

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application of MEADOWBROOK)	DOCKET NO. 850062-WS
UTILITY SYSTEMS, INC. for rate)	
increase in Palm Beach County and)	ORDER NO. 21017
investigation into overearnings.)	
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	ISSUED: 4-11-89

The following Commissioners participated in the disposition of this matter:

BETTY EASLEY
JOHN T. HERNDON

ORDER GRANTING, IN PART, MOTION FOR PARTIAL
STAY, CLARIFYING CUSTOMERS OF RECORD DATE,
INSURING REFUND SECURITY AND REQUIRING UTILITY
TO BEGIN MAKING REFUND AND TO SHOW CAUSE WHY IT
SHOULD NOT BE FINED FOR FAILING TO MAKE REFUND

BY THE COMMISSION:

On January 19, 1989, Meadowbrook Utility Systems, Inc. (Meadowbrook) served notice of its appeal of Orders Nos. 20287 and 20488. Also on January 19, 1989, Meadowbrook filed a motion for clarification of the refund provisions of Order No. 20488 and a motion for a partial stay of Orders Nos. 20287 and 20488. By this Order, we hereby "clarify" Order No. 20488 and grant, in part, Meadowbrook's motion for partial stay.

CASE BACKGROUND

By Order No. 13664, issued September 10, 1984, this Commission initiated an investigation into possible overearnings by Meadowbrook. On May 31, 1985, during the pendency of the overearnings investigation, Meadowbrook filed an application for increased water and sewer rates. By Order No. 14656, issued July 30, 1985, the Commission suspended Meadowbrook's proposed rates, denied any interim increase and consolidated the overearnings investigation into the rate case docket.

On April 21, 1986, Meadowbrook gave notice of its intent to place its proposed rates into effect, pursuant to Section 367.081(6), Florida Statutes. On July 1, 1986, on our own motion, we set the consolidated rate application and overearnings investigation for a formal hearing. The hearing was held on December 11 and 12, 1986 and January 9 and 26, 1987.

By Order No. 17304, issued March 19, 1987, we reduced Meadowbrook's rates and ordered it to refund, with interest, \$65,435 in excessive annual water revenues collected between August 21, 1984 and April 21, 1986, and \$416,690 in excessive annual water and sewer revenues collected under the proposed rates between April 21, 1986 and such time as the refund was completed.

On April 6, 1987, Meadowbrook filed a Motion for Stay of Order No. 17304, pursuant to Rule 25-22.061(1), Florida Administrative Code, pending judicial review of the Order by the First District Court of Appeal (DCA). By Order No. 17567, issued May 20, 1987, we granted Meadowbrook's request for a stay, subject to its providing security in the amount of \$983,455 to cover its potential refund liability through March of 1988. Meadowbrook filed a corporate undertaking and a letter of credit in the amount of \$460,000.

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

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On June 24, 1987, Meadowbrook notified this Commission of its intent to increase its water and sewer rates by application of the 1987 price index, pursuant to Section 367.081(4)(a), Florida Statutes. The price index was processed under Docket No. 870673-WS. By Order No. 17951, issued August 7, 1987, we acknowledged a price index increase of .94 percent in Meadowbrook's water rates and .83 percent in its sewer rates. Since these percentages were based upon Meadowbrook's proposed rates, which were still in effect due to the stay of Order No. 17304, Docket No. 870673-WS was kept open pending the disposition of Meadowbrook's appeal of that Order.

On July 29, 1987, Meadowbrook notified this Commission of its intent to increase sewer rates by application of a pass-through rate adjustment, pursuant to Section 367.081(4)(b), Florida Statutes. The pass-through rate increase was processed under Docket No. 870822-SU. By Order No. 18071, issued August 28, 1987, we acknowledged the pass-through rate increase. Since the pass-through rate adjustment was added to the proposed rates, which were still in effect due to the stay of Order No. 17304, Docket No. 870822-SU was kept open pending the disposition of Meadowbrook's appeal of that Order.

