

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation of possible
overearnings by J. Swiderski
Utilities, Inc. (Kings Cove) in
Lake County

DOCKET NO. 970645-WS
ORDER NO. PSC-97-0815-FOF-WS
ISSUED: July 7, 1997

The following Commissioners participated in the disposition of
this matter:

JULIA L. JOHNSON, Chairman
J. TERRY DEASON
SUSAN F. CLARK
DIANE K. KIELSING
JOE GARCIA

ORDER INITIATING INVESTIGATION INTO RATES AND CHARGES
AND
MAKING REVENUES SUBJECT TO REFUND

BY THE COMMISSION:

BACKGROUND

J. Swiderski Utilities, Inc. (JSUI or utility) is a Class C water and wastewater utility operating the Kings Cove system in Lake County. The Kings Cove system serves approximately 147 water and 143 wastewater customers. For the year ending December 31, 1996, the utility reported water operating revenues of \$53,630 and wastewater operating revenues of \$60,650, and a net operating income of \$20,848 for water and \$13,082 for wastewater.

The utility's 1996 annual report, filed April 2, 1997, indicated that JSUI's (Kings Cove) water system was earning an overall rate of return of 26.85 percent and the wastewater system was earning an overall rate of return of 8.92 percent. The last staff assisted rate case for this utility was completed by Order No. PSC-95-0129-FOF-WS, issued January 26, 1995, in Docket No. 940496-WS.

Our preliminary analysis shows the utility will overearn by approximately \$18,991 or 15.77 percent on an annual basis. The

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purpose of this Order is to initiate an investigation into possible overearnings of JSUI, to hold revenues subject to refund, and to require the provision of appropriate security for those funds subject to refund.

INITIATION OF INVESTIGATION INTO POSSIBLE OVEREARNINGS

Based on a desk audit of JSUI's 1996 annual report for Kings Cove, the preliminary analysis indicated that the utility earned an overall rate of return of 26.85 percent for the water system and 8.92 percent for the wastewater system, for a combined total earnings of 15.13 percent. Based on further analysis, it appears that the utility earned an overall rate of return of 24.62 percent for both systems.

By Order No. PSC-95-0129-FOF-WS, issued January 26, 1995, the utility's authorized overall rate of return is 8.84 percent with a range of 8.83 to 8.85 percent. Using the high end of the authorized range of return, as required by Section 367.082(2)(b), Florida Statutes, our estimates show the utility to be overearning by 15.77 percent. Because the utility appears to be earning outside the range of reasonableness on rate of return, we find that, pursuant to Section 367.082(1), Florida Statutes, an overearnings investigation shall be initiated.

REVENUES SUBJECT TO REFUND

Our preliminary analysis reveals that the Kings Cove system is earning an overall rate of return of 24.62%. As previously stated, the maximum of the authorized rate of return was set at 8.85 percent by Order No. PSC-95-0129-FOF-WS. Therefore, a 15.77 percent reduction is required. Using an estimated rate base of \$120,422, the annual revenues subject to refund is calculated to be \$18,991. Our calculation of the percentage of revenues to be held subject to refund is as follows:

Overall Achieved Return	24.62%
High End of Authorized Rate of Return	<u>8.85%</u>
Reduction Required	15.77%
Multiplied by Estimated Rate Base	<u>\$120,422</u>
Estimated Annual Revenues Subject to Refund	\$ 18,991
Estimated Annual Revenues Subject to Refund	\$ 18,991
Projected Annual Revenues	\$125,036
Operating Revenue % Subject to Refund	15.19%

Therefore, pending the final determination of overearnings, 15.19 percent of annual revenues shall be held subject to refund.

Also, we note that the utility may have aggravated its overearnings situation by implementing two price indexes. These increases are subject to the provisions of Section 367.081(4)(d), Florida Statutes, and may also be subject to refund.

SECURITY FOR FUNDS HELD SUBJECT TO REFUND

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 determined above, the amount of potential overearnings in the Kings Cove system is \$18,991 on an annual basis. Assuming a six-month time frame for our staff to complete their investigation, the potential refund amount is \$9,496. Interest, calculated in accordance with Rule 25-30.360, Florida Administrative Code, is \$266, making the total \$9,762, which should be collected under guarantee, subject to refund.

The security shall be in the form of a bond or letter of credit in the amount of \$9,762. Alternatively, the utility may establish an escrow agreement with an independent financial institution.

If the utility chooses a bond as security, the bond shall contain wording to the effect that it will be released or terminated only upon subsequent order of the Commission addressing overearnings or requiring a refund.

If the utility chooses a letter of credit as a security, it shall contain the following conditions:

- 1) The letter of credit is irrevocable for the period it is in effect.
- 2) The letter of credit shall 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 shall escrow 15.19% of its monthly revenues, and the following conditions shall be part of the escrow agreement:

- 1) No refunds in the escrow account may be withdrawn by the utility without the express approval of the Commission through the Director of the Division of Records and Reporting;
- 2) The escrow account shall be an interest bearing account;
- 3) All information concerning the escrow account shall be available from the institution to the Commission or its representative at all times;
- 4) If a refund to the customers is required, all interest earned by the escrow account shall be distributed to the customers;
- 5) If a refund to the customers is not required, the interest earned by the escrow account shall revert to the utility;
- 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; and
- 8) The Director of Records and Reporting must be a signatory to the escrow agreement.

Irrespective of the type of security provided, the utility shall keep an accurate and detailed account of all monies it receives. In no instance shall the maintenance and administrative costs associated with any refund be borne by the customers. These costs are the responsibility of, and shall be borne by, the utility. Also, by no later than the twentieth of each month, the utility shall 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

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required, the refund shall be with interest and undertaken in accordance with Rule 25-30.360, Florida Administrative Code.

CLOSING OF DOCKET

Pending determination of whether the utility is overearning, this docket shall remain open.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that an investigation of the rates and charges of J. Swiderski Utilities, Inc. (Kings Cove), shall be initiated. It is further

ORDERED that J. Swiderski Utilities, Inc. (Kings Cove), shall place \$18,991 (15.19 percent) annually of its revenues for water and wastewater service subject to refund with interest in accordance with Rule 25-30.360, Florida Administrative Code, to the extent set forth in the body of this order. It is further

ORDERED that J. Swiderski Utilities, Inc. (Kings Cove), shall provide the Commission with a bond or letter of credit in the amount of \$9,762, or an appropriate escrow agreement as set forth in the body of this Order as a guarantee of any potential refund of water and wastewater revenues collected subject to refund. It is further

ORDERED that by no later than the twentieth day of each month, the utility shall 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, pursuant to Rule 25-30.360(6), Florida Administrative Code. It is further

ORDERED that should a refund be required, the refund shall be with interest and undertaken in accordance with Rule 25-30.360, Florida Administrative Code. It is further

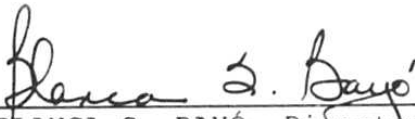
ORDERED that no maintenance or administrative costs associated with any refund shall be borne by the customers. It is further

ORDERED that the amount of revenue subject to refund shall be deposited in the escrow account within seven days of receipt. It is further

ORDERED that this docket shall remain open.

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By ORDER of the Florida Public Service Commission, this 7th
day of July, 1997.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

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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.

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, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, 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 and/or wastewater 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.