

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for staff- ) DOCKET NO. 941234-WS  
assisted rate case in Brevard ) ORDER NO. PSC-96-0591-FOF-WS  
County by Aquarina Developments, ) ISSUED: May 6, 1996  
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 MAKING ORDER NO. PSC-95-1417-FOF-WS FINAL,  
WITH AN EFFECTIVE DATE OF APRIL 16, 1996, RELEASING  
ESCROWED FUNDS TO UTILITY, REQUIRING UTILITY TO MAKE REFUND  
AND FINDING SHOW CAUSE PROCEEDING NOT WARRANTED

BY THE COMMISSION:

BACKGROUND

Aquarina Developments, Inc. (Aquarina or utility) is a Class C water and wastewater utility. On November 23, 1994, the utility applied for this staff-assisted rate case. We approved an historical test year ended December 31, 1994. Based on our audit, the utility recorded test year revenue of \$48,353 for water and \$43,097 for wastewater. The recorded operating expenses were \$63,007 for water and \$53,523 for wastewater, which resulted in a operating loss of \$14,654 for water and \$10,426 for wastewater.

By proposed agency action (PAA) Order No. PSC-95-1417-FOF-WS, issued November 21, 1995, we approved increased rates for water and wastewater, new rates for non-potable water used for irrigation and new meter installation charges for non-potable water. By this Order, we also authorized the utility to collect the approved rates as temporary rates, subject to refund, in the event of a protest.

On December 12, 1995, customers on behalf of five homeowners associations timely petitioned this Commission for a formal proceeding for this case. This case was scheduled for a prehearing on April 26, 1996 and hearing on May 30 and 31, 1996. On March 5, 1996, the customers filed a request for withdrawal of petition for formal proceeding.

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

WITHDRAWAL OF PROTEST

As mentioned earlier, by PAA Order No. PSC-95-1417-FOF-WS, we granted the utility final rates and charges. A timely protest to this PAA Order was filed on December 12, 1995. On March 5, 1996, the customers filed a request for withdrawal of petition for formal hearing. In the request for withdrawal, the customers state that they do not wish to incur rate case expense associated with the formal hearing. We find that no adjustments are necessary. Therefore, we find it appropriate to make Order No. PSC-95-1417-FOF-WS final, with an effective date of April 16, 1996. The escrowed funds for rates charged for service on or after March 1, 1996, shall be released to the utility.

REFUND

Order No. PSC-95-1417-FOF-WS was issued as PAA, except for the granting of temporary rates in the event of a protest. We authorized the utility to collect the rates approved in Order No. PSC-95-1417-FOF-WS on a temporary basis subject to refund in accordance with Rule 25-30.360, Florida Administrative Code. However, prior to the implementation of the rates and charges approved in this Order, we ordered the utility to submit and have approved by staff, revised tariff pages consistent with the our decision, provide proof that customers received adequate notice of the rate increase, and submit and have approved by staff a bond or letter of credit in the amount of \$45,960, or an escrow agreement as a guarantee of any potential refund of revenues collected on temporary basis.

As stated earlier, on December 12, 1995, PAA Order No. PSC-95-1417-FOF-WS was timely protested. The utility submitted revised tariff sheets and proof of customer noticing on November 28, 1995. On February 7, 1996, after the protest was filed, we received an escrow agreement from SunTrust Central Florida, N.A. This agreement was not in compliance with the our Order in that the escrow account was non-interest bearing and the Director of Records and Reporting's name was not listed on the signature card. Our staff informed the utility's of same. On March 1, 1996, the corrections were made. On March 5, 1996, we received a request for withdrawal of petition for a formal proceeding. Since the utility satisfied all requirements of Order No. PSC-95-1417-FOF-WS on March 1, 1996, the utility's tariffs for temporary rates were stamped effective March 1, 1996.

Based on a phone conversation with the utility, our staff discovered that the utility implemented the temporary rates for consumption beginning January 8, 1996. Therefore, it became

apparent that the utility collected the temporary rates prior to approval. Accordingly, we find it appropriate that the utility make refunds to customers for any consumption billed using the temporary rates, for all billings prior to March 1, 1996. Customer accounts shall be credited with the difference between the old rates and the temporary rates plus interest in accordance with Rule 25-30.360, Florida Administrative Code. The utility shall provide proof of the customer credits within 90 days of the date of the Order.

