

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Investigation into ) DOCKET NO. 920010-WU  
appropriate rate Level for water ) ORDER NO. PSC-96-1203-FOF-WU  
service by Jasmine Lakes ) ISSUED: September 23, 1996  
Utilities Corporation )  
\_\_\_\_\_ )

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

NOTICE OF PROPOSED AGENCY ACTION  
ORDER REQUIRING REFUNDS AND RELEASING ESCROW FUNDS

BY THE COMMISSION:

NOTICE IS HEREBY GIVEN by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

BACKGROUND

Jasmine Lakes Utilities Corporation (Jasmine Lakes or utility) is a Class B utility, which provides water and wastewater services to over 1,500 residential customers and approximately 35 commercial customers in New Port Richey, Florida. According to the utility's 1995 Annual Report, Jasmine Lakes had operating revenues of \$421,520 and net operating income of \$33,456 for the water system and operating revenues of \$329,899 and net income of \$36,341 for the wastewater system. Jasmine Lake's service area is located in the Northern Tampa Bay Water-Use Caution Area as designated by the Governing Board of the South Florida Water Management District.

In July 1990, Jasmine Lakes acquired the assets of Jasmine Lakes Service, Inc.. We approved the transfer of assets by Order No. 23728, issued November 7, 1990, in Docket No. 900291-WS. The utility purchases water from Pasco County (county) for resale to its customers. In April 1989, the county increased its bulk purchase water rate from \$1.99 per thousand gallons to \$2.37 per thousand gallons. The previous owner failed to pass this increased cost through to the customers. Under the provisions of Section 367.081(4)(b), Florida Statutes, the utility was barred from

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recovering this increased cost through the pass-through mechanism because the increase was initiated more than 12 months before the utility's filing. As a result, on December 20, 1990, Jasmine Lakes filed an application for a limited proceeding water rate increase. By Order No. 24275, in Docket No. 901000-WS, issued March 25, 1991, we approved a revenue increase in the amount of \$36,933 based on a new rate of \$3.33 per thousand gallons for water. The increased rate became effective on April 16, 1991.

On November 12, 1991, the county informed us that since August 1990 Jasmine Lakes had refused to pay for any of the water it received from the county, claiming that the county's rates discriminated against wholesale users. On July 19, 1991, the county initiated a civil suit against Jasmine Lakes in circuit court regarding the disputed amount, which as of September 29, 1991, totalled \$251,628.85, including \$16,076 in interest.

The utility failed to advise us that it was not paying the county when it requested the limited proceeding increase to cover the increased cost of purchased water. Moreover, Jasmine Lakes began charging its customers the rates that were approved in the limited proceeding for the county's bulk water increase, while continuing to refuse to pay the county for the purchased water it received. As a result, the instant investigation was opened on January 3, 1992.

In Order No. PSC-92-0260-FOF-WU, issued April 28, 1992, in this docket, we found that we have the authority to make all increase-related revenues approved in Order No. 24275 subject to refund, i.e., those collected as of April 16, 1991, the date the new rates went into effect. Therefore, by Order No. PSC-92-0260-FOF-WU, and Order No. PSC-92-0700-FOF-WU, issued July 22, 1992, on reconsideration, we placed all revenues collected pursuant to Order No. 24275 subject to refund. We required Jasmine Lakes to provide a bond, letter of credit or escrow agreement as a guarantee of any potential refunds of water revenues collected. The utility elected to escrow the increase, and has submitted monthly reports of the escrow account to date. As of June 30, 1996, the balance in the escrow account set up in accordance with Order No. 25790, issued February 24, 1992, was \$138,563 and the balance in the escrow account set up in accordance with Order No. PSC-92-0700-FOF-WU was \$30,123. The total balance in both escrow accounts as of June 30, 1996, was \$168,686.

In June 1996, Jasmine Lakes and the county resolved the litigation by entering into a settlement agreement, which the Pasco County Board of County Commissioners has approved. Under the terms of that settlement agreement, the utility will be required to repay all of the back charges for bulk water service to the county at the

rates previously billed and apparently still owing. The agreement is conditioned upon our release of the escrow.

