

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Application for staff-assisted rate case in
Lee County by Environmental Protection
Systems of Pine Island, Inc.

DOCKET NO. 030106-SU
ORDER NO. PSC-07-0426-PAA-SU
ISSUED: May 15, 2007

The following Commissioners participated in the disposition of this matter:

LISA POLAK EDGAR, Chairman
MATTHEW M. CARTER II
KATRINA J. McMURRIAN

ORDER DECLINING TO INITIATE A SHOW CAUSE PROCEEDING
AND
NOTICE OF PROPOSED AGENCY ACTION
ORDER REQUIRING REFUND AND
REDUCING WASTEWATER RATES

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein requiring a refund and reducing wastewater rates 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

Environmental Protection Systems of Pine Island, Inc. (EPS or utility) is a Class C wastewater utility serving approximately 462 customers in Cherry Estates and R.V. Park in St. James City, which is located at the southern end of Pine Island, approximately 30 miles from Fort Myers. On January 30, 2003, EPS filed an application for a staff-assisted rate case (SARC). We approved the utility's current rates, charges and rate base on October 7, 2003.¹ A portion of the rate base approved included pro forma additions to plant.

Prior to the rate case, EPS reached an agreement with Lee County Utilities whereby EPS's treatment facility would be taken off line and EPS would interconnect with the Pine Island Regional Treatment System (PIRTS). At the time of the rate case, the utility expected to interconnect with PIRTS four to six months after we approved its rate increase. Construction had not begun on the facilities needed to interconnect, therefore our order was based on projected plant, retirements, cost of removal, and expenses. In an amendatory order,² we required the

¹ Order No. PSC-03-1119-PAA-SU, issued October 7, 2003, in Docket No. 030106-SU, In re: Application for staff-assisted rate case in Lee County by Environmental Protection Systems of Pine Island, Inc.

² Order No. PSC-03-1119A-PAA-SU, issued November 10, 2003, in Docket No. 030106-SU, In re: Application for staff-assisted rate case in Lee County by Environmental Protection Systems of Pine Island, Inc.

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utility to complete the construction and interconnection within nine months of the issuance date of the Consummating Order, i.e., August 10, 2004. According to the utility, it encountered many problems and delays and the interconnection did not occur until September 20, 2005. By letter dated November 16, 2004, the utility agreed to hold revenues from the date of the Order subject to refund pending a true up of the actual construction costs versus the projected costs in the Order.

We have authority to consider this case pursuant to Section 367.0814, Florida Statutes.

REQUIRING REFUND TO CUSTOMERS

As discussed previously, the utility was required to complete a pro forma interconnection project within nine months of the issuance date of the Consummating Order. Order No. PSC-03-1119-PAA-SU specified that the docket remain open pending our staff's verification that the utility completed the pro forma interconnection. The utility provided our staff with cost verification of the completed items.

According to the utility, numerous problems and delays prevented the interconnection from occurring in the time period set out in the order. The tariffs implementing the rate increase to recover the interconnection costs were effective November 15, 2003; however, the interconnection did not occur until September 20, 2005. Therefore, from November 15, 2003, through September 20, 2005, customers paid for costs the utility had not incurred. In addition, actual costs for the project were less than the costs projected in the rate case. Under the circumstances, we find that refunds to customers and a rate reduction are appropriate and necessary. The following is a comparison of Commission-approved pro forma plant and actual cost:

<u>PRO FORMA PROJECTS</u>	<u>Per Order 12/31/2003</u>	<u>Actual 12/31/2006</u>	<u>Difference</u>
LIFT STATION NO. 2	\$38,225	\$15,152	(\$23,073)
MASTER LIFT STATION	86,625	105,471	18,846
CONNECTION FEES less non-U&U	657,218	569,920	(87,298)
VIDEO OF LINES	23,771	28,570	4,799
LEGAL & ENG FEES	28,865	38,368	9,503
OFFICE EQUIPMENT	4,774	8,964	4,190
COST OF REMOVAL included in Early Loss calc	<u>30,237</u>	<u>30,700</u>	<u>463</u>
TOTAL	<u>\$869,715</u>	<u>\$797,145</u>	<u>(\$72,570)</u>

We identify three periods of time over which refunds shall be calculated. First, is the period November 15, 2003, through August 4, 2004; second is the period August 5, 2004,

through December 31, 2004; and third is the period January 1, 2005, through the date rates are changed. The pro forma impact on the revenue requirement for these periods is presented on Schedule A.

