

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation into
potential overearnings in
Highlands County by Highlands
Ridge Associates, Inc.

DOCKET NO. 981147-WS
ORDER NO. PSC-99-2164-PCO-WS
ISSUED: November 8, 1999

The following Commissioners participated in the disposition of
this matter:

JOE GARCIA, Chairman
J. TERRY DEASON
SUSAN F. CLARK
E. LEON JACOBS, JR.

ORDER REQUIRING UTILITY TO HOLD
ADDITIONAL REVENUES SUBJECT TO REFUND

BY THE COMMISSION:

BACKGROUND

Highlands Ridge Associates, Inc. (Highlands Ridge or utility) is a Class C water and wastewater utility located in Avon Park in Highlands County. The utility served approximately 302 water customers and 296 wastewater customers at December 31, 1997. According to the utility's 1997 annual report, the revenues were \$76,534 for the water system and \$77,867 for the wastewater system. The corresponding net operating incomes were \$20,870 and \$7,455 for the respective systems.

The development served by the utility consists of site-built manufactured homes, single-family detached homes, a clubhouse, several golf courses and a pro shop. The utility had been in operation since October 1990, providing service without compensation to approximately 35 connections. By Order No. PSC-92-0954-FOF-WS, issued September 9, 1992, the utility was granted Certificates Nos. 544-W and 474-S, and had rates and charges established for its water and wastewater systems. The utility has never filed a rate case, but it has received price index rate adjustments for the years 1994 through 1998.

On February 3, 1998, we received from the utility a request for a refund of a portion of the regulatory assessment fees paid

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during the years 1994-1996, as well as corrected regulatory assessment fee returns for those corresponding years. The utility stated in its request that certain connection and meter installation fees were incorrectly recorded as revenues during those years, and that those fees are not subject to regulatory assessment fees. As a result, the utility contends that it overpaid its regulatory assessment fees during those years.

On February 19, 1998, we also received from the utility an application for a 1998 price index. As part of the index application review process, we contacted the utility, which stated that the Southwest Florida Water Management District (SWFWMD or District) had contacted the utility about the high per capita consumption of the utility's customers. According to the utility, the District indicated that the utility's Consumptive Use Permit would be reviewed 18 months early for the primary purpose of requiring the utility to implement a conservation-oriented rate structure.

We proceeded to review certain information from the utility's 1997 annual report in order to determine, on a preliminary basis, the utility's average monthly water consumption per customer. During this review, we discovered that the utility, while indicating the number of general service customers at the beginning of the year, failed to account for those general service customers at the end of the year. When we called the utility to inquire about the general service customers, we were told that all general service customers were related parties to the utility and, therefore, were not billed. Therefore, although the utility's 1997 annual report did not indicate that the utility achieved a return greater than what was authorized, due to the number of customers who had not been billed, we began an informal investigation into the potential overearnings of this utility.

Consequently, we requested an audit of the utility's rate base, capital structure and operating position for the test period ended December 31, 1997. During the course of the informal investigation, we learned that, in addition to the customers who are metered but not billed, the utility also has several unmetered customers. Based on this new information, we conducted two field investigations, during which a comprehensive billing analysis was performed for the year ended December 31, 1997. Based on the results of our preliminary analysis, by Order No. PSC-98-1623-FOF-WS, issued December 7, 1998, we ordered a full investigation of the utility's earnings for water and wastewater service. In the Order,

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we found that the utility's water system is overearning by \$19,004 and its wastewater system is overearning by \$17,146. Based on the proposed time frame to complete this case, we required the utility to guarantee funds collected subject to refund in the amount of \$18,576. The utility subsequently provided a letter of credit to guarantee the potential refund.

REQUIRING THE UTILITY TO HOLD ADDITIONAL
REVENUES SUBJECT TO REFUND

The resolution of this case has exceeded the estimated period of time originally contemplated. Therefore, we find that it is both necessary and appropriate to require the utility to hold additional revenues subject to refund. Based on the current case schedule of a February 29, 2000 Agenda Conference date, we find that an additional seven months is adequate time in which to resolve all matters in this case.