In the pendency of the county's lawsuit, Jasmine Lakes filed for three price index rate adjustments for 1993, 1994, and 1995. However, the utility did not implement those index increases. Now, Jasmine Lakes has filed its 1996 price index rate increase and purchased water pass-through rate decrease with rates to be effective for service rendered on or after September 8, 1996. Having reached a settlement of the litigation with Pasco County, Jasmine Lakes proposed to implement the indexes for 1993, 1994, 1995 and 1996 all at once, together with the negative pass-through for the county's bulk water service rate reduction, which was effective April 1, 1996.

#### REFUNDS

As noted above, by Orders Nos. 25790 and PSC-92-0260-FOF-WU, we ordered the utility to collect subject to refund the revenue increase we approved in Order No. 24275 in its entirety. However, in Order No. PSC-92-0700-FOF-WU, upon reconsideration, we revised the retrospective refund period to the nine-month period May 1991 to January 1992 from the 11 month period April 1991 to February 1992, and the additional amount to be escrowed to \$27,437 from \$37,244, as stated in Order No. PSC-92-0260-FOF-WU.

On March 9, 1992, Jasmine Lakes submitted a draft escrow agreement which the utility proposed to utilize to comply with the requirements of Order No. 25790. In Order No. PSC-92-0260-FOF-WU, we took issue with the following in the draft agreement:

These monies are being retained in escrow, pending final determination by the Commission of what overearnings, if any, are created by the Utility as a result of the cost of the operation of its water system.

We found that this inappropriately conditioned the refund of these monies on a determination that the utility was overearning. The utility's position was that we would not be authorized to require a refund of these monies if such a refund would cause its rate of return to fall below the minimum of its authorized range. However, we found that that was not the appropriate test, because the purpose for the revenue increase had not been to address the utility's earnings posture, but rather to specifically recover the increased cost of the bulk water the utility was purchasing from the county. Further, we found that if the utility was underearning, its recourse was to file a rate case, which, in fact, Jasmine Lakes did in Docket No. 920148-WS.

By letter dated July 15, 1996, Jasmine Lakes informed us of the settlement agreement reached with the county. Section 22 of the agreement provides that:

A specific condition precedent to the effectiveness of this Agreement shall be the Florida Public Service Commission's authorization to Jasmine Lakes Utilities, Corp., to release all funds held in escrow as of March 30, 1996 and allow Jasmine to utilize such funds to pay towards the outstanding water bill owed to the County.

Under the terms of the agreement, the county agreed to accept payment from Jasmine Lakes in the amount of \$796,987 as full and complete payment of the amount due and owing for all water purchased before April 1, 1996. Within 30 days of the agreement, the utility is to pay the county the amount of \$398,987, and thereafter, for the next seven years, the utility is to make installment payments discharging the balance.

In January 1992, the county reduced its bulk water rate from \$2.37 to \$2.19 per thousand gallons. However, the utility continued to charge its customers the rate authorized in the limited proceeding which was based on a \$2.37 bulk water charge. Hence, we find it appropriate to order that the utility shall refund to its customers the amount of revenues equivalent to the difference between its embedded purchased water cost (\$2.37) and the rate the county charged the utility for purchased water (\$2.19) for the period January 1992 through February 1993. No refund is required for any other period because the utility's embedded purchased water cost was either equal to or less than the county's bulk water charge. By Order No. PSC-93-0027-FOF-WS, issued January 5, 1993, in Docket No. 920148-WS, we proposed granting Jasmine Lakes increases in its water rates, which reflected the county's prevailing bulk service rate. Upon protest by the Office of Public Counsel, the utility implemented the proposed agency action rates in March 1993. Accordingly, we find that the utility shall make refunds in the amount of \$16,355, plus interest, to its present customers of record who were customers also in the period January 1992 through February 1993.