November 15, 2003 – August 4, 2004: During this period, little if any construction had taken place on the interconnection. Thus, we find that from November 15, 2003 through August 4, 2004, the utility collected revenues to which it was not entitled. Our staff calculated the revenue requirement impact of the interconnection included in the rate case. However, adjustments to the rate case revenue requirement are necessary because the rate case contemplated the interconnection would be complete. Because it was not completed, the utility continued to operate its treatment facilities. Our staff reversed certain operation and maintenance (O&M) adjustments that were made in the rate case to the projected 2003 test year. This included a new expense for purchased wastewater treatment, and excluded certain O&M expenses that would no longer be incurred by the utility after the interconnection was completed. The resulting revenue requirement impact is \$107,112. In the rate case, the Commission-approved wastewater rates were designed to recover \$230,802. Therefore, our staff calculated a refund to customers of 46.41 percent ($\$107,112/\$230,802$) of revenues collected between November 15, 2003, and August 4, 2004. However, we are not approving a 46.41 percent refund.

To evaluate the effect the refunds would have on the utility's 2004 and 2005 earnings, our staff analyzed EPS's annual reports and made adjustments to the annual reports consistent with the utility's rate case. Based on the analysis, the utility overearned by 35.64 percent in 2004 and by 26.64 percent in 2005. Therefore, we find it appropriate that the utility refund to customers 35.64 percent of revenues collected between November 15, 2003, and August 4, 2004.

August 5, 2004 – December 31, 2004: It appears from invoices that from August 5, 2004, the utility began spending substantial amounts for the interconnection project. However, the cost of the project was less than what was approved by this Commission. Further, during this time, the interconnection still was not completed, so the same O&M adjustments discussed above were made to this time period. Our staff calculated the difference between the revenue requirement impacts projected in the rate case and the actual costs and also made the reversing adjustments described above. The resulting revenue requirement impact is \$20,714. In the rate case, the Commission-approved wastewater rates were designed to recover \$230,802. Therefore, we find it appropriate that the utility refund to customers 8.97 percent ($\$20,714/\$230,802$) of revenues collected between August 5, 2004 – December 31, 2004.

By approving December 31, 2004, as the ending date for the 8.97 percent refund, we are allowing the full nine months for completion of the project as we previously ordered. The interconnection occurred on September 20, 2005, and December 31, 2004 would be nine months prior to the interconnection date.

January 1, 2005 – Date Rates are Changed: As stated above, the utility interconnected with PIRTS on September 20, 2005. Because the actual cost of the interconnection is less than the amount projected in the rate case, we find the utility is collecting more in rates than is fair and just. Since the interconnection has occurred, no reversal of the O&M adjustments was made. As a result, our staff calculated the difference in the revenue requirement impact of the

interconnection approved in the rate case of \$97,401 and the actual costs incurred by the utility of \$86,398. The resulting \$11,003 was divided by the total revenue requirement from the rate case of \$230,802 to produce a 4.77 percent overage. Therefore, we find it appropriate that the utility refund to customers 4.77 percent of revenues collected between January 1, 2005 and the date rates are changed. We have ordered refunds in prior cases.³

The refunds shall be made within 90 days of the effective date of the Consummating Order finalizing the Order for refunds and a rate reduction and include interest as required by Rule 25-30.360(4), F.A.C. The utility shall submit the proper refund reports pursuant to Rule 25-30.260(7), F.A.C. The refund shall be made to customers of record as of the date of the Consummating Order pursuant to Rule 25-30.360(3), F.A.C. The utility shall treat any unclaimed refunds as CIAC pursuant to Rule 25-30.360(8), F.A.C. In no instance shall the maintenance and administrative costs associated with a refund be borne by the customers. These costs are the responsibility of, and shall be borne by the utility.

REDUCING WASTEWATER RATES

Based on the calculation shown on Schedule A, attached hereto and incorporated herein by reference, the Commission-approved pro forma allowances accounted for \$97,401 of the revenue requirement approved in Order No. PSC-03-1119-PAA-SU. Applying the same methodology to the actual pro forma cost incurred results in a revenue requirement of \$86,398 from pro forma additions. The difference in revenue requirement (\$11,003) represents the amount by which existing rates shall be reduced.

