



Public Service Commission

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RECORDS AND REPORTING
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DATE: JULY 19, 2000

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

FROM: DIVISION OF ECONOMIC REGULATION (B. DAVIS, MERCHANT)
DIVISION OF LEGAL SERVICES (FUDGE)

RE: DOCKET NO. 991902-SU - INVESTIGATION INTO THE WASTEWATER RATES OF COMMERCIAL UTILITIES, DIVISION OF GRACE & COMPANY INC., IN DUVAL COUNTY.
COUNTY: DUVAL

AGENDA: 08/01/00 - REGULAR AGENDA - PROPOSED AGENCY ACTION FOR ISSUE 1 - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\ECR\WP\991902.RCM

CASE BACKGROUND

Commercial Utilities, Division of Grace & Company, Inc., (Commercial or utility) is a Class B wastewater only facility located in Jacksonville, Florida. The utility serves 35 wastewater general service customers. These customers include hotels, banks, a shopping center, restaurants, and other small businesses. Commercial was issued Certificates Nos. 219-W and 164-S by Order No. 6704, issued June 4, 1975, in Dockets No. 74787-W and 74788-S.

Pursuant to the Environmental Protection Board's Rule 3, Section 3.402 F.2.2, the Jacksonville Department of Health, Welfare, and Bio-Environmental Service required Commercial to connect to a regional wastewater facility. The original deadline for this was March 10, 1992. The actual interconnection took place July 30, 1992.

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The utility's last rate proceeding was in Docket No. 910766-WS which resulted in Order No. PSC-93-0233-FOF-WS, issued February 12, 1993. In that order, the Commission transferred \$343,080 in interconnection costs, which were to be accounted for in the Intangible Plant category. The intangible plant was to be amortized over 27 years.

Commercial's water certificate was canceled through Order No. PSC-97-0094-FOF-WU, issued January 27, 1997, in Docket No. 961268-WU. All water service is now provided by the City of Jacksonville.

Staff review of the utility's 1998 annual report indicated that the utility achieved a greater return than what was authorized in Order No. PSC-93-0233-FOF-WS. This current investigation was opened by Order No. PSC-00-0346-FOF-SU, issued February 18, 2000. That order also placed \$44,833 in revenue subject to refund secured by a corporate undertaking. This recommendation addresses the staff's recommendation that the utility is not earning in excess of the authorized return and that the utility should maintain its books and records in conformance with Commission rules.

DISCUSSION OF ISSUES

ISSUE 1: Is the utility earning a greater return than what was authorized in Order No. PSC-93-0233-FOF-WS?

RECOMMENDATION: No, staff's investigation of the calendar year 1999 indicates that the utility is earning a return within its last authorized range set forth in Order No. PSC-93-0233-FOF-WS. The corporate undertaking guaranteeing the revenue held subject to refund ordered by Order No. PSC-00-0346-FOF-SU should be released. (B. DAVIS)

STAFF ANALYSIS: Order No. PSC-00-0346-FOF-SU, issued on February 18, 2000, in this docket, directed that the test year for the investigation should be the year ended December 31, 1999. Staff has audited the test year and finds the achieved rate of return on equity of 8.80% to be within the authorized range of 8.06% to 10.06% as set forth in Order No. PSC-93-0233-FOF-WS. The corporate undertaking guaranteeing the revenue held subject to refund ordered by Order No. PSC-00-0346-FOF-SU should be released.

ISSUE 2: Should the utility be required to show cause, in writing within 21 days, why it should not be fined up to \$5,000 per day for its apparent violation of Rule 25-30.115, Florida Administrative Code, for failure to maintain its books and records in conformance with the National Association of Regulatory Utility Commissioners (NARUC) Uniform System of Accounts (USOA)?

RECOMMENDATION: No. A show cause proceeding should not be initiated. However, the utility should be ordered to maintain its books and records in conformance with the 1996 NARUC USOA. Further, it should submit a statement from its outside Certified Public Accountant (CPA) by April 30, 2001 along with its 2000 annual report, stating that its books are in conformance with the NARUC USOA and have been reconciled with Commission Order No. PSC-93-0233-FOF-WS. (FUDGE, B. DAVIS)

STAFF ANALYSIS: During the staff audit, the auditors discovered that the utility did not maintain its accounts and records in conformance with the NARUC USOA. Accounting Instruction 2A of the NARUC Uniform System of Accounts for Class B Utilities, states, "The books of accounts for all wastewater utilities shall be kept by the double entry method, on an accrual basis. Each utility shall keep its accounts monthly and shall close its books at the end of each calendar year." The auditors found that Commercial maintains its books and records using the cash basis of accounting instead of the accrual basis. Further, Commercial does not keep its books on a monthly basis.

