**FLORIDA PUBLIC SERVICE COMMISSION**

 **Fletcher Building, 101 East Gaines Street**

 **Tallahassee, Florida 32399-0850**

 **M E M O R A N D U M**

 **NOVEMBER 9, 1994**

**TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)**

**FROM: DIVISION OF WATER & WASTEWATER (CASEY, FERGUSON)**

 **DIVISION OF LEGAL SERVICES (PELLEGRINI)**

**RE: DOCKET NO. 941107-WU - FORTY-EIGHT ESTATES WATER SYSTEM -APPLICATION FOR A STAFF ASSISTED RATE CASE**

**COUNTY: LAKE**

**AGENDA: NOVEMBER 22, 1994 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE**

**CRITICAL DATES:15-MONTH EFFECTIVE DATE: MARCH 19, 1996**

 **(SARC)**

**SPECIAL INSTRUCTIONS:THIS ITEM SHOULD BE HEARD BY THE FULL COMMISSION.**

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 **CASE BACKGROUND**

 Forty Eight Estates Water System (48 Estates or utility) is a Class C water only utility serving 72 customers in Lake County. This utility was organized in 1971. Although Lake County came under Commission jurisdiction on June 13, 1972, this utility was not brought to the attention of the Commission until a customer inquiry in December 1986. Mr. Stanley Busk owned the utility since 1985. On January 22, 1987, 48 Estates applied for a certificate for its existing water system and was granted water Certificate 498-W in Commission Order No. 18839, issued February 10, 1988.

 The utility has never submitted an annual report to the Commission. Show cause actions have been brought against the utility by the Commission for failure to file 1988, 1989, 1990 and 1991 annual reports and no reports were received for 1992 and 1993. Past due regulatory assessment fees total $896.07 for 1988, 1992 and 1993. On August 9, 1994, Judge Jerry T. Lockett in the Circuit Court of the Fifth Judicial Circuit in Lake County issued an Order in Case No. 88-1353-CA-01, declaring 48 Estates abandoned and appointing J. Swiderski Utilities, Inc. (JSU) as receiver of the system. The abandonment was precipitated by a Department of Environmental Protection (DEP) suit against the owner, Mr. Busk, for not maintaining required standards for the utility. DEP issued an Order requiring immediate repairs and upgrades to the water system to bring it in compliance within 30 days, which the utility owner failed to do.

 The Commission acknowledged JSU as receiver in Docket No. 940855-WU at the October 18, 1994 Agenda Conference. JSU is a utility operating two systems in Lake County, Summit Chase, which serves 219 water and 218 wastewater customers and Kings Cove, which serves 148 water and 143 wastewater customers under Certificate Nos. 441-W and 371-S. JSU, on behalf of 48 Estates, filed this staff assisted rate case on October 17, 1994, requesting emergency rate consideration. The existing tariff for 48 Estates includes no base facility charge, only a gallonage charge of $1.16 per 1,000 gallons with a minimum charge of $6.25. The rates have not changed since the utility's original certification.

 The utility will have to make extensive capital improvements in order to comply with DEP standards. Until capital improvements can be thoroughly examined within the scope of this SARC, the utility would like to recover at least its operating and maintenance costs, along with the related regulatory assessment fees.

 The emergency rates recommended herein are based solely on the estimated shortfall of operation and maintenance (O & M) expenses over revenues, grossed-up for regulatory assessment fees. Books and records from the previous owner are not available. For this emergency rate recommendation, staff has used the utility's original certificate Order No. 18839, issued February 10, 1988, as a starting point. A staff audit of this utility was completed September 11, 1987 with a test year ending December 31, 1986. Staff has also contacted vendors of the utility to request historical cost records. When this was not possible, staff estimated costs based on the number of customers and like-size utilities or indexed the staff audited 1986 costs through the annual Commission approved index figures. Revenues are based on average customer usage per month obtained from the billing analysis during the 1987 staff audit and updated to the present number of customers. A thorough examination of the utility's quality of service, rate base, rates and charges is currently scheduled and a final staff recommendation will be made for the May 16, 1995, agenda conference.

 Water use in the utility's service area is under the jurisdiction of the St. Johns River Water Management District. The district has designated the region as a critical use area, thereby requiring water conservation methods to be implemented. A review of this utility's water usage will be done for the final recommendation after the staff engineer and staff auditor have completed their investigations.