On December 10, 1987, the First DCA affirmed Order No. 17304 in all respects. Meadowbrook Utility Systems, Inc. v The Florida Public Service Commission, 518 So. 2d 326 (Fla. 1st DCA 1987). On December 23, 1987, Meadowbrook filed a motion for rehearing with the First DCA. Meadowbrook's motion was denied on February 1, 1988.

On February 26, 1988, Meadowbrook petitioned the Supreme Court of Florida to review the decision of the First DCA. On June 20, 1988, the Supreme Court denied Meadowbrook's petition for review and granted this Commission's motion for attorney's fees. Meadowbrook utility Systems, Inc. v The Florida Public Service Commission, 529 So. 2d 694 (Fla. 1988).

Early in 1988, this Commission discovered an error in the computer program used by Meadowbrook to calculate the pass-through of increased sewer rates. As a result of this error, the sewer base facility charge was increased by \$2.60 per ERC rather than \$2.14 per ERC. By Order No. 19174, issued April 18, 1988, in Docket No. 870822-SU, we corrected this error and required Meadowbrook to reduce its rates and refund the excess revenues collected under the incorrect rates.

On April 25, 1988, Kelly Tractor Company, Inc. (Kelly Tractor), filed a complaint against Meadowbrook. The basis of Kelly Tractor's complaint was that Meadowbrook misread its water meter for some seven years, with the result that Meadowbrook overcharged Kelly Tractor by \$168,902.58 for both water and sewer service. Kelly Tractor requested that this Commission order Meadowbrook to refund the overcharges, plus interest. The Kelly Tractor matter was processed under Docket No. 880606-WS. Although the Kelly Tractor matter is outside of the record for this proceeding, it is discussed herein insofar as it relates to Meadowbrook's motion for a partial stay.

On July 29, 1988, Meadowbrook filed a motion for this

Commission to "adjust" the amount of the required refund. Meadowbrook argued that, before we ordered it to fulfill its refund requirement, we should reconsider certain proforma plant additions which we disallowed in the rate case and give initial consideration to certain unanticipated plant additions and expenses, to Meadowbrook's overcharging of Kelly Tractor and to Meadowbrook's contention that such a refund would cause it to go bankrupt. By Order No. 20135, issued October 10, 1988, we found that, with regard to the previously disallowed proforma plant additions, Meadowbrook's motion was an untimely motion for reconsideration. In addition, we found that the remaining issues raised by Meadowbrook were completely outside of the record of the consolidated rate application and overearnings investigation. Accordingly, by Order No. 20135, we dismissed Meadowbrook's motion.

On November 7, 1988, by Order No. 20287, we lifted the stay of Order No. 17304, recalculated Meadowbrook's rates to account for the 1987 price index and pass-through rate increases and required Meadowbrook to comply with the refund provisions of Order No. 17304.

On November 22, 1988, Meadowbrook filed a Motion for Reconsideration of Order No. 20287. In its motion, Meadowbrook argued again that, before enforcing Orders Nos. 17304 and 20287, we should consider the effect of its overcharging of Kelly Tractor. By Order No. 20488, issued December 20, 1988, we found that Meadowbrook's motion neither raised any matter not previously considered nor pointed out any error or omission in our initial disposition of the matter. Therefore, by Order No. 20488, we denied Meadowbrook's Motion For Reconsideration. Further, in an expression of our frustration with Meadowbrook's procrastinatory tactics concerning the refund, we ordered it to begin complying with the refund provisions of Order No. 17304 as of December 20, 1988.

Also on December 20, 1988, by Order No. 20474, issued in Docket No. 880606-WS, this Commission ordered Meadowbrook to refund to Kelly Tractor overcollections amounting to \$168,902.58, plus interest.

On January 19, 1989, Meadowbrook served notice of an appeal of Orders Nos. 20287 and 20488. The basis of Meadowbrook's appeal is that the Commission, in failing to take Meadowbrook's overcharging of Kelly Tractor into consideration in this consolidated rate application and overearnings docket, has "double-dipped". In other words, Meadowbrook believes that we are requiring it to refund \$168,902.58, the amount refunded to Kelly Tractor, twice. In addition to the notice of appeal, Meadowbrook also filed a motion for a partial stay of Orders Nos. 20287 and 20488 and a motion for clarification of the refund provisions of Order No. 20488.

