

MEMORANDUM

November ²⁰ 28, 1998

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RECEIVED
RECORDS DIV

TO: DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (VACCARO) *TV/dr*

RE: DOCKET NO. 961475-SU - APPLICATION FOR LIMITED PROCEEDING
INCREASE IN WASTEWATER RATES BY FOREST HILLS UTILITIES,
INC. IN PASCO COUNTY.

98-1545-FOF-SU

Attached is an ORDER APPROVING OFFER OF SETTLEMENT, ORDERING
PAYMENT OF FINE AND FORWARDING FINE TO THE OFFICE OF THE
COMPTROLLER, to be issued in the above-referenced docket.

(Number of pages in order - 6)

ATTACHMENT(S) NOT ON-LINE

TV/dr

Attachment

cc: Division of Water and Wastewater (Willis, Rendell, Austin)
Division of Auditing and Financial Analysis (McPherson)

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for limited proceeding increase in wastewater rates by Forest Hills Utilities, Inc. in Pasco County.

DOCKET NO. 961475-SU
ORDER NO. PSC-98-1545-FOF-SU
ISSUED: November 20, 1998

The following Commissioners participated in the disposition of this matter:

JULIA L. JOHNSON, Chairman
J. TERRY DEASON
SUSAN F. CLARK
JOE GARCIA
E. LEON JACOBS, JR.

ORDER APPROVING OFFER OF SETTLEMENT, ORDERING PAYMENT OF FINE AND FORWARDING FINE TO THE OFFICE OF THE COMPTROLLER

BY THE COMMISSION:

BACKGROUND

Forest Hills Utilities, Inc. (Forest Hills or utility) is a Class B utility that provides water and wastewater service in Pasco County. Forest Hills serves approximately 2,200 water and 1,000 wastewater customers. The wastewater system had revenues totaling \$210,688 in 1995. The utility serves an area that has been designated by the Southwest Florida Water Management District as a water use caution area.

On December 12, 1996, Forest Hills filed an application, pursuant to Section 367.0822, Florida Statutes, for a limited proceeding to increase its wastewater rates. The requested increase in wastewater rates was based upon the Florida Department of Environmental Protection's required interconnection of Forest Hills' wastewater system to Pasco County's wastewater treatment facilities and the resulting increase in cost of sewage operations.

In this proceeding, an issue arose pertaining to the utility's customer deposits. In June of 1995, our staff approved the utility's proposed plan to refund customer deposits which had been held longer than the 23-month period prescribed in Rule 25-

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30.311(5), Florida Administrative Code. Pursuant to the proposal, refunds should have been completed by September 11, 1995. However, the review of the customer deposit balance in this limited proceeding raised questions as to whether or not the refunds had been done. Our staff also had concerns regarding possible commingling of utility and non-utility deposits, in violation of Rules 25-30.115 and 25-30.311(3), Florida Administrative Code, and utility deposits in excess of the utility's approved tariff, in violation of Section 367.091(3), Florida Statutes.

By Order No. PSC-97-1458-FOF-SU, issued November 19, 1997, we approved Forest Hills' request for increased wastewater rates. We also ordered the utility to show cause, in writing within twenty days of the issuance of the order, why it should not be fined \$15,000 for failing to comply with Rules 25-30.311(3) and (5), and 25-30.115, Florida Administrative Code, and Section 367.091(3), Florida Statutes. On December 9, 1997, the utility filed its response to the show cause order.

In its response, the utility contended that it did not violate Rule 25-30.115, Florida Administrative Code. This rule, by reference, adopts the National Association of Regulatory Commissioners' (NARUC) Uniform System of Accounts (USOA). The utility stated that Accounting Instruction Number 12 of NARUC USOA simply requires that the utility keep such accounts of non-regulated departments as are proper and necessary to reflect the results of operating each of the other enterprises. The utility contended that its records are maintained as such to provide that information to a customer or the Commission upon request.

The utility contended that it did not violate Rule 25-30.311(3), Florida Administrative Code, because the rule does not require totally separate accounting for regulated and non-regulated services. The provisions of the rule require that the utility keep a record of each transaction concerning customer deposits. Thus, Forest Hills stated that the commingling of the regulated and non-regulated services did not constitute a failure to keep a record of each transaction concerning such deposits. The utility stated that it 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, the date the refund was done, the amount of interest paid, and the date that the interest was applied. The utility maintained that it could segregate the regulated and non-

regulated deposits, upon request, for either the customer or the Commission.

