

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation into the
wastewater rates of Commercial
Utilities, Division of Grace &
Company, Inc., in Duval County.

DOCKET NO. 991902-SU
ORDER NO. PSC-00-1508-PAA-SU
ISSUED: August 18, 2000

The following Commissioners participated in the disposition of
this matter:

J. TERRY DEASON, Chairman
E. LEON JACOBS, JR.
LILA A. JABER

NOTICE OF PROPOSED AGENCY ACTION FINDING NO OVEREARNINGS
AND RELEASING CORPORATE UNDERTAKING AND ORDER REQUIRING
COMPLIANCE WITH THE UNIFORM SYSTEM OF ACCOUNTS

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service
Commission that the actions finding no overearnings and releasing
the corporate undertaking discussed herein are 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

Commercial Utilities, Division of Grace & Company, Inc.,
(Commercial or utility) is a Class B wastewater only facility
located in Jacksonville, Florida. The utility serves 35 wastewater
general service customers. Commercial was issued Certificates Nos.
219-W and 164-S by Order No. 6704, issued June 4, 1975, in Dockets
No. 74787-W and 74788-S.

Pursuant to the Environmental Protection Board's Rule 3,
Section 3.402 F.2.2, the Jacksonville Department of Health,
Welfare, and Bio-Environmental Service required Commercial to
connect to a regional wastewater facility. The interconnection
took place July 30, 1992.

DOCUMENT NUMBER-DATE

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FORM 10148-00-00-00-00-00

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The utility's last rate proceeding was in Docket No. 910766-WS, which resulted in Order No. PSC-93-0233-FOF-WS, issued February 12, 1993. In that order, we transferred \$343,080 in interconnection costs, which were to be accounted for in the Intangible Plant category. The intangible plant was to be amortized over 27 years.

Commercial's water certificate was canceled by Order No. PSC-97-0094-FOF-WU, issued January 27, 1997, in Docket No. 961268-WU. All water service is now provided by the City of Jacksonville.

Our review of the utility's 1998 annual report indicated that the utility achieved a greater return than what was authorized in Order No. PSC-93-0233-FOF-WS. Therefore, this investigation was opened by Order No. PSC-00-0346-FOF-SU, issued February 18, 2000. By that order, we required the utility to place \$44,833 as revenue subject to refund secured by a corporate undertaking.

OVEREARNINGS INVESTIGATION

Order No. PSC-00-0346-FOF-SU, issued on February 18, 2000, in this docket, directed that the test year for the investigation shall be the year ended December 31, 1999. We have audited the test year and find the achieved rate of return on equity of 8.80% to be within the authorized range of 8.06% to 10.06% as set forth in Order No. PSC-93-0233-FOF-WS. Therefore, the revenue held subject to refund, and the corporate undertaking required by Order No. PSC-00-0346-FOF-SU, guaranteeing those revenues, shall be released.

CONFORMANCE WITH 1996 NARUC UNIFORM SYSTEM OF ACCOUNTS

During the audit, our auditors discovered that the utility did not maintain its accounts and records in conformance with the NARUC USOA. Accounting Instruction 2A of the NARUC Uniform System of Accounts for Class B Utilities, states that "The books of accounts for all wastewater utilities shall be kept by the double entry method, on an accrual basis. Each utility shall keep its accounts monthly and shall close its books at the end of each calendar year." Our auditors found that Commercial maintains its books and records using the cash basis of accounting instead of the accrual basis. Further, Commercial does not keep its books on a monthly basis.

Our auditors also found that the utility does not use the depreciation rates prescribed by this Commission. The utility instead uses accelerated federal income tax depreciation rates.

Rule 25-30.140(4)(a), Florida Administrative Code, states that "[a]ll Class A and B utilities shall maintain depreciation rates and reserve activity by account as prescribed by this Commission." Rule 25-30.140(4)(b), Florida Administrative Code, states that "[a]ll Class C utilities shall maintain depreciation rates and reserve activity data by total depreciable plant, function or account as prescribed by this Commission." At the time of the utility's last rate proceeding, Commercial was a Class C utility. The utility's annual reports filed with this Commission reflect Class C depreciation rates with no recognition of the taxes deferred by using the accelerated federal income tax depreciation rates. We find it appropriate to require the utility to implement the Class B depreciation rates prescribed by Rule 25-30.140(4)(b), Florida Administrative Code, on a going forward basis for its books and annual report.

The utility has a CPA who prepares its financial statements and maintains its general ledger. An outside consultant prepares the annual reports. During the audit, it was discovered that the CPA made no adjustments to the utility's rate base accounts in the general ledger unless he received instructions from the consultant. The consultant, in many instances, made adjustments to the annual reports but failed to notify the CPA in a timely manner to adjust the general ledger.

The lack of coordination of efforts presented some problems for our auditors. The CPA was unable to provide any information regarding discrepancies our auditors noted in the general ledger. In Order No. PSC-93-0233-FOF-WS, we required the utility to make several adjustments to its books and records. Although some of the adjustments were made in the annual reports, none of them were made to the general ledger until the consultant provided the adjustments to the CPA. These adjustments were provided to the CPA at the end of 1999, and he adjusted the general ledger in February 2000. As a result, the utility's books and records did not reflect any of our required adjustments until seven years after they were ordered. The consultant and CPA shall work together to ensure that required adjustments are completed in a timely manner.

