

LAW OFFICES
ROSE, SUNDBSTROM & BENTLEY, LLP
2548 BLAIRSTONE PINES DRIVE
TALLAHASSEE, FLORIDA 32301

(850) 877-8555

CHRISH BENTLEY, PA
F MARSHALL DETERDING
BRIAN L DOSTEF
MARTIN S FRIEDMAN, PA
JOHN R JENKINS, PA
STEVEN T MINDLIN, PA
ROBERT M C ROSE
DAREN L SHIPPY
WILLIAM E SUNDBSTROM, PA
DIANE D THOMAS, PA
JOHN L WHARTON

MAILING ADDRESS
POST OFFICE BOX 1007
TALLAHASSEE, FLORIDA 32302-1007
TELEPHONE 850-877-8555

December 9, 1997

VIA HAND DELIVERY

Blanca Bayo, Director
Division of Records & Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida

Re: Forest Hills Utilities, Inc.; Docket No. 961475-SU
Application for Limited Proceeding
Our File No. 29062.02

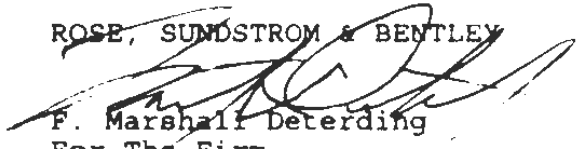
Dear Ms. Bayo:

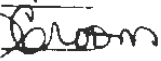
Attached in the above referenced docket are the original and 15 copies of Forest Hills Utilities, Inc.'s Response to Show Cause.

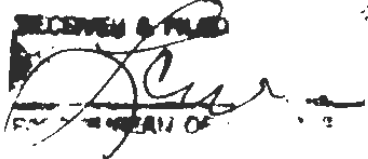
If you have any questions in this regard, please let me know.

Sincerely,

ROSE, SUNDBSTROM & BENTLEY


F. Marshall Deterding
For The Firm

ACK
AFA _____
APP _____
GAF _____
CMU _____ FMD/tms
CTR _____ Enclosures
EAG _____
LEG cc: Tim Vaccaro, Esquire
LN Mr. Eric Groom
OPC _____ Ms. Shannon Austin
RCH _____ Mr. Lee Munroe
SEC Ms. Trish Merchant
WAS 
OTH _____

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FLORIDA PUBLIC SERVICE COMMISSION

DOCUMENT NUMBER-DATE

12585 DEC-95

FPSC RECORDS/REPORTING

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Re: Order to Show Cause)
Forest Hills Utilities, Inc.)
Concerning Customer Deposits) Docket No. 961475-SU
_____)

RESPONSE TO SHOW CAUSE

COMES NOW, Forest Hills Utilities, Inc. (hereinafter "Forest Hills" or "Utility"), by and through its undersigned counsel hereby files this response to the Commission's Order No. PSC-97-1458-FOF-SU which required that the Utility show cause why it should not be fined for violation of Section 367.091(3), Florida Statutes, and Commission Rules 25-30.115, 25-30.311(3) and (5), Florida Administrative Code ("FAC"). It is the Utility's contention that it is not in violation of any rules of the Commission and that the Utility has corrected the minor violation of Section 367.091(3), Florida Statutes, and that the proposed fine is, therefore, unrealistic and unreasonable, and in support thereof states as follows:

Alleged Violation of Rule 25-30.115, FAC

1. The Commission's Show Cause Order alleges that the Utility failed to keep its accounts and records in conformity with the 1984 Uniform System of Accounts, adopted by the National Association of Regulatory Utility Commissioners, in that it failed to follow Accounting Instruction Number 12 for Class B Utilities. This accounting instruction states:

If a Utility also operates other Utility departments such as electric, wastewater, gas, etc., it shall keep such accounts for the other departments as may be prescribed by proper authority and in the absence of prescribed accounts, it shall

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keep such accounts as are proper or necessary to reflect the results of operating each other department.

The Commission's Order alleges that the commingling of water and wastewater deposits with garbage and street light deposits, constitutes a willful violation of this accounting instruction and, therefore, Rule 25-30.115 wherein the Uniform System of Accounts is adopted by reference.

2. Nowhere does the accounting instruction and, therefore, the Rule specifically require that the deposits of the water and wastewater utility systems be separately maintained from those of other entities. It simply requires that the Utility keep such accounts of these non-regulated departments as are proper and necessary to reflect the results of operating each of these other enterprises.