The utility agreed that in the past, due to errors, it violated Rule 25-30.311(5), Florida Administrative Code, which requires the refund of 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. However, the utility stated that it immediately began to make refunds once the matter was brought to its attention. The utility contended that it was no longer in violation of Rule 25-30.311(5), Florida Administrative Code, and had corrected any past failures.

Finally, the utility indicated that, due to an extremely high d fault rate, renters were charged higher deposits than what was authorized in the utility's tariff. The utility agreed that the charging of the excess deposit to the renters was in violation of Section 367.091, Florida Statutes, which requires that a utility only impose and collect the rates and charges approved by the Commission. The utility contended that it had refunded all deposits that represent a water and wastewater deposit above the minimum authorized by the utility's tariff.

Our staff conducted an audit to determine whether or not the utility had taken corrective measures to come into compliance with the alleged violations. The audit report was received on December 22, 1997. The utility provided lists to the staff auditor separating the regulated and non-regulated customer deposits. This indicated that the utility was capable of separating the deposits so as to reflect the results of operating each department. Also, the staff auditor was provided a copy of a customer's "New Account Information" sheet where the utility keeps a record of each customer's deposit. The staff auditor stated that the utility was in substantial compliance with Rule 25-30.311(3), Florida Administrative Code. Based on the utility's response and the audit, we find that Forest Hills did not violate Rules 25-30.115 and 25-30.311(3), Florida Administrative Code.

Based on the audit, the utility still had customer deposits being held for longer than the 23 months provided in the Rule. Further, the utility still had excess deposits collected from renters, in violation of Section 367.091, Florida Statutes. In response to the audit, the utility filed reports indicating that it had made refunds to the customers who were entitled and provided an explanation regarding those customers who were not entitled. Also,

the utility met with our staff on several occasions to discuss the audit findings.

On April 29, 1998, the utility filed a proposed settlement agreement indicating that it was in compliance with Rule 25-30.311(5), Florida Administrative Code, and Section 367.091, Florida Statutes. Another audit was conducted and received by our staff on June 18, 1998. This audit revealed that there were still additional deposits which needed refunding due to a calculating error in the utility's late payment schedule. The late payment schedule labeled certain customer payments as late, when they were not. Therefore, those customers were entitled to refunds. On July 8, 1998, the utility filed information which indicated that it had corrected the problem in the schedule and also refunded the deposits to the customers who were entitled to a refund. On September 30, 1998, the utility filed a revised offer of settlement to incorporate concerns arising from the last audit. Due to a typographical error in the revised settlement offer, the utility filed a second revised settlement offer on October 6, 1998. The second revised settlement offer is attached to this Order as Attachment A and by reference, is incorporated herein.

SETTLEMENT OFFER

In its settlement offer, the utility states that its response to the show cause order indicates that it is no longer in violation of Rules 25-30.311(3) and 25-30.115, Florida Administrative Code. The utility also states that it has provided substantial information to demonstrate that Forest Hills is now in compliance with Rule 25-30.311(5), Florida Administrative Code, and Section 367.091, Florida Statutes, with regard to its customer deposits, and will remain in compliance in the future. As a settlement of this matter, Forest Hills offers to pay a fine of \$4,000 for its past violations of Commission rules and statutes.

We find that the utility has provided substantial additional information to ensure that it is in compliance in regards to its customer deposit practices. Because Forest Hills did not violate Rules 25-30.311(3) and 25-30.115, Florida Administrative Code, we believe that the proposed fine is reasonable for the past violations of Rule 25-30.311(5), Florida Administrative Code, and Section 367.091, Florida Statutes. Forest Hills shall pay the \$4,000 fine within 10 days of the issuance date of this Order. Upon our receipt, the \$4,000 fine shall be forwarded to the Department of Banking and Finance, Office of the Comptroller for

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deposit in the State of Florida General Revenue Fund, pursuant to Section 367.161, Florida Statutes. Upon forwarding the fine to the Comptroller's Office, this docket shall be closed.

