

FLORIDA PUBLIC SERVICE COMMISSION  
Capital Circle Office Center, 2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

M E M O R A N D U M

OCTOBER 17, 1996

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

FROM: DIVISION OF WATER & WASTEWATER (CASEY, EDWARDS) *[Handwritten initials]*  
DIVISION OF LEGAL SERVICES (AGARWAL) *[Handwritten initials]*

RE: DOCKET NO. 960814-WS - HEATHER HILLS ESTATES UTILITY -  
INVESTIGATION OF POSSIBLE OVERTURNINGS  
COUNTY: MANATEE

AGENDA: 10/29/96 - REGULAR AGENDA - DECISION ON REVENUES SUBJECT  
TO REFUND - PARTICIPATION IS LIMITED TO COMMISSIONERS  
AND STAFF

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: S:\PSC\WAW\WP\960814WS.RC\m

CASE BACKGROUND

On October 10, 1995, the Manatee County Board of County Commissioners adopted Resolution No. R-95-109, pursuant to Section 367.171, Florida Statutes, declaring the privately owned water and wastewater utilities in Manatee County subject to the provisions of Chapter 367, Florida Statutes, effective October 10, 1995. The Florida Public Service Commission (PSC) acknowledged their resolution in Order PSC-95-1393-FOF-WS, issued November 11, 1995.

Heather Hills Estates (Heather Hills or utility) was established in 1967 to serve water and wastewater customers within Heather Hills Estates in Manatee County, Florida. The utility serves 353 single family residential customers as well as a park club house and a golf course clubhouse/restaurant for a total of approximately 355 water customers and 354 wastewater customers. The golf course has a septic tank for wastewater service. Water use in the utility's service area is under the jurisdiction of the Southwest Florida Water Management District. The utility is a consecutive system (purchases water and wastewater service for resale) which is considered non-jurisdictional by the Southwest Florida Water Management District.

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Heather Hills filed its application for a grandfather certificate on December 7, 1995. The utility was granted Water Certificate No. 577-W and Wastewater Certificate No. 498-S in Order No. PSC-96-0434-FOF-WS, issued March 28, 1996. A pass-through rate increase was approved for Heather Hills effective April 22, 1996 for the 4 1/2% regulatory assessment fees.

During consideration of the grandfather certificate item by Commissioners at the March 5, 1996 agenda conference, two customers of Heather Hills expressed their concern of possible overearnings of the utility and dissatisfaction with the existing minimum gallonage charge for water and wastewater. The 1995 annual report review revealed possible overearnings of the utility. Staff followed-up the review by initiating an undocketed investigation of possible overearnings.

When the analysis was complete, staff docketed the investigation and brought the item to agenda on August 13, 1996. Commission Order No. PSC-96-1126-FOF-WS, issued September 5, 1996, found the utility was overearning by \$1,826 on the water system and not overearning on the wastewater system. In lieu of ordering a reduction in water rates, the Commission ordered the utility to initiate a meter replacement program which would negate any overearnings on the part of the water system. In addition, the Commission ordered a **revenue neutral rate structure change** in the existing rate structure of the utility to eliminate the minimum gallonage charge for water and wastewater.

A timely protest to the proposed agency action (PAA) order was filed by fourteen utility customers and received by the Commission on September 25, 1996. Because the protest results in making the PAA Order a nullity, the utility is not required to begin the meter replacement program, however, the utility is overearning by \$1,826 annually. The new rate structure the Commission proposed for the utility has not been implemented. This recommendation addresses placing the overearnings subject to refund and determining the required security.



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DISCUSSION OF ISSUES

ISSUE 1: Should any amount of Heather Hills annual water or wastewater revenues be held subject to refund?

RECOMMENDATION: Yes. Heather Hills should hold annual water revenues of \$1,826 subject to refund. Since the wastewater system was found not to be overearning, no wastewater revenues should be held subject to refund. (CASEY)

STAFF ANALYSIS: An overearnings investigation of Heather Hills Estates utility was completed and Order No. PSC-96-1126-FOF-WS, issued September 5, 1996, found the utility was overearning by \$1,826 annually on the water system and not overearning on the wastewater system. In lieu of ordering a reduction in water rates, the Commission ordered the utility to initiate a meter replacement program which would negate any overearnings on the part of the water system. In addition, the Commission ordered a **revenue neutral rate structure change** in the existing rate structure of the utility to eliminate the minimum gallonage charge for water and wastewater. A timely protest signed by fourteen (14) customers of Heather Hills Estates was received by the Commission on September 25, 1996.

Since the protest resulted in making the PAA Order a nullity, the utility will be overearning by \$1,826 annually because the meter replacement program and the new rate structure will not be implemented at this time. Staff is recommending Heather Hills Estates Utility hold annual water revenues of \$1,826 subject to refund.



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**ISSUE 2:** What is the appropriate security to guarantee the amount subject to refund?

**RECOMMENDATION:** The security should be in the form of a bond or letter of credit in the amount of \$1,420. Alternatively, the utility could establish an escrow agreement with an independent financial institution. If security is provided through an escrow agreement, the utility should escrow 4.22% of its quarterly revenues. (CASEY)

**STAFF ANALYSIS:** Pursuant to Section 367.082, Florida Statutes, when revenues are held subject to refund, the utility is authorized to continue collecting the previously authorized rates. As recommended in Issue No. 1, the amount of potential overearnings in the water system is \$1,826 on an annual basis. Assuming a nine-month time frame to complete the hearing process and make a final recommendation, the potential refund amount is \$1,370. Interest, calculated in accordance with Rule 25-30.360, Florida Administrative Code, is \$50, making the total \$1,420, which should be collected under guarantee, subject to refund with interest.

The security should be in the form of a bond or letter of credit in the amount of \$1,420. 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 finds no overearnings; or
- 2) If the Commission finds overearnings, the utility shall refund the amount collected that is attributable to the overearnings.

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 the final Commission order is rendered, and the amount of refund, if any, is determined.

If security is provided through an escrow agreement, the utility should escrow 4.22% of its quarterly revenues (customers billed quarterly), and the following conditions should be part of



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the escrow agreement:

- 1) No funds 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 be a signatory to the escrow agreement.

In no instance should the maintenance and administrative costs associated with any refund be borne by the customers. These costs are the responsibility of, and should be borne by, the utility. Also, by no later than the twentieth (20) day of each month, the utility should file a report showing the amount of revenues collected each month and the amount of revenues collected to date relating to the amount subject to refund. Should a refund be required, the refund should be with interest and undertaken in accordance with Rule 25-30.360, Florida Administrative Code.



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ISSUE 4: Should this docket be closed?

RECOMMENDATION: No, this docket should remain open pending the hearing process and final recommendation to the Commission.  
(AGARWAL, CASEY)

STAFF ANALYSIS: A timely protest of PAA Order No. PSC-96-1126-FOF-WS, issued September 5, 1996 was signed by fourteen (14) customers of Heather Hills Estates and received by the Commission on September 25, 1996. This docket should remain open pending the hearing process and final recommendation to the Commission.