MOTION FOR PARTIAL STAY

Meadowbrook has requested a partial stay of Orders Nos. 20287 and 20488, pending the First DCA's review of the matter. Under Rule 25-22.061(1)(a), Florida Administrative Code,

When the order being appealed involves the refund of moneys to customers or a decrease in rates charged to customers, the Commission shall, upon motion filed by the utility or company affected, grant a stay pending judicial proceedings. The stay shall be conditioned upon the posting of good and sufficient bond, or the posting of a corporate undertaking, and such other conditions as the Commission finds appropriate.

Since the orders being appealed involve the refund of revenues collected, we are constrained to grant Meadowbrook's motion for partial stay. However, we do not believe that we are always, or indeed in this situation, required to stay the full amount requested. For instance, if Meadowbrook had requested that we stay the entire refund amount, which currently consists of approximately \$1,500,000, we would only grant its motion to the extent of the amount that was actually in controversy.

In the matter currently before us, Meadowbrook has requested that we grant a stay in the amount of \$155,216.10, which we find to be nearly twice the amount that is actually in controversy. As previously stated, the Kelly Tractor matter is completely outside of the record of this case. However, if it were part of the record, the appropriate adjustment would be to remove the amounts that Meadowbrook overcharged Kelly Tractor during the test year from test year revenues and recalculate its rates on a going forward basis. Meadowbrook has simply requested that we stay the entire amount that it refunded to Kelly Tractor for the time during which it is liable for customer refunds, including interest.

Since Meadowbrook used an incorrect methodology to calculate the stay, we requested that it furnish monthly revenue figures so that we might calculate the appropriate stay amount. Meadowbrook refused to provide these figures. Accordingly, we have recalculated what we believe to be the appropriate stay amount, utilizing Meadowbrook's annual reports and regulatory assessment fee filings, as set forth below.

Adjustments to Water Revenues

Overearnings - We first consider the overearnings aspect of this consolidated docket, which applies to water revenues only. During 1984, the test year for this consolidated docket, Meadowbrook overbilled Kelly Tractor by 3,831,000 gallons, or \$9,205, for water. Removing \$9,250 from test year water revenues, the overearnings refund percentage change from 9.52 to 8.32 percent. Meadowbrook should, therefore, be allowed to escrow the difference between the water refund that would have been required under the original refund percentage and the amount that would be required under the adjusted refund percentage, for water revenues collected between August of 1984 and May of 1986.

File and Suspend Rates - Next, we consider the result of

the overbillings on the file and suspend rates which Meadowbrook implemented on or about April 21, 1986. As stated above, Meadowbrook overbilled Kelly Tractor for 3,381,000 gallons during the test year. Under the file and suspend rates, the adjusted gross annual revenues would change from \$919,696 to \$907,820. Subtracting miscellaneous service revenues of \$22,616 from these amounts changes the refund percentage from 33.38 to 32.48 percent. Meadowbrook should, accordingly, be allowed to escrow the difference between the water refund that would have been required under the original refund percentage and the amount that would be required under the adjusted refund percentage, for the period between April 21, 1986 and August 23, 1987, when Meadowbrook's 1987 price index increase became effective.

1987 Price Index Adjustment - Meadowbrook filed for a 1987 price index increase on June 23, 1987. The index-adjusted rates were effective for service rendered on or after August 23, 1987. Applying the price index adjustment to the adjusted file and suspend rates and removing miscellaneous service revenues of \$22,216, the refund percentage changes from 33.33 to 32.44 percent. Therefore, Meadowbrook should be allowed to escrow the difference between the water refund that would have been required under the original refund percentage and the amount that would be required under the adjusted refund percentage, for the period between August 23, 1987 and whenever Meadowbrook's final bills were rendered.

Adjustments to Sewer Revenues

Overearnings - As a result of our overearnings investigation, we did not find that there were any overearnings for Meadowbrook's sewer operations. Therefore, no adjustment is indicated for the period between August of 1984 and May of 1986.