These refunds shall be made with the interest actually earned by the escrow fund over its life. The utility shall submit the proper refund reports, pursuant to Rule 25-30.360(7), Florida Administrative Code. The refund shall be completed within 90 days of the effective date of this order. The utility shall submit copies of cancelled checks, credits applied to monthly bills or other evidence verifying that the refunds have been made. The

utility shall treat the balance of the amount ordered refunded after distribution to the then and now customers of record as contributions-in-aid-of-construction, pursuant to Rule 25-30.360(8), Florida Administrative Code. Further, the remaining portion of the escrow fund shall be released to the utility. Finally, the utility shall apply the funds so released towards discharge of its delinquent water bills owed to the county as heretofore identified.

NEW RATES

Pursuant to Section 367.082(4)(a), Florida Statutes, the utility is permitted to implement the Commission-authorized index increases for 1993, 1994, and 1995, as well as 1996, without action of this Commission. The new rates, reflecting these increases and the decrease in its purchased water rate of \$0.19 per thousand gallons, are set forth in Attachment A. These rates are to be effective for service rendered on or after September 8, 1996. The utility advised us that it will provide notice to its customers, prior to the effective date, informing them of the impending rate adjustment, and explaining that the increase is due to the application of the 1993, 1994, and 1995, along with the 1996, price index rate adjustments and purchased water pass-through rate decrease. We order the utility to do so.

Finally, this docket shall remain open until the refunds ordered herein have been completed.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Jasmine Lakes Utilities Corporation shall make refunds from the escrow fund established pursuant to Order No. 25790 to its customers in the manner herein described. It is further

ORDERED that Jasmine Lakes Utilities Corporation shall submit the refund reports in accordance with Rule 25-30.360(7), Florida Administrative Code. It is further

ORDERED that Jasmine Lakes Utilities Corporation shall treat any undistributed refunds as defined herein as contributions-in-aid-of-construction pursuant to Rule 25-30.360(8), Florida Administrative Code. It is further

ORDERED that Jasmine Lakes Utilities Corporation shall revise its rates as herein set forth. It is further

ORDERED that the approved rates shall be effective for service rendered on or after September 8, 1996. It is further

ORDER NO. PSC-96-1203-FOF-WU  
DOCKET NO. 920010-WU  
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ORDERED that Jasmine Lakes Utilities Corporation shall provide notice to customers as herein prescribed. It is further

ORDERED that Jasmine Lakes Utilities Corporation shall provide proof of the date the notice to customers was given within ten days of the date of the notice. It is further

ORDERED that the balance of the escrow fund shall be released to Jasmine Lakes Utilities Corporation for the specific purpose of discharging in part its indebtedness to Pasco County for bulk water service as herein identified. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective unless an appropriate petition, in the form provided by Rule 25-22.036, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings or Judicial Review" attached hereto. It is further

ORDERED that this docket shall remain open.

By ORDER of the Florida Public Service Commission, this 23rd day of September, 1996.

BLANCA S. BAYÓ, Director  
Division of Records and Reporting

by: Kary J. Lynn  
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.

The action proposed herein is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. 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 25-22.029(4), 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, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on October 14, 1996.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If this order becomes final and effective on the date described above, any party substantially affected may request judicial review by the Florida Supreme Court in the case of an 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. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

ATTACHMENT A

WATER  
Residential and General Service

<u>Meter Size</u>	<u>Billed Rates</u>	<u>Authorized Rates</u>	<u>Proposed Rates</u>
5/8" x 3/4"	\$ 8.50	\$ 8.80	\$ 8.92
1"	21.25	22.00	22.31
1-1/2"	42.50	43.99	44.61
2"	68.00	70.39	71.38
3"	136.00	146.77	142.75
4"	212.50	219.96	223.06
6"	425.00	439.92	446.12
8"	680.00	703.87	713.79
<u>Charge per 1,000 gallons:</u>	\$ 3.10	\$ 3.21	\$ 2.89

Private Fire Protection

<u>Meter Size</u>			
4"	70.83	73.32	74.35
6"	141.67	146.64	148.71
8"	226.67	234.63	237.94

Sewer  
Residential Service

<u>Meter Size</u>	<u>Billed Rates</u>	<u>Authorized Rates</u>	<u>Proposed Rates</u>
All meter sizes	\$ 9.49	\$ 9.87	\$ 10.00
<u>Charge per 1,000 gallons:</u> (maximum 6,000 gallons)	\$ 2.40	\$ 2.49	\$ 2.52

