

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for rate
increase in Flagler County by
Palm Coast Utility Corporation.

DOCKET NO. 951056-WS
ORDER NO. PSC-97-0654-FOF-WS
ISSUED: June 9, 1997

The following Commissioners participated in the disposition of
this matter:

JULIA L. JOHNSON, Chairman
J. TERRY DEASON
DIANE K. KIESLING

ORDER GRANTING STAY OF ORDERS NOS. PSC-96-1338-FOF-WS
AND PSC-97-0388-FOF-WS, REQUIRING ADDITIONAL SECURITY, AND
PLACING ADDITIONAL REVENUES SUBJECT TO REFUND

BY THE COMMISSION:

BACKGROUND

Palm Coast Utility Corporation (PCUC) is a utility which provides water and wastewater service to the public in Flagler County. PCUC is located in a critical use area as designated by the St. Johns River Water Management District (SJRWMD). During the twelve months ending December 31, 1994 (the historical test year), the utility recorded operating revenues of \$5,007,702 for water service and \$2,951,217 for wastewater service. During the same period, PCUC reported a net operating loss of \$2,247 for water and net operating income of \$281,533 for wastewater.

On December 27, 1995, the utility filed an application for increased rates pursuant to Sections 367.081 and 367.082, Florida Statutes. The utility satisfied the minimum filing requirements (MFRs) for a rate increase on February 12, 1996, and that date was designated as the official filing date pursuant to Section 367.083, Florida Statutes.

By Order No. PSC-96-0493-FOF-WS, issued April 9, 1996, (Interim Order) we approved interim rates for PCUC based upon a historic test year, designed to generate \$5,491,319 in annual water revenues and \$3,432,636 in annual wastewater revenues, subject to refund with interest. This represents a \$483,617 (9.66%) increase

DOCUMENT NUMBER-DATE

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PSC-REC'D OS/REPORTING

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over water test year revenues, and a \$481,419 (16.31%) increase over wastewater test year revenues.

A prehearing conference was held in Tallahassee on June 20, 1996. The hearing was held in Palm Coast on July 1 and 2, 1996 and continued and concluded in Tallahassee on July 19, 1996. The Office of Public Counsel (OPC), Dunes Community Development District, and Flagler County intervened in this docket.

On November 7, 1996, we issued Order No. PSC-96-1338-FOF-WS. On November 22, 1996, PCUC filed a timely Motion for Reconsideration (Motion) and a Request for Oral Argument. On December 2, 1996, OPC filed its timely response to PCUC's motion and request. On January 24, 1997, PCUC filed an additional Request for Oral Argument and an Amended Motion for Reconsideration or, Alternatively, Motion to Correct Computational Errors (Amended Motion). On January 31, 1997, OPC filed its response to PCUC's Amended Motion. On February 26, 1997, PCUC filed its Second Amended Motion for Reconsideration or, Alternatively, Amended Motion to Correct Computational Errors. OPC filed its response to this Second Amended Motion on March 3, 1997.

By Order No. PSC-97-0388-FOF-WS, issued on April 7, 1997, (Reconsideration Order) we granted in part and denied in part PCUC's Motion for Reconsideration, denied PCUC's Amended and Second Amended Motions for Reconsideration and denied the requests for oral argument. As a result of this order, PCUC was ordered to refund a percentage of the interim water and wastewater revenues and lower certain water rates and all wastewater rates.

On April 11, 1997, PCUC filed its Motion for Stay Pending Judicial Review. In its Motion, PCUC indicated that it will appeal the Final Order and the Reconsideration Order.

STAY OF ORDERS NOS. PSC-96-1338-FOF-WS AND PSC-97-0388-FOF-WS

Orders Nos. PSC-96-1338-FOF-WS and PSC-97-0388-FOF-WS required PCUC to decrease certain water rates and all wastewater rates charged to customers and refund a percentage of interim revenues. As stated earlier, PCUC filed a Motion for Stay of those orders.

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Rule 25-22.061(1)(a), Florida Administrative Code, provides that:

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.