Based on the foregoing, it is

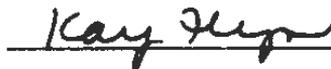
ORDERED by the Florida Public Service Commission that Forest Hills Utilities, Inc.'s October 6, 1998 Offer of Settlement, attached hereto as Attachment A and incorporated herein by reference, is hereby approved. It is further

ORDERED that Forest Hills Utilities, Inc. shall pay the \$4,000 fine approved herein within 10 days of the issuance date of this Order. It is further

ORDERED that upon receipt, the \$4,000 fine shall be forwarded by the Commission to the Department of Banking and Finance, Office of the Comptroller for deposit in the State of Florida General Revenue Fund. It is further

ORDERED that upon forwarding the \$4,000 fine to the Department of Banking and Finance, Office of the Comptroller, this docket shall be closed.

By ORDER of the Florida Public Service Commission this 20th day of November, 1998.



KAY FLYNN, Chief
Bureau of Records

(S E A L)

TV

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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.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application of Forest Hills)
Utilities, Inc. for limited)
proceeding increase in wastewater)
rates in Pasco County, Florida.)

Docket No. 961475-SU
PUBLIC SERVICE COMMISSION

OCT 6 1998
REGISTRATION
LEGAL DIVISION

SECOND REVISED SETTLEMENT AGREEMENT

COMES NOW, FOREST HILLS UTILITIES, INC., ("Forest Hills" or "Utility") by and through its undersigned attorneys, and files this proposed settlement of the outstanding show cause matters related to customer deposits in the above-referenced case and states as follows:

1. The Commission entered its order to show cause by Order No. PSC-97-1458-POF-SU issued on November 19, 1997, requiring that Forest Hills show cause why it should not be fined \$15,000 for failing to comply with the requirements of Rule 28-30.311(1), and (5), and 28-30.115, Florida Administrative Code, and Section 367.091(3), Florida Statutes.

2. In response to the Commission's show cause order, the Utility has provided substantial additional information to the Commission staff and has met with the Commission staff on several occasions to discuss the alleged violations and the corrective measures taken by the Utility over the last three years.

3. Based upon the Utilities' response to the order to show cause dated December 9, 1997, Forest Hills is not currently in violation of Rules 28-30.115 and 28-30.311(3), Florida Administrative Codes.

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4. The information supplied by the Utility demonstrates that, to the extent violations occurred, they were due to many factors including change in staffing, misunderstandings about the requirements of the rule, illness of key personnel and other events.

5. Forest Hills has now provided substantial information to the Commission staff which demonstrates that the Utility is currently in compliance with the requirements of Rule 25-30.311, Florida Administrative Code and Section 367.091(3), Florida Statutes, with regard to customer deposits and has made a refund to all customers entitled to a refund of deposits including 8% interest. The Commission's staff will undertake an audit in the near future to verify these facts. To the extent the staff audit reveals any further discrepancies, the Utility will work with the staff to correct those. The Utility has also provided the staff with the assurances that the Utility has set up its bookkeeping so that it can better monitor the status of those customer deposits and insure that the Utility will continue in compliance with the requirements of the Commission's rule on customer deposits. The Utility hereby makes the same assurances to the Commissioners.

6. The final concern with the Utility's charging of non-utility deposits to customers who did not have non-utility services has now been corrected and the Utility has taken steps to insure that it will no longer occur on a going-forward basis. Within thirty (30) days of the date of this proposed Settlement

Agreement, the Utility will have completed refunds of all remaining outstanding deposits that fall within this area of concern and will have supplied an affidavit to the staff from an officer of the Utility that all appropriate refunds have been completed.

7. In light of the above facts, the Utility proposes to settle the instant show cause proceeding by the provision of the information already submitted to the staff, the assurances as outlined above in paragraph 4 hereof and by payment of a fine of \$4,000 for the past violations of Commission rules and statutes.

WHEREFORE, Forest Hills Utilities, Inc. hereby proposes that the Commission accept the proposed settlement offer under the terms as outlined herein, and issue its Order closing the show cause proceeding in accordance with those terms. The Utility will submit payment for the fine, as outlined herein, immediately upon acceptance of this settlement by the Commission.

Respectfully submitted this
FMD
day of October, 1998
by:

ROSE, SUNDSTROM & BENTLEY, LLP
2548 Blairstone Pines Drive
Tallahassee, Florida 32301
(850) 877-6555


F. MARSHALL DETERDING

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Hand Delivery* or U.S. Mail to the following parties this 17 day of October, 1998.

Tim Vaccaro, Esquire*
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0873


F. MARSHALL DEFENDING

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