File and Suspend Rates - As discussed above, Meadowbrook overbilled Kelly Tractor for 3,831,000 gallons of water during the test year. Sewer bills are, of course, based upon water consumption. Removing the excess sewer revenues would generate gross annual sewer revenues of \$733,559 rather than \$746,470, for a change in Meadowbrook's refund percentage from 15.69 to 14.21 percent. Meadowbrook should be allowed to escrow the difference between the sewer refund that would have been required under the original refund percentage and the amount that would be required under the adjusted refund percentage, for the period between April 21, 1986, and August 28, 1987, when Meadowbrook implemented the price index increase. The sewer price index increase actually became effective for service rendered on or after August 23, 1987, however, Meadowbrook also applied for a pass-through rate increase for sewer and, since the pass-through became effective for service rendered on or after August 28, 1987, Meadowbrook waited until this date to implement the price index increase as well.

Price Index and Pass-Through Rate Increases - As stated above, Meadowbrook implemented both a 1987 price index and a pass-through rate increase on August 28, 1987. Applying the price index and pass-through adjustments to the adjusted file and suspend rates, the refund percentage changes from 14.83 to

13.49 percent. Therefore, Meadowbrook should be allowed to escrow the difference between the sewer refund that would have been required under the original refund percentage and the amount that would be required under the adjusted refund percentage, for the period between August 28, 1987, and the date that Meadowbrook rendered its final bills.

Breakdown of Sewer Refund Percentages - Since the sewer refund percentages are composite figures, a further breakdown of these percentages is necessary, as set forth below:

<u>Percent:</u>	<u>14.21 percent</u>	<u>13.49 percent</u>
<u>For Period:</u>	<u>May, 1986 to August, 1987</u>	<u>September, 1987 to Final Billing</u>

Metered Customers

All: 13.60 percent 12.91 percent

Flat Rate Customers

Residential: 41.19 percent 36.89 percent

Golfview Junior High School: 56.99 percent 54.74 percent

Adjustment to Stay Amount

Based upon our findings and the adjustments above, we find that the appropriate amount to be stayed, pending judicial review, is \$80,256. Our calculation of this amount is as follows:

SUMMARY

	<u>WATER</u>	<u>SEWER</u>
(A) Revenues - Sept., 1984 to April, 1986	\$ 1,127,665	N/A
Percentage Difference	1.20%	N/A
Amount to be Escrowed	<u>\$ 13,532</u>	N/A
(B) Revenues - April, 1986 to August, 1987	\$ 1,230,409	\$ 1,091,043
Percentage Difference	0.90%	1.48%
Amount to be escrowed	<u>\$ 11,074</u>	<u>\$ 16,147</u>
(C) Revenues - Sept., 1987 to January 1989	\$ 1,496,702	\$ 1,263,003
Percentage difference	0.89%	1.34%
Amount to be escrowed	<u>\$ 13,321</u>	<u>\$ 16,924</u>
(D) Total principal to be escrowed	\$ 37,927	\$ 33,071

	<u>WATER</u>	<u>SEWER</u>
Ascending balance - compound interest factor	<u>1.1304</u>	<u>1.1304</u>
Principal and interest to be escrowed	<u>42,873</u>	<u>37,383</u>
Combined amount to be escrowed	<u>\$80,256</u>	

NOTE 1: Period revenue estimates are based upon annual reports, with the exception of calendar year 1988 and January, 1989. These estimates are based upon regulatory assessment fee filings for the first six months of 1988. The period estimates are necessary because Meadowbrook refused to provide monthly revenue totals as requested.

NOTE 2: Kelly Tractor overcharges have been removed from revenue totals.

MOTION FOR CLARIFICATION

Meadowbrook has also requested that we clarify the basis upon which the refund should be made. Under Rule 25-30.360(3), Florida Administrative Code,

Where the refund is the result of a specific rate change, including interim rate increases and the refund can be computed on a per customer basis, that will be the basis of the refund. However, where the refund is not related to specific rate changes, such as a refund for overearnings, the refund shall be made to customers of record as of a date specified by the Commission. In such case, refunds shall be made on the basis of usage. Per customer refund refers to a refund to every customer receiving service during the refund period. Customer of record refund refers to a refund to every customer receiving service as of a date specified by the Commission.

