

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for a) DOCKET NO. 900757-SU
Rate Increase in Collier) ORDER NO. PSC-92-0191-FOF-SU
County by NAPLES SEWER) ISSUED: 04/13/92
COMPANY)
_____)

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman
SUSAN F. CLARK
J. TERRY DEASON
BETTY EASLEY
LUIS J. LAUREDO

ORDER REQUIRING UTILITY TO CEASE COLLECTING
INTERIM RATES AND REQUIRING REFUND OF
INTERIM RATES ALREADY COLLECTED

BY THE COMMISSION:

Case Background

Naples Sewer Company (NSC or utility) is a class "C" wastewater utility which has been providing service to an industrial park in Naples, Florida, since 1974. Upon granting NSC a grandfather certificate in 1986, we approved NSC's then-existing rates. The instant rate proceeding was the utility's first before the Commission.

NSC met the minimum filing requirements (MFRs) for a rate increase on April 23, 1991; therefore, that date became the official date of filing. The test year for final rates was the projected twelve-month period ended December 31, 1991. The utility requested final wastewater rates designed to generate a revenue requirement of \$292,079, an increase of 334%.

NSC requested interim wastewater rates designed to generate \$181,202 in annual revenues, which exceeded interim test year revenues by \$113,872, or 169%. By Order No. 24737, issued July 1, 1991, we authorized NSC to collect interim wastewater rates, subject to refund, which were designed to generate \$143,646 in annual revenues, revenues 113% higher than interim test year revenues. Interim rates were secured by a letter of credit.

A formal administrative hearing was scheduled for September 5, 1991. However, by Order No. 24922, issued August 16, 1991, we dismissed NSC's rate case because NSC did not comply with the noticing requirement of Rule 25-22.0406(5), Florida Administrative

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Code, and, thus, denied its customers procedural due process. We further ordered that any interim revenues collected by NSC be refunded with interest.

On August 23, 1991, NSC filed a Motion for Reconsideration and a Motion for Stay Pending Judicial Review. On August 30, 1991, NSC filed an Amended Motion. By Order No. 25392, issued November 25, 1991, the Commission denied both of NSC's motions. The instant Order concerns the refund of interim rates.

Interim Rates

NSC appealed our Order dismissing its case, Order No. 24922, and our Order denying reconsideration and a stay, Order No. 25392. Our reason for denying NSC's request for a stay pursuant to Rule 25-22.061(1)(a), Florida Administrative Code, was clear. In Order No. 25392, we stated,

We believe that the cited rule is inapplicable because it pertains only to stays pending judicial appeal, and an appeal has not yet been filed in this case.

We therefore shall not grant a stay at this time. If the utility appeals this case, the utility would be entitled to a stay if it complies with the requirements of Rule 25-22.061, Florida Administrative Code.

After it had filed its notice of appeal, NSC refused to file a request for a stay. Further, during the pendency of NSC's case at the Commission and at the First District Court of Appeal (DCA), NSC failed to file the monthly interim rates reports required by Order No. 24737 and by Rule 25-30.360(6), Florida Administrative Code.

On February 14, 1992, NSC filed with the Commission a notice stating that NSC had sold its facilities to Collier County on February 12, 1992. Simultaneous with this filing, NSC wrote the Clerk of the First DCA that pursuant to Section 367.071(4)(a), Florida Statutes, NSC's appeal was terminated by operation of law. Upon request of the First DCA, NSC filed a Notice of Dismissal with the Court; the Court, on March 6, 1992, entered an Order dismissing NSC's appeal.

The appeal's dismissal notwithstanding, our Order requiring a refund has never been stayed by this Commission or by the First DCA. Rule 25-30.360(2), Florida Administrative Code, requires that refunds be completed within ninety days of the order requiring the refund. Even if we measured the ninety-day refund period from the date of our Order denying reconsideration, November 25, 1991, the refund completion date, February 23, 1992, has come and gone

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without NSC's fully complying with the refund and without its filing refund reports as required by Rule 25-30.360(7) and (8), Florida Administrative Code.

Prior to our considering action against NSC for the above transgressions, NSC submitted a report of the interim rates it collected since its implementation of those rates. Also, by letter dated March 18, 1992, NSC's owner agreed to complete the refund of all interim rates collected and to file all refund reports on or before April 23, 1992, thirty days from the date of this decision. Therefore, we hereby order the utility to immediately cease collecting any interim rates and to complete the refund and to file the refund reports by the date promised.

Extension on Letter of Credit

As security for its collection of interim rates, NSC established a letter of credit with the Citizens National Bank of Naples (the bank) for the benefit of this Commission. The letter of credit provides that the Commission may draw any sum not exceeding \$65,000, that any drafts must be accompanied by a signed statement "certifying that Naples Sewer Company is in violation of its agreement with Public Service Commission regarding the guarantee of interim increase," and that drafts must be presented on or before April 30, 1992.

In conjunction with its offer to complete the refund by April 23, 1992, the utility agreed to obtain a thirty-day extension on the letter of credit, making the expiration date on the instrument May 30, 1992. As of the day of our vote in this matter, we had already received an official extension on the letter of credit from the bank. We believe that this extension will afford us sufficient time to verify the utility's completion of the refund, and, therefore, we accept and acknowledge said extension.

It is, therefore,

ORDERED by the Florida Public Service Commission that Naples Sewer Company shall immediately cease collecting any interim rates and shall, by April 23, 1992, complete a refund of interim rates and file refund reports as set forth hereinabove. It is further

ORDERED that the extension on the letter of credit obtained by Naples Sewer Company is hereby accepted and acknowledged. It is further

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ORDERED that this docket shall remain open pending further disposition by the Commission.

By ORDER of the Florida Public Service Commission, this 13th of April, 1992.



STEVE TRIBBLE, Director,
Division of Records and Reporting

(S E A L)

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 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.