Despite the state of the utility's books and records, we were able to perform the audit. The errors reported by our auditors

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constitute apparent violations of Rule 25-30.115, Florida Administrative Code, which provides that:

Water and wastewater utilities shall, effective January 1, 1998, maintain their accounts and records in conformity with the 1996 NARUC Uniform System of Accounts adopted by the National Association of Regulatory Utility Commissioners.

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 have willfully violated any Commission rule, order, or provision of Chapter 367, Florida Statutes. In failing to maintain its books and records in conformance with the USOA, the utility's act was "willful" in the sense intended by Section 367.161, Florida Statutes. 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, Florida Administrative Code, Relating To Tax Savings Refund For 1988 and 1989 For GTE Florida, Inc., the 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." Additionally, "[i]t is a common maxim, familiar to all minds that 'ignorance of the law' will not excuse any person, either civilly or criminally." Barlow v. United States, 32 U.S. 404, 411 (1833).

Although the utility's failure to keep its books and records in conformance with the NARUC USOA is an apparent violation of Rule 25-30.115, Florida Administrative Code, we find that a show cause proceeding would not be cost effective because of the size of the utility. Therefore, a show cause proceeding shall not be initiated at this time. The apparent violation of Rule 25-30.115, Florida Administrative Code, was caused by the lack of communication between the utility's CPA and outside consultant. We have contacted the utility, and have been informed that the consultant will contact the CPA when any adjustments to the general ledger are needed. While we will not initiate show cause proceedings, we shall require the utility to bring its books and records into conformance with the 1996 NARUC USOA. Further, the utility shall submit a statement from its CPA by April 30, 2001, along with its 2000 annual report, stating that its books are in conformance with the NARUC USOA and have been reconciled with Order No. PSC-93-0233-FOF-

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WS. Our staff will review the utility's compliance at that time and determine if a show cause proceeding should be initiated.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the achieved rate of return on equity of 8.80% is within the authorized range of 8.06% to 10.06% as set forth in Order No. PSC-93-0233-FOF-WS. It is further

ORDERED that the revenue held subject to refund, and the corporate undertaking required by Order No. PSC-00-0346-FOF-SU, guaranteeing those revenues, shall be released. It is further

ORDERED that the utility shall implement the Class B depreciation rates prescribed by Rule 25-30.140(4)(b), Florida Administrative Code, on a going forward basis for its books and annual report. It is further

ORDERED that the consultant and CPA shall work together to ensure that required adjustments are completed in a timely manner. It is further

ORDERED that Commercial Utilities shall maintain its books and records in conformance with the 1996 NARUC Uniform System of Accounts and submit a statement from its accountant by March 31, 2001, along with its 2000 annual report, stating that its books are in conformance with the NARUC Uniform System of Accounts and have been reconciled with this Order. It is further

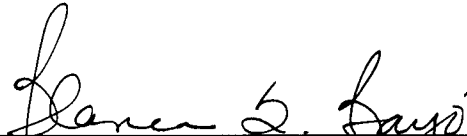
ORDERED that the provisions of this Order finding no overearnings and releasing the corporate undertaking, are issued as proposed agency action and shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida 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" attached hereto. It is further

ORDERED that if no timely protest is received to the proposed agency action, no further action will be necessary and, upon the expiration of the protest period, this Order shall become final and

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effective upon the issuance of a Consummating Order and the docket shall be closed.

By ORDER of the Florida Public Service Commission this 18th day of August, 2000.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(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.

As identified in the body of this order, our actions finding no overearnings and releasing the corporate undertaking are preliminary in nature. Any person whose substantial interests are affected by the actions proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, at 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on September 8, 2000. If such a petition is filed, mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested

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person's right to a hearing. In the absence of such a petition, this order shall become effective and final upon the issuance of a Consummating Order.

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.

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 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 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.

M E M O R A N D U M

August 17, 2000

✓ 3:15
RECEIVED-PPSC
AUG 18 PM 1:28
RECORDS AND
REPORTING

TO: DIVISION OF RECORDS AND REPORTING
FROM: DIVISION OF LEGAL SERVICES (FUDGE) *GF ps*
RE: DOCKET NO. 991902-SU - INVESTIGATION INTO THE WASTEWATER
RATES OF COMMERCIAL UTILITIES, DIVISION OF GRACE &
COMPANY, INC., IN DUVAL COUNTY.

1508-PAA

Attached is an NOTICE OF PROPOSED AGENCY ACTION FINDING NO
OVEREARNINGS AND RELEASING CORPORATE UNDERTAKING AND ORDER
REQUIRING COMPLIANCE WITH THE UNIFORM SYSTEM OF ACCOUNTS, to be
issued in the above-referenced docket.

(Number of pages in order - 7)

JKF/lw

Attachment

cc: Division of Regulatory Oversight (Hicks)
Division of Economic Regulation (B.Davis, Merchant)

I:991902OR.JKF

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