The previous Commission-approved wastewater rates were designed to recover \$230,802. Applying the reduction to the revenue requirement of \$11,003 discussed above results in a 4.77 percent ($\$11,003/\$230,802$) reduction to existing wastewater rates.

Therefore, we find it appropriate to reduce wastewater rates across the board by 4.77 percent (\$11,003) annually. The utility shall file revised tariff sheets and a proposed customer notice to reflect the Commission-approved rates. The approved rates shall be effective for service rendered on or after the stamped approval date on the tariff sheet, pursuant to Rule 25-30.475(1), Florida Administrative Code. The appropriate wastewater rates are reflected on Schedule B, attached hereto and incorporated herein by reference.

DECLINING TO INITIATE A SHOW CAUSE PROCEEDING

Pursuant to Order No. PSC-03-1119A-PAA-SU, supra, we required EPS to complete the construction of facilities needed to interconnect with PIRTS within nine months of the issuance date of the Consummating Order. Therefore, the construction and interconnection should have been accomplished no later than August 10, 2004.

³ Order No. PSC-04-0356-PAA-WU, issued April 5, 2004, in Docket No. 030423-WU, In re: Investigation into 2002 earnings of Residential Water Systems, Inc. in Marion County.

According to the utility, it encountered many problems and delays and the interconnection did not occur until September 20, 2005. During 2004 through 2006, the utility kept our staff advised of its progress and problems and agreed to hold revenues from the date of the Order subject to refund. Obstacles that impeded the completion of the project included obtaining funding, hiring reliable contractors, and weather-related incidents.

Utilities are charged with the knowledge of the Commission's orders, rules and statutes. 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). Section 367.161(1), F.S., 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, F.S., or any lawful order of this Commission. By failing to complete the ordered interconnection by September 10, 2004, the utility's acts were "willful" in the sense intended by Section 367.161, Florida Statutes. By 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., having found that the company had not intended to violate the rule, we nevertheless found it appropriate to order it to show cause why it should not be fined, stating that "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 regulated utilities are charged with knowledge of our orders, rules, and statutes, we do not believe that EPS's actions rise to the level justifying the initiation of a show cause proceeding. The utility kept our staff apprised of its progress and agreed to hold revenues subject to refund. In addition, we are approving herein a refund and a prospective rate decrease. Thus, customers will be reimbursed for past charges and in the future, rates will include only the actual costs of the interconnection. In light of these mitigating factors, we decline to initiate a show cause proceeding at this time.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Environmental Protection Systems of Pine Island, Inc. shall refund 35.64 percent of revenues collected from November 15, 2003 through August 4, 2004; 8.97 percent of revenues collected from August 5, 2004 through December 31, 2004; and 4.77 percent of revenues collected from January 1, 2005, through the date rates are changed. It is further

ORDERED that the refunds shall be made within 90 days of the effective date of the Consummating Order and include interest as required by Rule 5-30.360(4), Florida Administrative Code (F.A.C.). The utility shall submit the proper refund reports pursuant to Rule 25-30.360(7), F.A.C. The refund shall be made to customers of record as of the date of the Consummating Order pursuant to Rule 25-30.360(3), F.A.C. The utility shall treat any unclaimed refunds as CIAC pursuant to Rule 25-30.360(8), F.A.C. It is further

ORDERED that wastewater rates shall be reduced by 4.77 percent (\$11,003) annually. The utility shall file revised tariff sheets and a proposed customer notice to reflect the


Commission-approved rates. The approved rates shall be effective for service rendered on or after the stamped approval date on the tariff sheet, pursuant to Rule 25-30.475(1), F.A.C. It is further

ORDERED that show cause proceedings shall not be initiated at this time. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, 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 Office of Commission Clerk, 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 filed by a substantially affected person within 21 days of the Proposed Agency Action Order, a Consummating Order shall be issued. However, the docket shall remain open for our staff's verification that the revised tariff sheets and customer notice have been filed by the utility and approved by staff and that the refund has been completed and verified by staff. Once these actions are complete, this docket shall be closed administratively.