 **DISCUSSION OF ISSUES**

**ISSUE 1:** Should Forty-Eight Estates Water System request for emergency rate relief be granted and if so, what is the appropriate increase and what are the appropriate rates?

**RECOMMENDATION:** Yes, the utility should be granted emergency rate relief designed to generate additional annual revenues of $7,293 for water, an increase of 79.27%. The recommended rates are incorporated into staff's recommendation below. (CASEY, FERGUSON, PELLEGRINI)

**STAFF ANALYSIS:** In most staff assisted rate case proceedings, emergency rates would not be considered. The main reason for this practice has been the lack of financial data to set rates until the staff audit was completed along with prior problems with other Class C utilities ability to refund. See, e.g., Order No. PSC-94-1053-FOF-WS, Order Denying Petition for Emergency Rates or for Reconsideration of Order No. 24643, In Re: Application for Staff-Assisted Rate Case in Volusia County by PINE ISLAND UTILITY CORPORATION, 94 FPSC 8:510, August 29, 1994 (emergency rates denied because appropriate only where immediate and urgent need in very unique circumstances). Cf. Order No. PSC-93-1844-FOF-WS, Order Granting Emergency Rates and Charges, In Re: Application for Staff-Assisted Rate Case in Marion County by ASTOR WEST, INC., 93 FSPC 12:528, December 28, 1993 (Commission does not ordinarily consider emergency rates in SARC unless utility in receivership, in order to encourage timely seeking of rate relief); Order No. PSC-93-0633-FOF-SU, Order Granting Emergency Temporary Rates and Placing Docket in Monitor Status, In Re: Application for Staff-Assisted Rate Case by L.C.M. Sewer Authority in Lee County, 93 FPSC 4:608, April 22, 1993 (determination whether emergency rates appropriate made on case-by-case basis and not typically allowed because lack of audited data); Order No. 25711, Order Granting Emergency Temporary Wastewater Rate Increase, Subject to Refund, and Establishing Provisions for Deposit and Release of Escrow Funds, In Re: Petition for Emergency Limited Proceedings on Wastewater Service in Pasco County by MAD HATTER UTILITY, INC., 92 FPSC 2:276, February 12, 1992 (utility allowed to collect emergency temporary rates, subject to refund, to recover bulk waste treatment costs, in order to preserve public health, safety, and welfare).

 Staff recommends that this utility's history warrants an exception to practice. 48 Estates was declared abandoned on August 9, 1994 by Judge Jerry T. Lockett of the Fifth Judicial Circuit Court in Lake County and is now in receivership. The previous owner, Stanley Busk, failed to acknowledge numerous show cause actions by the Commission and ignored DEP orders to bring the water system into compliance with required standards.

 This SARC will allow the recovery of prudent utility expenses in rates and allow 48 Estates the opportunity to earn a fair rate of return. Staff's initial investigation shows O&M expenses exceeding revenues by $6,551. By following the time schedule of a typical staff-assisted rate case, the earliest date at which 48 Estates could hope to receive compensatory rates would be June 26, 1995. At that point, the receiver would have expended an estimated unrecoverable $5,779 in operating expenses in excess of receipts from revenue to operate 48 Estates. Given that it is not the receiver's fault that the utility operated at a deficit for so long, that the utility is not meeting DEP required standards and that the customers may suffer if funds are not available for the continued operation of the system, staff recommends approval of emergency rates, subject to refund, which will minimize the loss.

 The O & M expenses have been analyzed by staff, adjusted where necessary, and grossed up for regulatory assessment fees. These calculations do not include depreciation expense or rate of return, which will be handled in the final recommendation. Calculations of the recommended increases, with adjustments thereto, are contained on Schedule No. 1. Forty Eight Estates existing tariff does not provide for a base facility and gallonage rate structure, which is the preferred rate structure to provide for the equitable sharing by the rate payers of both the fixed and variable costs of providing service. The existing tariff consists of a $1.16/1,000 gallon charge for water with a minimum charge of $6.25/month. Staff is recommending conversion to the base facility and gallonage rate structure in accordance with Rule 25-30.437 (6), Florida Administrative Code. The recommended rates, which will allow 48 Estates to recover its operating and maintenance expenses, grossed up for regulatory assessment fees, are:

 WATER

 MONTHLY RATES

 Residential

 Emergency

Base Facility Charge Temporary

 Meter Size Existing Recommended

 5/8" x 3/4" N/A $ 7.79

 Gallonage Charge

 Per 1,000 gallons $ 1.16\* $ 1.23

 \* Minimum Charge of $6.25

 Using the 72 residential water customers with an average water consumption of 9,179 gal/mon per customer, an average residential monthly water bill comparison would be as follows:

 Average Average

 Monthly Bill Monthly Bill

 For Using

 Existing Emergency Percent

 Rates Rates Increase

Base Facility Charge $ 0.00 $ 7.79

Gallonage Charge $10.65 $ 11.29

Total $10.65 $ 19.08 79.15%

**ISSUE 2:** Should J. Swiderski Utilities, Inc., as receiver for 48 Estates Water System, be required to provide interim rate protection, and if so, in what form and in what amount?

**RECOMMENDATION:** Yes, J. Swiderski Utilities, Inc., as receiver for 48 Estates Water System, should file either a bond, a letter of credit from an independent financial institution or establish an escrow account with an independent financial institution, to remain in effect until a final Commission Order is issued.

 The utility should maintain a record of the amount of the revenues that are subject to refund. In addition, after the increased rates are in effect, the utility should file reports with the Division of Water and Wastewater no later than 20 days after each monthly billing. These reports shall indicate the amount of revenue collected under the increased rates. (CASEY)

**STAFF ANALYSIS:** This recommendation proposes an increase in water rates. In order to protect the customers in the event that the final rates are less than those received as a result of the emergency increase authorized, it is recommended that the utility provide refund security in the amount of $5,102. The recommended rates collected by the utility shall be subject to the refund provisions discussed below.

 The utility should be authorized to collect the emergency rates after staff's approval of the security for potential refund, a copy of the proposed customer notice, and revised tariff sheets. The security should be in the form of a letter of credit in the amount of $5,102. Alternatively, the utility could establish an escrow agreement with an independent financial institution.

 If the utility chooses a bond as security, the bond should contain wording to the effect that it will be terminated only under the following conditions:

 1) The Commission approves the final rate increase; or

 2) If the Commission denies the increase, the utility shall refund
 the amount collected that is attributable to the increase.

 If the utility chooses a Letter of Credit as security, it should contain the following conditions:

 1) The letter of credit is irrevocable for the period it is in effect.

 2) The letter of credit will be in effect until a final Commission order is rendered, either approving or denying
 the rate increase.

 If the security is provided through an escrow agreement, the following conditions should be part of the agreement:

 1) No refunds in the escrow account may be withdrawn by the utility without the express approval of the Commission.

 2) The escrow account shall be an interest bearing account.

 3) If a refund to the customers is required, all interest earned by the escrow account shall be distributed to the customers.

 4) If a refund to the customers is not required, the interest earned by the escrow account shall revert to the utility.

 5) All information on the escrow account shall be available from the holder of the escrow account to a Commission representative at all times.

 6) The amount of revenue subject to refund shall be deposited in the escrow account within seven days of receipt.

 7) This escrow account is established by the direction of the Florida Public Service Commission for the purpose (s) set forth in its order requiring such account. Pursuant to Cosentino v. Elson, 263 So. 2d 253 (Fla. 3d DCA 1972), escrow accounts are not subject to garnishments.

 8) The Director of Records and Reporting must by a signatory to the escrow agreement.

 In no instance should the maintenance and administrative costs associated with the refund be borne by the customers. These costs are the responsibility of, and should be borne by, the utility. Irrespective of the form of security chosen by the utility, an account of all monies received as a result of the rate increase should be maintained by the utility. This account must specify by whom and on whose behalf such monies were paid. If a refund is ultimately required, it should be paid with interest calculated pursuant to Rule 25-30.360(4), Florida Administrative Code.

 The utility should maintain a record of the amount of the revenues that are subject to refund. In addition, after the increased rates are in effect, the utility should file reports with the Division of Water and Wastewater no later than 20 days after each monthly billing. These reports shall indicate the amount of revenue collected under the increased rates.