The auditors also found that the utility does not use the depreciation rates prescribed by this Commission. The utility instead uses accelerated federal income tax depreciation rates.

Rule 25-30.140 (4) (a), Florida Administrative Code, states, "All Class A and B utilities shall maintain depreciation rates and reserve activity by account as prescribed by this Commission." Rule 25-30.140 (4) (b), Florida Administrative Code states, "All Class C utilities shall maintain depreciation rates and reserve activity data by total depreciable plant, function or account as prescribed by this Commission." At the time of the utility's last rate proceeding, Commercial was a Class C utility. The utility's annual reports filed with the Commission reflect Class C depreciation rates with no recognition of the taxes deferred by using the accelerated federal income tax depreciation rates. The utility should implement the Class B depreciation rates prescribed by Commission Rule 25-30.140 (4) (b), Florida Administrative Code, on a going forward basis for its books and annual report.

The utility has a CPA who prepares its financial statements and maintains the general ledger. An outside consultant prepares the annual reports. During the staff audit, it was discovered that the CPA made no adjustments to the utility's rate base accounts in the general ledger unless he received instructions from the consultant. The consultant, in many instances, made adjustments to the annual reports but failed to notify the CPA in a timely manner to adjust the general ledger.

The lack of coordination of efforts presented some problems for the audit staff. The CPA was unable to provide any information regarding discrepancies the audit staff noted in the general ledger. In Order No. PSC-93-0233-FOF-WS, the Commission required the utility to make several adjustments to its books and records. Although some of the adjustments were made in the annual reports, none of them were made to the general ledger until the consultant provided the adjustments to the CPA. These adjustments were provided to the CPA at the end of 1999, and he adjusted the general ledger in February 2000. As a result, the utility's books and records did not reflect any of the required Commission adjustments until seven years after they were ordered. The consultant and CPA should work together to ensure that required adjustments are completed in a timely manner.

Despite the state of the utility's books and records, staff was able to perform the audit. The errors reported by the auditors constitute apparent violations of Rule 25-30.115, Florida Administrative Code which provides that:

Water and wastewater utilities shall, effective January 1, 1998, maintain their accounts and records in conformity with the 1996 NARUC Uniform System of Accounts adopted by the National Association of Regulatory Utility Commissioners.

Section 367.161, Florida Statutes, authorizes the Commission to assess a penalty of not more than \$5,000 for each offense, if a utility is found to have knowingly refused to comply with, or have willfully violated any Commission rule, order, or provision of Chapter 367, Florida Statutes. In failing to maintain its books and records in conformance with the USOA, the utility's act was "willful" in the sense intended by Section 367.161, Florida Statutes. In Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL, titled In Re: Investigation Into The Proper Application of Rule 25-14.003, Florida Administrative Code, Relating To Tax Savings Refund For 1988 and 1989 For GTE Florida, Inc., the Commission having found that the company had not intended to violate the rule, nevertheless found it appropriate to order it to

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show cause why it should not be fined, stating that "[i]n our view, 'willful' implies an intent to do an act, and this is distinct from an intent to violate a statute or rule." Additionally, "[i]t is a common maxim, familiar to all minds that 'ignorance of the law' will not excuse any person, either civilly or criminally." Barlow v. United States, 32 U.S. 404, 411 (1833).

Although the utility's failure to keep its books and records in conformance with the NARUC USOA is an apparent violation of Rule 25-30.115, Florida Administrative Code, staff believes that a show cause proceeding would not be cost effective because of the size of the utility and should not be initiated at this time. The apparent violation of Rule 25-30.115, Florida Administrative Code, was caused by the lack of communication between the utility's CPA and outside consultant. Staff has contacted the utility, and has been informed that the consultant will contact the CPA when any adjustments to the general ledger are needed. Staff recommends that the Commission not order the utility to show cause for failing to keep its books and records in conformance with the NARUC USOA. However, the utility should be ordered to bring its books and records into conformance with the 1996 NARUC USOA. Further, the utility should submit a statement from its CPA by April 30, 2001, along with its 2000 annual report, stating that its books are in conformance with the NARUC USOA and have been reconciled with Order No. PSC-93-0233-FOF-WS. Staff will review the utility's compliance at that time and determine if a show cause proceeding should be initiated.

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ISSUE 3: Should this docket be closed?

RECOMMENDATION: Yes, if no timely protest is filed to Issue 1, no further action is necessary and this docket should be closed upon the issuance of a consummating order. (FUDGE, B. DAVIS)

STAFF ANALYSIS: If no timely protest is filed to Issue 1, no further action is necessary and this docket should be closed upon the issuance of a consummating order. Staff will monitor the utility's compliance with the 1996 NARUC USOA when the utility submits its 2000 annual report.