General Service

<u>Meter Size</u>	<u>Billed Rates</u>	<u>Authorized Rates</u>	<u>Proposed Rates</u>
5/8" x 3/4"	\$ 9.49	\$ 9.87	\$ 10.00
1"	23.73	24.67	24.98
1-1/2"	47.45	49.33	49.96
2"	75.92	78.93	79.93
3"	151.84	157.85	159.85
4"	237.25	246.65	249.78
6"	474.50	493.30	499.56
8"	759.20	789.27	799.29
<u>Charge per 1,000 gallons:</u>	\$ 2.88	\$ 2.99	\$ 3.03

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rates previously billed and apparently still owing. The agreement is conditioned upon our release of the escrow.

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#### REFUNDS

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These monies are being retained in escrow, pending final determination by the Commission of what overearnings, if any, are created by the Utility as a result of the cost of the operation of its water system.

We found that this inappropriately conditioned the refund of these monies on a determination that the utility was overearning. The utility's position was that we would not be authorized to require a refund of these monies if such a refund would cause its rate of return to fall below the minimum of its authorized range. However, we found that that was not the appropriate test, because the purpose for the revenue increase had not been to address the utility's earnings posture, but rather to specifically recover the increased cost of the bulk water the utility was purchasing from the county. Further, we found that if the utility was underearning, its recourse was to file a rate case, which, in fact, Jasmine Lakes did in Docket No. 920148-WS.

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A specific condition precedent to the effectiveness of this Agreement shall be the Florida Public Service Commission's authorization to Jasmine Lakes Utilities, Corp., to release all funds held in escrow as of March 30, 1996 and allow Jasmine to utilize such funds to pay towards the outstanding water bill owed to the County.

Under the terms of the agreement, the county agreed to accept payment from Jasmine Lakes in the amount of \$796,987 as full and complete payment of the amount due and owing for all water purchased before April 1, 1996. Within 30 days of the agreement, the utility is to pay the county the amount of \$398,987, and thereafter, for the next seven years, the utility is to make installment payments discharging the balance.

In January 1992, the county reduced its bulk water rate from \$2.37 to \$2.19 per thousand gallons. However, the utility continued to charge its customers the rate authorized in the limited proceeding which was based on a \$2.37 bulk water charge. Hence, we find it appropriate to order that the utility shall refund to its customers the amount of revenues equivalent to the difference between its embedded purchased water cost (\$2.37) and the rate the county charged the utility for purchased water (\$2.19) for the period January 1992 through February 1993. No refund is required for any other period because the utility's embedded purchased water cost was either equal to or less than the county's bulk water charge. By Order No. PSC-93-0027-FOF-WS, issued January 5, 1993, in Docket No. 920148-WS, we proposed granting Jasmine Lakes increases in its water rates, which reflected the county's prevailing bulk service rate. Upon protest by the Office of Public Counsel, the utility implemented the proposed agency action rates in March 1993. Accordingly, we find that the utility shall make refunds in the amount of \$16,355, plus interest, to its present customers of record who were customers also in the period January 1992 through February 1993.

These refunds shall be made with the interest actually earned by the escrow fund over its life. The utility shall submit the proper refund reports, pursuant to Rule 25-30.360(7), Florida Administrative Code. The refund shall be completed within 90 days of the effective date of this order. The utility shall submit copies of cancelled checks, credits applied to monthly bills or other evidence verifying that the refunds have been made. The

utility shall treat the balance of the amount ordered refunded after distribution to the then and now customers of record as contributions-in-aid-of-construction, pursuant to Rule 25-30.360(8), Florida Administrative Code. Further, the remaining portion of the escrow fund shall be released to the utility. Finally, the utility shall apply the funds so released towards discharge of its delinquent water bills owed to the county as heretofore identified.