**ISSUE 3:** What is the appropriate effective date of the increased emergency rates?

**RECOMMENDATION:** The approved emergency rates shall be effective for service rendered as of the stamped approval date on the revised tariff sheets provided customers have received notice, in accordance with Rule 25-30.475, Florida Administrative Code. The utility must provide proof that the customers have received notice within ten days of the date of the notice. Tariff sheets will be approved upon staff's verification that the tariff sheets are consistent with the Commission's decision, that the proposed customer notice is adequate, and that the required security has been provided. In no event shall the rates be effective for services rendered prior to the stamped approval date. (CASEY)

**STAFF ANALYSIS:** The approved emergency rates shall be effective for service rendered as of the stamped approval date on the revised tariff sheets, provided customers have received notice, in accordance with Rule 25-30.475, Florida Administrative Code. The utility must provide proof that the customers have received notice within ten days of the date of the notice. Tariff sheets will be approved upon staff's verification that the tariff sheets are consistent with the Commission's decision, that the proposed customer notice is adequate, and that the required security has been provided. In no event shall the rates be effective for services rendered prior to the stamped approval date.

**ISSUE 4:** Should this docket be closed?

**RECOMMENDATION:** No, this docket should remain open for the processing of the staff-assisted rate case. (CASEY, FERGUSON, PELLEGRINI)

**STAFF ANALYSIS:** This petition for emergency rate relief was filed within the context of a staff-assisted rate case. Staff has scheduled a recommendation considering all pertinent aspects of the SARC for the May 16, 1995, agenda conference. Staff will make a recommendation regarding closing the docket at that time.

FORTY‑EIGHT ESTATES WATER SYSTEM

DOCKET NO. 941107‑WU

CALCULATION OF EMERGENCY RATE INCREASE (WATER)

SCHEDULE NO. 1

 PER STAFF ADJUSTMENTS STAFF

 PER STAFF 1986 JAN. 1, 1986 FOR ADJUSTED

 ACCOUNT AUDIT AUDIT THROUGH EMERGENCY REVENUE &

 NUMBER ACCOUNT TITLE DEC. 31, 1986 ADJUSTMENTS DEC. 31, 1986 RATES O & M

 461 Revenue 6,700 251 6,951 2,249 9,200 \*8

 601 Salaries and Wages ‑ Employees 0 780 780 244 1,024 \*1

 603 Salaries and Wages ‑ Officers 2,507 365 2,872 898 3,770 \*1

 604 Employee Pensions and Benefits 0 0 0

 610 Purchased Water 0 0 0

 615 Purchased Power 1,359 1,359 (26) 1,333 \*2

 616 Fuel for Power Production 0 0 0

 618 Chemicals 27 27 119 146 \*3

 620 Materials and Supplies 1,460 1,460 457 1,917 \*1

 630 Contractual Services 837 (500) 337 4,499 4,836 \*4

 640 Rents 125 125 39 164 \*1

 650 Transportation Expenses 190 190 59 249 \*1

 655 Insurance Expense 0 0 822 822 \*5

 665 Regulatory Commission Expense 0 0 50 50 \*6

 670 Bad Debt Expense 0 0 0

 675 Miscellaneous Expenses 1,849 195 2,044 (604) 1,440 \*7

 8,354 840 9,194 6,557 15,751

 OPERATING LOSS (1,654) (2,243) (6,551)

 GROSS UP FOR REGULATORY ASSESSMENT FEES

 $15,751/.955 = $16,493

 PERCENTAGE INCREASE

 $7,293/$9,200 = 79.27%

 NOTES

 \*1 Indexed up from the 1986 staff audit using the Commission approved index figure.

 \*2 Actual 12 month historic cost from electric company.

 \*3 Pro rated using cost of receivers other system which has just completed a staff audit for a SARC.

 \*4 Includes $2,837 for operator services, $1,949 for water testing, $300 for accounting fees and $200 for repairs and maintenance.

 \*5 Actual cost, per system, for receiver's other 2 systems which just completed a staff audit.

 \*6 Estimated Rate Case Expense amortized over 4 years.

 \*7 Includes $293 for postage, $180 for telephone, $529 for office expenses, and $438 for an operating permit amortized over 3 years.

 \*8 Calculated using average customer usage/month obtained from the billing analysis during the 1986 audit and updated to the utility's present 72

 customers.

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