

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Request for ) DOCKET NO. 951244-WS  
Establishment of Payment Plan ) ORDER NO. PSC-95-1514-FOF-WS  
for Delinquent 1992 and 1994 ) ISSUED: December 6, 1995  
Regulatory Assessment Fees in )  
Martin County by Fisherman's )  
Cove of Stuart, Inc. )  
\_\_\_\_\_ )

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 APPROVING PAYMENT PLAN

BY THE COMMISSION:

Fisherman's Cove of Stuart, Inc. (Fisherman's Cove or utility) is a Class "C" water and wastewater utility located in Martin County. The utility provides water and wastewater service to approximately 524 residential customers. The utility's service area is composed of duplexes. According to the utility's 1994 annual report, it had operating revenues of \$95,991 for water and \$134,594 for wastewater and an operating loss of \$698 for water and net operating income of \$11,797 for wastewater.

The utility's 1992 regulatory assessment fees (RAFs) have until very recently been in arrears, and its 1994 RAFS continue in arrears. On April 25, 1995, the utility proposed to pay \$1,000 per month against its delinquent 1994 RAFs, and on August 29, 1995, the utility proposed to pay \$1,000 per month against its delinquent 1992 RAFs. On October 18, 1995, we notified the utility that the proposed payment plans were not sufficient, and we suggested plans that would discharge the utility's RAFs obligations by March 31, 1996. The utility has paid its RAFs for 1993.

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

Applicable Law and Policy

Section 350.113 (3), Florida Statutes, provides that the Commission, "for good cause shown by written request, may extend for a period not to exceed 30 days the time for paying any fee ...." Rule 25-30.120 (1), Florida Administrative Code, requires utilities to pay a regulatory assessment fee in the amount of four and one-half per cent of gross revenues for the entire year. Rule 25-30.120 (2) (a), Florida Administrative Code, provides that "[r]egulatory assessment fees shall be filed ... on or before March 31 for the preceding year ended December 31." Rule 25-30.120 (2) (b), Florida Administrative Code, provides that "[e]ach utility shall have up to and including the due date in which to: 1. remit the total amount of its fee, or 2. Remit an amount which the utility estimates is its full fee, or 3. Seek and receive from the Division of Administration a 30-day extension of its due date ...." If a utility fails to timely pay the regulatory assessment fee as provided in Rule 25-30.120 (2) (b), Florida Administrative Code, a penalty shall be assessed and interest charged, as provided in Section 350.113 (4), Florida Statutes, and Rule 25-30.120 (5), Florida Administrative Code. The Commission in three other dockets has construed these provisions to bar waiver of regulatory assessment fees, penalties, and interest, but not to preclude a reasonable payment schedule to redress a utility's delinquency. The basic purpose of these provisions would appear to be to set forth the conditions for which penalties, interest and collection costs may be assessed against a delinquent regulated company.

In Docket No. 900961-SU, *In Re: Request for waiver of penalty and interest added to regulatory assessment fees for 1989, by St. George Island, Company, Ltd., in Franklin County*, the Commission, in Order No. 24290, *Order Denying Petition for Waiver of Penalties and Interest*, issued March 26, 1991, permitted the utility to submit a proposed payment schedule for its outstanding regulatory assessment fees, penalties and interest. The Commission noted that it had no statutory authority to grant waiver, and that Section 350.113(5), Florida Statutes, permitted a fee deadline to be extended 30 days for good cause shown. In Order No. 24884, *Order Establishing Payment Schedule for 1988 and 1989 Regulatory Assessment Fees*, issued August 6, 1991, the Commission rejected the utility's proposed payment schedule of \$250 per month for 52 months, but authorized a payment schedule of \$2,500 per month until the balance, then \$13,036, was paid.