#### NEW RATES

Pursuant to Section 367.082(4)(a), Florida Statutes, the utility is permitted to implement the Commission-authorized index increases for 1993, 1994, and 1995, as well as 1996, without action of this Commission. The new rates, reflecting these increases and the decrease in its purchased water rate of \$0.19 per thousand gallons, are set forth in Attachment A. These rates are to be effective for service rendered on or after September 8, 1996. The utility advised us that it will provide notice to its customers, prior to the effective date, informing them of the impending rate adjustment, and explaining that the increase is due to the application of the 1993, 1994, and 1995, along with the 1996, price index rate adjustments and purchased water pass-through rate decrease. We order the utility to do so.

Finally, this docket shall remain open until the refunds ordered herein have been completed.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Jasmine Lakes Utilities Corporation shall make refunds from the escrow fund established pursuant to Order No. 25790 to its customers in the manner herein described. It is further

ORDERED that Jasmine Lakes Utilities Corporation shall submit the refund reports in accordance with Rule 25-30.360(7), Florida Administrative Code. It is further

ORDERED that Jasmine Lakes Utilities Corporation shall treat any undistributed refunds as defined herein as contributions-in-aid-of-construction pursuant to Rule 25-30.360(8), Florida Administrative Code. It is further

ORDERED that Jasmine Lakes Utilities Corporation shall revise its rates as herein set forth. It is further

ORDERED that the approved rates shall be effective for service rendered on or after September 8, 1996. It is further

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ORDERED that Jasmine Lakes Utilities Corporation shall provide notice to customers as herein prescribed. It is further

ORDERED that Jasmine Lakes Utilities Corporation shall provide proof of the date the notice to customers was given within ten days of the date of the notice. It is further

ORDERED that the balance of the escrow fund shall be released to Jasmine Lakes Utilities Corporation for the specific purpose of discharging in part its indebtedness to Pasco County for bulk water service as herein identified. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective unless an appropriate petition, in the form provided by Rule 25-22.036, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings or Judicial Review" attached hereto. It is further

ORDERED that this docket shall remain open.

By ORDER of the Florida Public Service Commission, this 23rd day of September, 1996.

BLANCA S. BAYÓ, Director  
Division of Records and Reporting

by: Kary J. Ryan  
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.

The action proposed herein is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. 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 25-22.029(4), 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, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on October 14, 1996.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If this order becomes final and effective on the date described above, any party substantially affected may request judicial review by the Florida Supreme Court in the case of an 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. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

ATTACHMENT A

WATER  
Residential and General Service

<u>Meter Size</u>	<u>Billed Rates</u>	<u>Authorized Rates</u>	<u>Proposed Rates</u>
5/8" x 3/4"	\$ 8.50	\$ 8.80	\$ 8.92
1"	21.25	22.00	22.31
1-1/2"	42.50	43.99	44.61
2"	68.00	70.39	71.38
3"	136.00	146.77	142.75
4"	212.50	219.96	223.06
6"	425.00	439.92	446.12
8"	680.00	703.87	713.79
<u>Charge per 1,000 gallons:</u>	\$ 3.10	\$ 3.21	\$ 2.89

Private Fire Protection

<u>Meter Size</u>			
4"	70.83	73.32	74.35
6"	141.67	146.64	148.71
8"	226.67	234.63	237.94

Sewer  
Residential Service

<u>Meter Size</u>	<u>Billed Rates</u>	<u>Authorized Rates</u>	<u>Proposed Rates</u>
All meter sizes	\$ 9.49	\$ 9.87	\$ 10.00
<u>Charge per 1,000 gallons:</u> (maximum 6,000 gallons)	\$ 2.40	\$ 2.49	\$ 2.52

General Service

<u>Meter Size</u>	<u>Billed Rates</u>	<u>Authorized Rates</u>	<u>Proposed Rates</u>
5/8" x 3/4"	\$ 9.49	\$ 9.87	\$ 10.00
1"	23.73	24.67	24.98
1-1/2"	47.45	49.33	49.96
2"	75.92	78.93	79.93
3"	151.84	157.85	159.85
4"	237.25	246.65	249.78
6"	474.50	493.30	499.56
8"	759.20	789.27	799.29
<u>Charge per 1,000 gallons:</u>	\$ 2.88	\$ 2.99	\$ 3.03