PCUC contends that pursuant to this rule, the Commission shall, upon motion filed by a utility, grant the stay. As adequate security for this stay, the utility states that it will post an adequate bond.

Where the order in question involves a refund or reduction in rates, then Rule 25-22.061(1)(a), Florida Administrative Code, is mandatory. Orders Nos. PSC-96-1338-FOF-WS and PSC-97-0388-FOF-WS require PCUC to make refunds and reduce certain water rates and all wastewater rates. Therefore, pursuant to Rule 25-22.061(1)(a), Florida Administrative Code, upon PCUC posting a bond as set out below, a stay of Orders Nos. PSC-96-1338-FOF-WS and PSC-97-0388-FOF-WS shall be imposed, pending the resolution of the judicial proceedings.

ADDITIONAL FUNDS HELD SUBJECT TO REFUND

As indicated earlier, by Order No. PSC-96-0493-FOF-WS, issued April 9, 1996, we approved interim rates for PCUC. The utility implemented its interim water and wastewater rates on April 10, 1996. By Orders Nos. PSC-96-1338-FOF-WS and PSC-97-0388-FOF-WS, we required PCUC to refund a percentage of the revenues collected through interim rates and also to reduce certain water rates and all wastewater rates.

In accordance with our decision herein regarding the stay, the refunds and the reduction to rates are postponed until a decision is made by the First District Court of Appeal. Pending the

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decision by the First District Court of Appeal, PCUC will continue to collect interim water and wastewater rates. Therefore, as shown on Schedule No. 1, we have determined that 2.22% of the annual water revenues and 7.87% of the annual wastewater revenues collected through interim rates should be held subject to refund. These amounts are calculated by taking the water and wastewater revenue requirements of \$5,373,161 and \$3,186,512 granted in the Reconsideration Order and the water and wastewater revenue requirements of \$5,491,319 and \$3,432,636 granted in the Interim Order and subtracting the miscellaneous revenues. The percentage is then calculated using the difference between these net amounts.

SECURITY FOR THE REFUND

In general, we estimate that the appeal process will take 24 months. We have calculated the security to include the estimated appeal time, along with the period of time between the implementation of interim rates and this Order. As a result of the motion, we find it appropriate to require that security in the amount of \$1,395,580 be posted to guarantee any potential refunds of revenues collected pursuant to the Interim Order and any additional revenues resulting from the extended time period due to the Stay of Orders Nos. PSC-96-1338-FOF-WS and PSC-97-0388-FOF-WS.

As discussed earlier, pursuant to Rule 25-22.061, Florida Administrative Code, 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 we find appropriate.

In its motion, filed April 11, 1997, the utility states that it will post an appropriate bond. Therefore, the utility shall post a bond in the amount of \$1,395,580. Our calculation is shown on Schedule No. 1. Pursuant to Rule 25-30.360(6), Florida Administrative Code, the utility shall provide a report by the 20th of each month indicating the monthly and total revenue collected subject to refund. Further, the bond shall state that it will remain in effect during the pendency of the appeal and will be released or terminated upon subsequent order of this Commission addressing the potential refund.

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CLOSING OF THE DOCKET

Orders Nos. PSC-96-1338-FOF-WS and PSC-97-0388-FOF-WS have been appealed. Therefore, this docket shall remain open pending final resolution of the appeal by the First District Court of Appeal.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Palm Coast Utility Corporation's Motion for Stay is granted as set out in the body of this Order. It is further

ORDERED that each of the findings made within the body of this Order are hereby approved in every respect. It is further

ORDERED that based on the proposed reduction in rates as shown in Orders Nos. PSC-96-1338-FOF-WS and PSC-97-0388-FOF-WS, Palm Coast Utility Corporation shall collect and hold subject to refund 2.22% of annual water interim revenues and 7.87% of annual wastewater interim revenues pending the appeal of those Orders. It is further

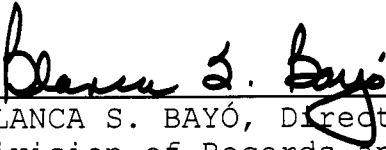
ORDERED that Palm Coast Utility Corporation shall post a bond in the amount of \$1,395,580. It is further

ORDERED that Palm Coast Utility Corporation shall file a report by the 20th of each month indicating the monthly and total revenue collected subject to refund. It is further

ORDERED that this docket shall remain open pending final resolution of the appeal by the First District Court of Appeal.