3. The Utility keeps detailed records of its customer deposits showing customer name, account number, lot and street address, the date the deposit was made, the amount of the deposit, whether the deposit is made by an owner or renter, in addition to information concerning late payments, the date and amount of refund and interest paid. The Commission's Order alleges that each customer is given only one receipt for deposit for water, wastewater, and garbage collection and street light service, and that a customer would be unable to determine how much of his deposit is related to each service. While it is correct that a review of that deposit receipt would not provide that information, a simple request from the Utility would. The Utility certainly maintains records that would enable them to provide that information to the

customer or the Commission upon request, and in fact, that information was provided to the Commission staff during the course of the inquiries in this case. Nowhere in the Rule, or in the Accounting Instruction No. 12, is there a requirement that a separate deposit receipt be provided for regulated versus non-regulated services. The Commission has never before alleged that failure to provide separate receipts for deposits for different operations somehow constituted a failure to keep records of all transactions related to those deposits, and in fact, the Utility does keep records of all transactions of deposits. The commingling of these deposit receipts has never been alleged by the Commission to be a violation of Rule 25-30.115, FAC, much less has the Commission ever proposed to show cause or to fine a Utility for commingling of such non-regulated deposits or other accounts.

4. The Commission's suggestion that the commingling of deposit accounts, in and of itself, constitutes a violation of the provisions of Rule 25-30.115, FAC, is unprecedented. The Commission has, over the years, seen numerous cases in which Utility systems regulated by it have operated other non-regulated garbage, street light and other businesses. The Commission has never before suggested that such commingling of deposits or other minor accounts constitutes a violation of a NARUC Accounting Instruction, a violation of a Commission Rule, much less has the Commission required that a Utility Show Cause for such commingling, or propose a fine. While the Commission has in similar cases segregated out the information related to the regulated water and wastewater

operations, the Commission has never alleged any wrongdoing on the Utility's part in similar circumstances, prior to the present case.

Alleged Violation of Rule 25-30.311(3), FAC

1. Commission Order No. PSC-97-1458-FOF-SU alleges that the commingling of deposit accounts for regulated enterprises with those for unregulated enterprises as outlined above also constitutes a violation of Rule 25-30.311(3), FAC.

2. The provisions of this rule section require that the Utility keep a record of each transaction concerning customer deposits. The Order alleges that the commingling of the accounts constitutes a failure to keep a record of each transaction concerning such deposits.

3. Forest Hills keeps detailed records of each customer deposit including the customer's name, account number, lot and street address, date the deposit was made, the amount and whether it was made by an owner or a renter, a record of whether the deposit was refunded or applied to the account of the customer, the date that was done, the amount of interest paid in the date that that interest was applied. No further records or accounts of such deposits are reasonably necessary for the maintenance of such deposits.

4. As with the alleged violation of Rule 25-30 115, FAC, as outlined above, Rule 25-30.311(3), FAC, does not require separate accounting of deposits for regulated versus non-regulated services as the Order alleges. The Utility has always been able to

segregate those upon request, for either the customer or the Commission. However, the Rule does not require totally separate accounting for them. The Rule itself requires only that the Utility maintain certain records of its deposits, including a record of each transaction concerning such deposit, and the Utility has done so in complete conformance with the Commission's Rule.

5. As stated with regard to the alleged violation of Rule 25-30.115, FAC, the Commission has previously reviewed cases involving Utility's operating regulated and non-regulated systems and has encountered commingling of some minor accounts in those companies as well. While the Commission has made adjustments to recognize only the portions of those accounts related to regulated operations for rate setting and other purposes, the Commission has never before alleged that the commingling constitutes a violation of any of the Commission's Rules, nor has the Commission required a Utility to Show Cause why it should not be fined for any such commingling, much less has the Commission proposed a fine of this magnitude in any of those previous cases. The Commission's allegations and proposals in this case are therefore unprecedented and in fact contrary to the previous Commission treatment of like situations.

6. For all of these reasons, the Utility is not in violation of Rule 25-30.311(3), FAC.

Allged Violation of Rule 25-30.311(5), FAC

1. The Commission's Order alleges that the Utility has violated the provisions of Section 25-30.311(5), FAC in that this Section of the Rule requires that Utilities refund deposits held for a period of 23 months of continued service with satisfactory payment record, or after 12 months between problems with the payment history. The staff originally raised this concern with customer deposits in 1995. The Utility agreed that some errors had occurred and immediately began the process of refunding all deposits of customers with satisfactory payment histories. By the end of 1995, the deposits of all customers of the Utility with satisfactory payment histories as of May 1, 1995, had their deposits refunded (with the exception of renters). Such refunds or credits were completed by the end of 1995.

