

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for rate
increase in Flagler County by
Palm Coast Utility Corporation.

DOCKET NO. 951056-WS
ORDER NO. PSC-00-0240-FOF-WS
ISSUED: February 7, 2000

The following Commissioners participated in the disposition of this matter:

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

FINAL ORDER MODIFYING APPEAL BOND

BY THE COMMISSION:

Palm Coast Utility Corporation (PCUC or utility) provides water and wastewater service in Flagler County. Palm Coast is located in a critical use area as designated by the St. Johns River Water Management District (SJRWMD). During the twelve months ending December 31, 1994 (the historical test year), the utility recorded operating revenues of \$5,007,702 for water service and \$2,951,217 for wastewater service. During the same period, Palm Coast reported a net operating loss of \$2,247 for water and net operating income of \$281,533 for wastewater.

On December 27, 1995, the utility filed an application for increased rates pursuant to Sections 367.081 and 367.082, Florida Statutes. The utility satisfied the Minimum Filing Requirements (MFRs) for a rate increase on February 12, 1996 and that date was designated as the official filing date pursuant to Section 367.083, Florida Statutes.

By Order No. PSC-96-0493-FOF-WS, issued April 9, 1996, the Commission approved interim rates for PCUC based upon an historic test year, designed to generate \$5,491,319 in annual water revenues and \$3,432,636 in annual wastewater revenues, subject to refund with interest. This represents a \$483,617 (9.66%) increase over water test year revenues, and a \$481,419 (16.31%) increase over wastewater test year revenues.

DOCUMENT NUMBER-DATE

01641 FEB-78

CASE RECORDS/REPORTING

ORDER NO. PSC-00-0240-FOF-WS
DOCKET NO. 951056-WS
PAGE 2

A prehearing was held in Tallahassee on June 20, 1996. The hearing was held in Palm Coast on July 1 and 2, 1996 and concluded in Tallahassee on July 19, 1996. The Office of Public Counsel (OPC), Dunes Community Development District, and Flagler County intervened in this docket.

On November 7, 1996, the Commission issued Order No. PSC-96-1338-FOF-WS (Final Order). On November 22, 1996, PCUC filed a timely Motion for Reconsideration and a Request for Oral Argument. On December 2, 1996, OPC filed its timely response to PCUC's motion and request. On January 24, 1997, PCUC filed an additional Request for Oral Argument and an Amended Motion for Reconsideration or, Alternatively, Motion to Correct Computational Errors. On January 31, 1997, OPC filed its response to PCUC's Amended Motion. On February 26, 1997, PCUC filed its Second Amended Motion for Reconsideration or, Alternatively, Amended Motion to Correct Computational Errors. OPC filed its response to this Second Amended Motion on March 3, 1997.

By Order No. PSC-97-0388-FOF-WS, issued April 7, 1997, the Commission granted in part and denied in part PCUC's Motion for Reconsideration, denied PCUC's Amended and Second Motions for Reconsideration and denied the requests for oral argument. As a result of this Order, PCUC was ordered to refund a percentage of the interim water and wastewater revenues and lower certain water rates and all wastewater rates.

On April 11, 1997, PCUC filed its Motion for Stay Pending Judicial Review. By Order No. PSC-97-0655-FOF-SU, issued June 9, 1997, the Commission granted PCUC's Motion for Stay of Orders Nos. PSC-96-1338-FOF-WS and PSC-97-0388-FOF-WS, which required PCUC to: decrease certain water rates and all wastewater rates charged to customers; refund a percentage of interim revenues; and increase security.

On May 5, 1997, PCUC appealed the Final Order issued November 7, 1996. On May 10, 1999, the First District Court of Appeal issued its opinion on review of the Final Order. Palm Coast Utility Corporation v. FPSC, 24 Fla. L. Weekly D1182a (Fla 1st DCA May 10, 1999). Among other things, the Court reversed and remanded for further proceedings on the issues of fire flow, lot count methodology, annual average daily flow, margin reserve, and imputation of contributions-in-aid-of-construction (CIAC). The Court remanded these issues to the Commission.

The Commission filed a Motion for Clarification on May 25, 1999, to determine whether further evidentiary proceedings were permissible on remand. The court withdrew its May 10, 1999, opinion and issued a corrected opinion on October 14, 1999. Palm Coast Utility Corp. v. FPSC, 742 So. 2d 482 (Fla. 1st DCA 1999). In that opinion, the court reversed and remanded for further proceedings, including the introduction of additional evidence on the issue of lot county methodology, fire flow allowance, and annual average daily flow.

On August 5, 1996, Flagler County adopted Resolution No. 96-62 rescinding Commission jurisdiction in Flagler County effective immediately. Although that resolution was acknowledged by Order No. PSC-96-1391-FOF-WS, issued November 20, 1996, in Docket No. 960898-WS, Section 367.171(5) states that "[w]hen a utility becomes subject to regulation by a county, all cases in which the utility is a party then pending before the commission, or in any court by appeal from any order of the commission, shall remain within the jurisdiction of the commission or court until disposed of." Therefore, we retain jurisdiction over Docket No. 951056-WS now before us on remand.