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By ORDER of the Florida Public Service Commission, this 9th
day of June, 1997.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

BLR

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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.

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.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) 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. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.

**PALM COAST UTILITY CORPORATION
 FLAGLER COUNTY
 DOCKET NO. 951056-WS
 TEST YEAR ENDING DECEMBER 31, 1995**

Schedule No. 1

ANNUAL REVENUES HELD SUBJECT TO REFUND CALCULATION:

WATER

| | | |
|--|------------------|------------------|
| COMMISSION APPROVED - PER INTERIM ORDER | | \$5,491,319 |
| APPROVED FINAL REVENUE - PER RECONSIDERATION ORDER | \$5,373,161 | |
| LESS MISC SERVICE REVENUES | (42,469) | (42,469) |
| WATER SERVICE REVENUES | <u>5,330,692</u> | <u>5,448,850</u> |
| ANNUAL REVENUE SUBJECT TO REFUND | | \$118,158 |

PERCENT INCREASE IN WATER SALES REVENUES

2.22%

WASTEWATER

| | | |
|--|------------------|------------------|
| COMMISSION APPROVED - PER INTERIM ORDER | | \$3,432,636 |
| APPROVED FINAL REVENUE - PER RECONSIDERATION ORDER | \$3,186,512 | |
| LESS MISC SERVICE REVENUES | (59,023) | (59,023) |
| WASTEWATER SERVICE REVENUES | <u>3,127,489</u> | <u>3,373,613</u> |
| ANNUAL REVENUE SUBJECT TO REFUND | | \$246,124 |

PERCENT INCREASE IN WASTEWATER SALES REVENUES

7.87%

AMOUNT OF BOND FOR STAY MOTION:

WATER AND WASTEWATER

| | |
|---|-----------------|
| AMOUNT OF ANNUAL REVENUES SUBJECT TO REFUND | \$364,282 |
| DIVIDED BY 12 MONTHS | 12 |
| MONTHLY REVENUE HELD | <u>\$30,357</u> |

| | |
|---|--------------------|
| Number of months for refund to be completed - 39 months (April 1996 through July 1999) | 39 |
| TOTAL AMOUNT OF POTENTIAL REFUND W/O INTEREST | <u>\$1,183,917</u> |

| | |
|--|------------------|
| 13-MONTH AVERAGE ANNUAL INTEREST RATE AS OF 4/4/97 | 5.501% |
| FACTORED INTERST RATE FOR 39 MONTH PERIOD | <u>1.1787825</u> |

| | |
|--|--------------------|
| AMOUNT OF POTENTIAL REFUNDS - AMOUNT OF BOND | \$1,395,580 |
|--|--------------------|

M E M O R A N D U M

June 6, 1997

RECEIVED

JUN 09 1997

11:30
FPSC - Records/Reporting

TO: DIVISION OF RECORDS AND REPORTING
FROM: DIVISION OF LEGAL SERVICES (REYES) *BLR* *JRS*
RE: DOCKET NO. 951056-WS - Application for rate increase in
Flagler County by Palm Coast Utility Corporation

0654-FOF

Attached is an ORDER GRANTING STAY OF ORDERS NOS. PSC-96-1338-FOF-WS AND PSC-97-0388-FOF-WS, REQUIRING ADDITIONAL SECURITY, AND PLACING ADDITIONAL REVENUES SUBJECT TO REFUND, with attachments, to be issued in the above referenced docket. (Number of pages in Order - 7)

see 1 and 2

BLR/dp

Attachment

cc: Division of Water & Wastewater (Willis, Rendell)

: 951056OR.BLR

Attachment Not Du-lie

*Offered
Amended
OPC*