NO SHOW CAUSE REQUIRED

As stated earlier, it was discovered that Aquarina began collecting the temporary rates authorized in Order No. PSC-95-1417-FOF-WS prior to receipt and approval of the appropriate security. Pursuant to Section 367.081, Florida Statutes, a utility may only collect rates and charges authorized by the Commission. It appears that Aquarina has violated Section 367.081, Florida Statutes and Order No. PSC-95-1417-FOF-WS, which provided specifically that the rates could only be implemented after certain requirements were met (notice to customers, approval of revised tariff sheets, and appropriate security).

We find the utility's action "willful" in the sense intended by Section 367.161, Florida Statutes. Section 367.161, Florida Statutes, authorizes us to assess a penalty of not more than \$5,000 for each offense, if a utility is found to have knowingly refused to comply with, or to have willfully violated any provision of Chapter 367, Florida Statutes or Commission order. In Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL, titled In Re: Investigation Into The Proper Application of Rule 25-14.003, F.A.C., Relating To Tax Savings Refund For 1988 and 1989 For GTE Florida, Inc., this Commission, having found that the company had not intended to violate the rule, nevertheless found it appropriate to order it to show cause why it should not be fined, stating that "[i]n our view, 'willful' implies an intent to do an act, and this is distinct from an intent to violate a statute or rule." Id. at 6.

Although the utility's collection of the rates occurred prior to the utility's compliance with all of the requirements of Order No. PSC-95-1417-FOF-WS, we find that a show cause proceeding is not warranted for two reasons. First, we find that a refund is the more appropriate method to remedy this violation. It assures that the customers receive the money to which they are entitled and it ensures that the utility's financial integrity is not jeopardized by a fine imposed in this instance. Second, based upon utility statements, it is apparent that the rates were implemented based on the utility's misunderstanding that it met all requirements of

Order No. PSC-95-1417-FOF-WS. The utility mistakenly believed that the notice to the customers and the proposed tariffs satisfied those requirements. Based on the foregoing, we find that the utility's actions under these circumstances do not rise to the level of warranting initiation of show cause proceedings. Accordingly a show cause proceeding shall not be initiated against Aquarina Development, Inc. for violation of Section 367:081, Florida Statutes and Order No. PSC-95-1417-FOF-WS.

CLOSING OF DOCKET

Pursuant to Order No. PSC-95-1417-FOF-WS, pro forma meter and pump costs were included in rate base for the non-potable water plant. The Order provided that the docket would remain open for 90 days, pending staff's verification of completion of meter and pump installations for the non-potable water plant. Therefore, this docket shall remain open for an additional 90 days from the issuance of the date of this Order, to allow staff time to verify completion of meter and pump installations for the non-potable water plant, and to allow the utility time to provide proof of customer refunds. This docket shall be closed administratively when all requirements of Order No. 95-1417-FOF-WS have been met.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Order No. PSC-94-1417-FOF-WS shall be made final, with an effective date of April 16, 1996. It is further

ORDERED that the escrowed funds for rates charged for service on or after March 1, 1996, be released to Aquarina Developments, Inc. It is further

ORDERED that Aquarina Developments, Inc. shall make refunds to customers for any consumption using the temporary rates for all billing prior to March 1, 1996. Customer accounts shall be credited with the difference between the old rates and the temporary rates plus interest in accordance with Rule 25-30.360, Florida Administrative Code. It is further

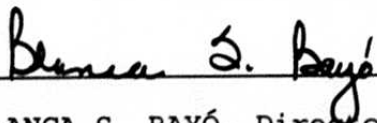
ORDERED that Aquarina Developments, Inc. shall provide staff with proof of customer credits within 90 days of the issuance date of this Order. It is further

ORDERED that a show cause proceeding shall not be initiated against Aquarina Developments, Inc. for violation of Section 367.081, Florida Statutes and Order No. PSC-95-1417-FOF-WS. It is further

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ORDERED that this Docket shall be closed administratively after Aquarina Developments, Inc. has provided proof of customer credits and upon staff's verification of meter and pump installations for non-potable water and that all requirements of Order No. PSC-95-1417-FOF-WS have been met.

By ORDER of the Florida Public Service Commission, this 6th day of May, 1996.

  
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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 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.