Modification of Current Appeal Bond

On June 9, 1997, we issued Order No. PSC-97-0654-FOF-WS, granting a stay of Orders Nos. PSC-96-1338-FOF-WS and PSC-97-0388-FOF-WS, and requiring additional security. On May 21, 1997, PCUC filed a Surety Rider which increased its appeal bond from \$796,200 to \$1,395,580.

On October 18, 1999, PCUC filed its latest monthly report pursuant to Rule 25-30.360(7), Florida Administrative Code. In this report, the utility indicates that the amount of revenue collected subject to refund was \$1,661,894. This exceeds the current appeal bond.

We have recalculated the potential refund based upon the issues that were reversed on appeal and have determined that the total liability may be approximately \$1,622,122, including interest, through August, 2000. Although this amount is less than the amount of cumulative revenues currently being held subject to refund, we have made this calculation based upon the issues remanded by the appellate court. Therefore, as shown on Schedule No. 1, attached and incorporated by reference herein, PCUC may lower the amount of wastewater revenues to be held subject to

ORDER NO. PSC-00-0240-FOF-WS
DOCKET NO. 951056-WS
PAGE 4

refund, pending the disposition of this matter on remand, from 7.87% to 6%.

Furthermore, PCUC shall increase the original appeal bond to the amount of \$1,633,122 to cover the total potential refund. The bond shall state that it will remain in effect during the pendency of the appeal and will be released or terminated upon subsequent order of this Commission addressing the potential refund.

This docket shall remain open pending disposition of the issues on remand.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Palm Coast Utility Corporation may lower the amount of wastewater revenues to be held subject to refund, pending the disposition of this matter on remand, from 7.87% to 6%. It is further

ORDERED that Schedule No. 1 attached hereto is incorporated herein by reference. It is further

ORDERED that Palm Coast Utility Corporation shall increase the original appeal bond to the amount of \$1,633,122 to cover the total potential refund. It is further

ORDERED that the bond shall state that it will remain in effect during the pendency of the appeal and will be released or terminated upon subsequent order of this Commission addressing the potential refund. It is further

ORDERED that this docket shall remain open pending disposition of the issues on remand.

ORDER NO. PSC-00-0240-FOF-WS
DOCKET NO. 951056-WS
PAGE 5

By ORDER of the Florida Public Service Commission this 7th
day of February, 2000.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records

(S E A L)

JKF

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.

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.

PALM COAST UTILITY CORPORATION
DOCKET NO. 951056-WS
TEST YEAR ENDING DECEMBER 31, 1995

Schedule No. 1

<u>ANNUAL REVENUES HELD SUBJECT TO REFUND</u>		
<u>WATER</u>		
COMMISSION APPROVED - PER INTERIM ORDER		\$5,491,319
APPROVED FINAL REVENUE - PER RECONSIDERATION ORDER	\$5,373,161	
LESS MISC SERVICE REVENUES	<u>(42,469)</u>	<u>(42,469)</u>
WATER SERVICE REVENUES	<u>5,330,692</u>	<u>5,448,850</u>
ANNUAL REVENUE SUBJECT TO REFUND		\$118,158
PERCENT INCREASE IN WATER SALES REVENUES		2.22%
<u>WASTEWATER</u>		
COMMISSION APPROVED - PER INTERIM ORDER		\$3,432,636
REMAND REVENUE FOR NON-DISCRETIONARY ITEMS	\$3,241,607	
LESS MISC SERVICE REVENUES	<u>(59,023)</u>	<u>(59,023)</u>
WASTEWATER SERVICE REVENUES	<u>3,182,584</u>	<u>3,373,613</u>
ANNUAL REVENUE SUBJECT TO REFUND		\$191,029
PERCENT INCREASE IN WASTEWATER SALES REVENUES		6.00%

<u>AMOUNT OF BOND FOR STAY MOTION:</u>		
<u>WATER AND WASTEWATER</u>		
AMOUNT OF ANNUAL REVENUES SUBJECT TO REFUND		\$309,187
DIVIDED BY 12 MONTHS		<u>12</u>
MONTHLY REVENUE HELD		<u>\$25,766</u>
Number of months for refund to be completed - 39 months (April 1996 through August 2000)		52
TOTAL AMOUNT OF POTENTIAL REFUND W/O INTEREST		<u>\$1,339,810</u>
13-MONTH AVERAGE ANNUAL INTEREST RATE AS OF 10/99	5.052%	
FACTORED INTEREST RATE FOR 52 MONTH PERIOD		<u>1.21892</u>
AMOUNT OF POTENTIAL REFUNDS - AMOUNT OF BOND		<u>\$1,633,122</u>

M E M O R A N D U M

February ⁷/₈, 2000

TO: DIVISION OF RECORDS AND REPORTING
FROM: DIVISION OF LEGAL SERVICES (FUDGE) *AF OS*
RE: DOCKET NO. 951056-WS - APPLICATION FOR RATE INCREASE IN
FLAGLER COUNTY BY PALM COAST UTILITY CORPORATION.

0240-FDF

Attached is a FINAL ORDER MODIFYING APPEAL BOND, to be issued
in the above-referenced docket.

(Number of pages in order - 6)

see pgs. 2+3

JKF/lw

Attachment is on-line

Attachment

cc: Division of Water and Wastewater (Willis)

I:951056OR.JKF

S/B RAR