There are two separate refunds involved in this case. The first portion of the refund is a result of our overearnings investigation and covers the period between August 21, 1984, and April 30, 1986. This refund is applicable to water only as we found no overearnings for the sewer operations. Under Rule 25-30.360(3), Florida Administrative Code, an overearnings refund shall be made to customers of record as of a date specified by the Commission. Inadvertently, no such date was specified in Order No. 17304. Accordingly, by this Order, we hereby specify the customers of record date for the overearnings portion of the refund to be April 21, 1986, the date that Meadowbrook implemented its file and suspend rates.

The second portion of the refund is a result of

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Meadowbrook's implementation of the file and suspend rates. Under Rule 25-30.360(3), Florida Administrative Code, "[w]here the refund is the result of a specific rate change, including interim rate increases and the refund can be computed on a per customer basis, that will be the basis of the refund." Therefore, this portion of the refund shall be made on a per customer basis and shall cover the period between April 21, 1986, when Meadowbrook implemented the file and suspend rates, and whenever Meadowbrook rendered its final bills to customers.

REFUND SECURITY AND ORDER TO SHOW CAUSE

It appears to us that Meadowbrook has taken every legal avenue available to it in order to delay making the refund. It is already over two years since we ordered Meadowbrook to make the refund discussed herein. Accordingly, we believe that it is appropriate to provide Meadowbrook's customers with some assurance that the refund will be forthcoming. Therefore, by this Order, we hereby direct the staff of this Commission to call Meadowbrook's letter of credit and place the proceeds into Meadowbrook's escrow account. Further, we hereby order Meadowbrook to deposit the balance of the amount to be refunded to customers, other than that amount already in escrow, into its existing escrow account within seven days of the date of this Order.

Finally, by Order No. 20488, we ordered Meadowbrook to begin making the refund as of December 20, 1988. We are informed that Meadowbrook has yet to begin making any part of the refund. We, therefore, hereby order Meadowbrook to begin making the refund immediately. Further, we find it appropriate to require Meadowbrook to show cause, in writing, within twenty days of the date of this Order, why it should not be fined, pursuant to Section 367.161, Florida Statutes, up to \$5,000 per day for each day that it has failed to make the required refund.

Based upon the foregoing, it is

ORDERED by the Florida Public Service Commission that Meadowbrook Utility Systems, Inc.'s motion for a partial stay is hereby granted, in part, as set forth in the body of this Order. It is further

ORDERED that the staff of this Commission shall call Meadowbrook Utility Systems, Inc.'s letter of credit and place the proceeds into the utility's existing escrow account. It is further

ORDERED that Meadowbrook Utility Systems, Inc. shall deposit the balance of the amount to be refunded to the customers into its existing escrow account within seven (7) days of the date of this Order. It is further

ORDERED that Meadowbrook Utility Systems, Inc. shall begin making the refund, as discussed herein, as of the date of this Order. It is further

ORDERED that Meadowbrook Utility Systems, Inc. shall show cause, in writing, why it should not be fined, pursuant to Section 367.161, Florida Statutes, up to \$5,000 per day for

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each day, since December 20, 1988, that it has failed to satisfy its refund liability as required by Order No. 20488. It is further

ORDERED that Meadowbrook Utility Systems, Inc.'s response to the show cause provisions of this Order must be received by the Director, Division of Records and Reporting, 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on May 1, 1989. It is further

ORDERED that Meadowbrook Utility Systems, Inc.'s response to the show cause provisions of this Order must contain specific allegations of fact and law. It is further

ORDERED that Meadowbrook Utility Systems, Inc.'s opportunity to file a written response to the show cause provisions of this Order shall constitute its opportunity to be heard prior to a final determination of noncompliance or assessment of penalty, as required under Rule 25-22.110(6), Florida Administrative Code. It is further

ORDERED that a failure to file a timely written response to the show cause provisions of this Order shall constitute an admission of Meadowbrook Utility Systems, Inc.'s noncompliance and a waiver of any right to a hearing.

By ORDER of the Florida Public Service Commission, this 11th day of April, 1989.



STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

RJP

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.

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

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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 sewer 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.