2. In November of 1997, shortly after the Commission's agenda conference which resulted in the issuance of Order No. PSC-97-1458-FOF-SU, the Utility obtained from the staff a listing of customers and outstanding deposits that the Commission staff alleged demonstrated a failure to properly refund deposits. Attachment A to the staff's letter showed a listing of customers with \$25.00 deposits that continued to be held despite a satisfactory payment history. The Utility has reviewed each and every one of these and has determined that in each and every one, no water and wastewater deposit continues to be held for any of these customers. Every one was refunded prior to the end of 1995 to the extent they had a satisfactory payment history at that time, or

since that time for the remainder. The \$25.00 that continues to be held for these customers represents the garbage and street light deposit applicable to them.

3. Attachment B to the Commission staff's November 6th letter, purports to show those customers for whom the Utility continues to hold the \$75.00 deposit. The only customers for whom the Utility ever charged the \$75.00 deposit was for property renters (as opposed to property owners), who were customers of the Utility. This was done primarily because of the tremendous default history which the Utility has experienced with these customers. The great majority had late payment history, and as such the Utility was at least entitled to hold some deposit for most of these customers during the time they were customers of the Utility. In addition, the Utility continues to hold a \$25.00 garbage and street light deposit from many of these customers. While the Utility did not complete all applicable refunds of deposits due to these customers as of May 1995, by the end of 1995, the number who were entitled to those were only a small portion of the total of 80 renters served by the Utility. As of February of 1997, all of these 1995 customers who have a satisfactory payment history have had that part of their deposits in excess of \$25.00 refunded (the garbage street light deposit).

4. Based upon the above, the Utility contends that it is not in violation of the provisions of Section 25-30.311(5), FAC, and has corrected any past failures as to the great majority of customers prior to the end of 1995. Those few renters who were

entitled to deposits and had not received them by the end of 1995, received them no later than February of 1997. To the extent any deposits were held for a period longer than authorized by the Rule after early 1997, the Utility is unaware of them, and they would be immaterial in any case. The Utility is currently performing an additional review of its deposits, in conjunction with a PSC staff audit, to make sure that there are no such exceptions still outstanding.

Section 367.091(3), Florida Statutes

1. The final violation which is alleged within the Commission's Order, is a violation of the provisions of Section 367.091(3), Florida Statutes, dealing with the amount of deposits which the Utility may collect. The allegation within the Commission's Order is that the Utility required deposits for renters in excess of those authorized by the Utility's tariff, in violation of the Statute.

2. While the Utility during and prior to 1995 began charging rental customers a \$50.00 water and sewer deposit (because of their extremely high default rate), along with a \$25.00 garbage and street light deposit. Those have all now been refunded to the extent they represent a water and wastewater deposit above the minimum authorized by the Utility's tariff. The last of these refunds was completed in February of 1997.

3. The Utility management has recently discovered that several renters who became customers after 1995 were also charged

these higher deposits. However, the Utility is currently in the process of correcting that additional error.

4. As a result of discussions with the staff, and admission of past errors in the calculation of appropriate deposits, the Utility has reduced all deposits applicable to its water and wastewater customers to the amount authorized by their tariff. All refunds and credits have been appropriately distributed to the customers including applicable interest.

WHEREFORE, Forest Hills Utilities, Inc., contends that based upon the above facts the Utility should not be fined for the alleged violations of Rules 25-30.115, 25-30.311(3), and (5), and Section 367.091(3), Florida Statutes. To the extent a violation did occur of the latter statutory section, and to the extent several years ago the Utility did technically violate the provisions of Section 25-30.311(5), FAC. The proposed fine of \$15,000 is excessive and constitutes an amount greatly in excess of the total amount of excess deposits held by the Utility during that period. Forest Hills Utilities, Inc. contends that there are numerous issues of material fact as outlined above, and requests a hearing pursuant to the provisions of Section 120.569, Florida Statutes, to the extent the Commission still proposes a fine after review of the about facts and circumstances.

Respectfully submitted this
9th day of December, 1997, by:

ROSE, SUNDSTROM & BENTLEY
2548 Blairstone Pines Drive
Tallahassee, Florida 32301
(904) 877-6555



F. Marshall Deterding

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing has been furnished by *Hand Delivery or U.S. Mail this 9th day of December, 1997.

*Tim Vaccaro, Esquire
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida



F. Marshall Deterding