Pursuant to Section 367.082, Florida Statutes, when revenues are held subject to refund, the utility is authorized to continue collecting the previously authorized rates. As discussed in Order No. PSC-98-1623-FOF-WS, the utility was required originally to guarantee a potential refund amount of \$18,576. That amount was based on a six-month time frame. Had the security in that Order been based on a 13-month period (six months plus an additional seven months), the total security required would have been \$41,513. Therefore, we find that the appropriate amount of additional security is \$22,937 (\$41,513 - \$18,576).

Also in Order No. PSC-98-1623-FOF-WS, as a result of staff's inability to perform a financial analysis of Highlands Ridge's financial statements due to insufficient data, we did not allow the utility to undergo a corporate undertaking. Therefore, the utility shall provide a letter of credit, bond or escrow agreement to guarantee the additional funds collected subject to refund.

If the security provided is a bond or a letter of credit, said instrument shall be in the amount of \$22,937. If the utility chooses a bond as security, the bond shall state that it will be released or shall terminate only upon subsequent order of the Commission addressing overearnings or requiring a refund. If the utility chooses to provide a letter of credit as security, the letter of credit shall state that it is irrevocable for the period it is in effect and that it will be in effect until a final order is rendered addressing overearnings or requiring a refund.

If the security provided is an escrow account, said account shall be established between the utility and an independent financial institution pursuant to a written escrow agreement. The Commission shall be a party to the written escrow agreement and a signatory to the escrow account. The written escrow agreement shall state the following:

1. The account is established at the direction of this Commission for the purpose set forth above;
2. No withdrawals of funds shall occur without the prior approval of the Commission through the Director of the Division of Records and Reporting;
3. The account shall be interest bearing;
4. Information concerning that escrow account shall be available from the institution to the Commission or its representative at all times;
5. The amount of revenue subject to refund shall be deposited in the escrow account within seven days of receipt; and
6. Pursuant to Cosentino v. Elson, 263 So. 2d 253 (Fla 3d. DCA 1972), escrow accounts are not subject to garnishments.

As discussed previously, the utility shall deposit \$3,277 into the escrow account each month for possible overearnings. The escrow agreement shall also state the following:

1. If a refund to the customers is required, all interest earned on the escrow account shall be distributed to the customers; and
2. If a refund to the customers is not required, the interest earned on the escrow account shall revert to the utility.

Irrespective of the type of security provided, the utility shall keep an accurate and detailed account of all monies it receives. Pursuant to Rule 25-30.360(6), Florida Administrative Code, the utility shall provide a report by the 20th day of each month indicating the monthly and total revenue collected subject to

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refund. Should a refund be required, the refund shall be with interest and undertaken in accordance with Rule 25-30.360, Florida Administrative Code.

In no instance shall maintenance and administrative costs associated with any refund be borne by the customers. The costs are the responsibility of, and shall be borne by, the utility. Finally, the utility is hereby put on notice that failure to comply with these requirements will result in the initiation of a show cause proceeding.

Based on staff's audit and subsequent revenue adjustments, we find that the utility's water system is overearning by \$19,004 and its wastewater system is overearning by \$17,146. Furthermore, as discussed previously, there are other issues pertaining to this utility that must be addressed. Therefore, this docket shall remain open pending our investigation of the utility's earnings for 1997 and the results of our investigation and analysis into all other outstanding matters.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Highlands Ridge Associates, Inc. shall provide the Commission with an additional bond or letter of credit in the amount of \$22,937, or an escrow agreement as set forth in the body of this Order, as a guarantee of any potential refund of revenues collected subject to refund. It is further

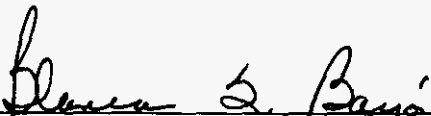
ORDERED that no later than the 20th of each month, Highlands Ridge Associates, Inc. shall file monthly reports consistent with the requirements set forth in the body of this Order. It is further

ORDERED that Highlands Ridge Associates, Inc. is hereby put on notice that failure to comply with the requirements contained herein will result in the initiation of a show cause proceeding. It is further

ORDERED that this docket shall remain open.

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By ORDER of the Florida Public Service Commission this 8th day
of November, 1999.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(SEAL)

JSB

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), 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.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

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 25-22.0376, 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.