In Docket No. 940974-WU, *Application for staff-assisted rate case in Putnam County by Landis Enterprises, Inc.*, the Commission, in Order No. PSC-94-1464-FOF-WU, *Order Establishing Payment Schedule for Application Filing Fees and Delinquent Regulatory*

*Assessment Fees, Including Penalties and Interest*, issued November 29, 1994, permitted the utility to pay its delinquent 1992 and 1993 regulatory assessment fees, with penalties and interest, in four monthly installments. The Commission found that a 12-month period beginning with the due date for the 1993 fee in which to remit the fees was reasonable in the circumstances. It again noted that "[p]ursuant to Sections 350.113(4) and (5), ... and Rule 25-30.120(5), Florida Administrative Code, we are required to collect interest, penalties and collection costs ... Neither the Florida Statutes nor the Commission Rules provide us with discretion to waive fees, penalties and interest." See also, Order No. PSC-94-1463-FOF-WS, *Order Holding Staff-Assisted Rate Case in Abeyance, Conditionally Approving Payment Plan for Application Filing Fees, Conditionally Approving Payment Plan for Delinquent Regulatory Assessment Fee, Denying Request for Waiver of Penalties and Interest, Denying Reinstatement of Suspended Fine, and Order to Show Cause*, issued November 29, 1994, Docket No. 940982-WS, *In Re: Application for staff-assisted rate case in Volusia County by Pine Island Utility Corporation*.

#### 1992 Regulatory Assessment Fees

Fisherman's Cove reported gross revenues of \$96,556.44 for water and \$135,139.52 for wastewater in its 1992 annual report, resulting in a RAFs obligation of \$10,426.32 plus penalty and interest of \$5,853, a current total of \$16,279.32. On April 8, 1993, our staff notified Fisherman's Cove that its request for an extension for payment of 1992 RAFs had not been received in time for Commission action to be taken prior to the payment due date of March 31, 1993, and that the RAFs along with penalty and interest should be paid as soon as possible. Again, on April 28, 1993, our staff notified the utility of its obligation to pay its 1992 RAFs plus penalty and interest. On May 3, 1993, the utility explained that it had delayed as long as possible to request an extension because of difficulty in accurately establishing its 1992 revenues. It asked for reconsideration of its request for an extension. The utility's request for reconsideration was not granted, and it was not until April 29, 1994, that the utility filed its 1992 annual report.

On August 8, 1995, our staff once more notified the utility of its obligation to pay its 1992 RAFs, plus penalty and interest. On August 29, 1995, the utility submitted a payment of \$3,000 and proposed to pay \$1,000 by the 15th of each month until the balance would be paid in full. Our staff informed the utility that the proposed payment plan was not reasonable because at the proposed rate the 1992 RAFs would not be paid off until August, 1996, more than three years after the initial due date of March 31, 1993.

Thereupon, the utility made payments on September 19, 1995, of \$1,000, on October 10, 1995, of \$1,000, on October 25, 1995, of \$1,000, and on November 17, 1995, of \$10,279.32, fully discharging its 1992 RAFs obligation.

1994 Regulatory Assessment Fees

Fisherman's Cove reported gross operating revenues of \$95,991 for water and \$134,594 for wastewater in its 1994 annual report, resulting in a RAFs obligation of \$10,376.33 plus penalty and interest of \$2,794.19, a current total of \$13,170.52. On April 25, 1995, the utility submitted a payment of \$1,000 and proposed to pay \$1,000 by the 15th of each month until the balance would be paid in full. Although we believe this to be a reasonable proposal because its 1994 RAFs would be paid off before its RAFs for 1995 would become due, the utility subsequently made further payments on October 25, 1995, of \$1,000, and on November 17, 1995, of \$1,434.11, leaving a balance owed of \$4,736.41. Accordingly, we find it appropriate to permit the utility to discharge the balance of its 1994 RAFs, including interest and penalties, by means of a payment plan of \$1,184.10 per month, with the first payment due December 15, 1995. At this rate, the balance will be discharged by March 31, 1996. We note that our approval of a payment plan for delinquent regulatory assessment fees is subject to the final approval of the Department of Banking and Finance.

In addition, we place the utility on notice that if 1995 RAFs are not paid by the due date of March 31, 1996, a proceeding will be initiated to require the utility to place into an interest bearing escrow account 4.5% of the total monthly service revenues billed by the utility.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Fisherman's Cove of Stuart, Inc., shall be permitted to discharge the balance owed of its 1994 regulatory assessment fees according to the payment plan described herein, subject to the final approval of the Department of Banking and Finance. It is further

ORDERED that this docket shall be closed.

ORDER NO. PSC-95-1514-FOF-WS  
DOCKET NO. 951244-WS  
PAGE 5

By ORDER of the Florida Public Service Commission, this 6th  
day of December, 1995.

BLANCA S. BAYÓ, Director  
Division of Records and Reporting

by: Kay Flynn  
Chief, Bureau of Records

( S E A L )

CJP

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, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, 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 and/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 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.