By ORDER of the Florida Public Service Commission this 15th day of May, 2007.



ANN COLE
Commission Clerk

(S E A L)

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.

As identified in the body of this order, our action ordering a refund and reducing wastewater rates is preliminary in nature. Any person whose substantial interests are affected by the action 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 Office of Commission Clerk, at 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on June 5, 2007. 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 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 Office of Commission Clerk, 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 Commission Clerk 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.

ENVIRONMENTAL PROTECTION SYSTEMS OF PINE ISLAND, INC.

SCHEDULE A
 DOCKET NO. 030106-SU

PRO FORMA IMPACT ON ANNUAL WASTEWATER REVENUE REQUIREMENT

	<u>Per Order</u> <u>12/31/2003</u>	<u>Actual</u>	<u>Difference</u>
Lift Station No. 2	38,225	15,152	
Master Lift Station	86,625	105,471	
Connection Fees less non-used and useful	657,218	569,920	
Video of Lines	23,771	28,570	
Legal and Engineering Fees	28,865	38,368	
Office Equipment	<u>4,774</u>	<u>8,964</u>	
Total Pro Forma Plant	839,478	766,445	
Accumulated Depreciation	(20,747)	(91,994)	
Accum Depre - Cost of Removal	0	30,700	
Non-Used & useful Plant	(35,391)	(32,689)	
Non-Used & useful Accum Dep	<u>771</u>	<u>3,169</u>	
Rate Base	784,111	675,631	
Rate of Return	<u>6.25%</u>	<u>6.25%</u>	
Return on Rate Base	49,007	42,227	
Depreciation Expense	41,035	37,174	
Loss on Early Retirement	4,392	4,392	
Non-Used and Useful Depreciation Expense	<u>(1,416)</u>	<u>(1,283)</u>	
Total	93,018	82,510	
Gross up for RAF			
	<u>0.955</u>	<u>0.955</u>	
Revenue Requirement Impact related to plant	\$97,401	\$86,398	(\$11,003)
Purchased Wastewater Treatment	(38,809)		(38,809)
Sludge Removal Expense	3,585		3,585
Purchased Power	5,457		5,457
Chemicals	5,106		5,106
Testing	1,227		1,227
Operator expense	4,160		4,160
Rent	<u>10,000</u>		<u>10,000</u>
Sub total of O&M effect	(\$9,274)		(\$9,274)
Gross up for RAF			
	<u>0.955</u>		<u>0.955</u>
Impact on O&M	(\$9,710.99)		(\$9,710.99)
Total Revenue Requirement Impact	<u>(\$107,112)</u>		<u>(\$20,714)</u>
Per order	230,802		230,802
Percent of Refund for 11/15/03 - 8/4/04	-46.41%		
Percent of Refund for 8/5/04 through 12/31/04			-8.97%
Percent of Refund for 1/1/05 through present			-4.77%

ENVIRONMENTAL PROTECTION SYSTEMS OF PINE ISLAND, INC.
 APPROVED RATE REDUCTION SCHEDULE

SCHEDULE B
 DOCKET NO. 030106-SU

CALCULATION OF RATE REDUCTION AMOUNT

MONTHLY WASTEWATER RATES

	MONTHLY EXISTING RATES	MONTHLY APPROVED RATES
<u>RESIDENTIAL SERVICE</u>		
Base Facility Charge All Meter Sizes	\$24.64	\$23.47
Gallorage Charge Per 1,000 Gallons	\$8.26	\$7.87
<u>GENERAL SERVICE</u>		
Base Facility Charge by Meter Size:		
5/8"X3/4"	24.64	\$23.47
3/4"	36.97	\$35.21
1"	61.61	\$58.67
1-1/2"	123.22	\$117.35
2"	197.16	\$187.76
3"	394.31	\$375.51
4"	616.12	\$586.75
6"	1,232.23	\$1,173.49
Gallorage Charge Per 1,000 Gallons	9.91	\$9.44
<u>Typical Residential 5/8" x 3/4" Meter Bill Comparison</u>		
0 Gallons	\$24.64	\$23.47
3,000 Gallons	\$49.42	\$47.08
5,000 Gallons	\$65.94	\$62.82
10,000 Gallons	\$107.24	\$102.17