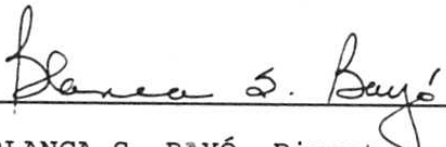
ORDERED that Lake Utilities Company, Inc. shall file a letter of credit in the amount of \$8,691 as a guarantee for any potential refund. Alternatively the utility may establish an escrow agreement with an independent financial institution pursuant to the terms and conditions set forth within the body of this Order. It is further

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ORDERED that the emergency water rates approved herein shall be effective for meter readings on or after thirty days from the stamped approval date on the revised tariff sheets. The revised tariff sheets will be approved upon Staff's verification that they are consistent with the Commission's decision, that the proposed customer notice is adequate, and that there is appropriate refund security. It is further

ORDERED that this docket shall remain open to process Lake Utilities Company, Inc.'s application for a staff-assisted rate increase.

By ORDER of the Florida Public Service Commission, this 21st day of August, 1995.

  
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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 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.