

FLORIDA PUBLIC SERVICE COMMISSION
Capital Circle Office Center • 2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

MEMORANDUM

JANUARY 23, 1997

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO) *to [signature]*

FROM: DIVISION OF WATER & WASTEWATER (GROOM, AUSTIN) *GNB JA*
DIVISION OF LEGAL SERVICES (VACCARO, K. JOHNSON) *[signature]*

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

AGENDA: 02/04/97 - REGULAR AGENDA - DECISION ON EMERGENCY RATES -
INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: 60-DAY SUSPENSION DATE: 2/9/97

SPECIAL INSTRUCTIONS: S:\PSC\WAW\WP\961475SU.RCM

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

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CASE 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 1,100 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. This increase in wastewater rates is based upon the Florida Department of Environmental Protection's (DEP) required interconnection of Forest Hills' wastewater system to Pasco County's wastewater treatment facilities and the resulting increase in cost of sewage operations. After reviewing the utility's application which included a request for emergency rates, staff requested and received additional information regarding the utility's emergency.

In recent years, problems with the utility's sewage treatment facilities have grown to a point to require discussions with DEP to find solutions to allow continued wastewater treatment services. On February 12, 1993, Forest Hills entered into a stipulated settlement agreement with DEP. Under the terms of the stipulated settlement agreement, the parties agreed that Forest Hills could choose one of two possible solutions to DEP requirements: (1) renovate and or "reconstruct" the "existing" treatment plant which may include the idea of constructing an entirely new plant; or (2) connect the utility to an outside regional, county or municipal system and terminate the operation of the existing wastewater treatment plant. Both parties agreed that connection to an outside county or municipal system was the preferred solution and that it must be completed by 182 weeks (June, 1996) from the date of the agreement, February 12, 1993.

In mid 1994, Forest Hills learned that Pasco County was planning an extension of its US-19 force main to a point contiguous to Forest Hills' service area. Therefore, Forest Hills opened negotiations for a bulk wastewater agreement. Prior to these negotiations, Forest Hills and the City of Tarpon Springs had negotiated a draft bulk service agreement. However, the agreement was rejected by the Tarpon Springs City Council.

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In April, 1995, Forest Hills signed a bulk wastewater treatment service agreement with Pasco County, which was approved by the County Commission on April 4, 1995. Under the terms of the agreement (25 year term), Pasco County would extend its force main and build a master pump station. Forest Hills would construct a force main from its system to the master pump station and reimburse the County for its prorata share of costs, in the amount of \$100,000. The County would treat up to .225 million gallons per day based on annual average daily flow. Forest Hills would also pay for the cost and installation of a flow meter. The utility would pay the County's bulk rate which is currently \$3.23 per 1,000 gallons.

In mid November, 1996, Pasco County and Forest Hills completed their facilities for this interconnection. The utility states that because of the discrepancy between the cost of purchase sewage treatment and the utility's existing rates, Forest Hills cannot afford under any circumstances to go forward with the interconnection until such emergency rates are granted. This recommendation addresses whether emergency rates should be approved and under what security to guarantee any potential refunds.

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DISCUSSION OF ISSUES

ISSUE 1: Should the tariff request for emergency rates requested by Forest Hills to recover the additional cost of its wastewater facilities being interconnected with Pasco County be approved, subject to refund, until a final determination is made by the Commissioner?

RECOMMENDATION: Yes. The tariff request for emergency rates requested by Forest Hills should be approved, subject to refund, until the Commission determines the appropriate final rates for the wastewater interconnection with Pasco County. The tariffs filed by Forest Hills should be effective for service rendered on or after the stamped approval date on the tariff sheets pursuant to Rule 25-30.475(1), Florida Administrative Code, provided the customers have received notice. The rates should not be implemented until proper notice has been received by the customers. The utility should provide proof of the date notice was given within 10 days after the date of the notice. If, however, the Commission denies the tariff request for emergency rates, the tariff should be suspended pending final determination. (GROOM, AUSTIN)

STAFF ANALYSIS: As discussed in the case background, Forest Hills has entered into a stipulated settlement agreement with DEP which requires the utility to interconnect its wastewater system with Pasco County wastewater treatment facilities and receive bulk service from this point forward. The utility's wastewater treatment facilities are then required to be taken off-line and no longer used for the purpose of treating domestic wastewater.

The stipulated settlement resolved enforcement proceedings originally related to an unpermitted discharge which resulted in an October, 1985 Consent Order between the utility and DEP. The 1985 Consent Order required that the percolation pond be renovated to provide for more efficient percolation so that unpermitted discharge would not continue. At that time, Forest Hills constructed sand filters and a french drain system. However, DEP did not believe that the improvements met the conditions of the Consent Order. Therefore, on August 2, 1990, a Petition for Enforcement and Complaint was filed by DEP against Forest Hills and its president to enforce compliance with the 1985 Consent Order.

Both parties agreed that connection to an outside county or municipal system was the preferred solution to the stipulated settlement and that the interconnection must be completed by 182 weeks (June, 1996) from the date of the agreement (February 12, 1993). Pasco County and Forest Hills have completed all construction necessary for the interconnection and prepared to

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immediately discontinue use of the utility's wastewater treatment plant. DEP is demanding under threat of fine, that Forest Hills immediately connect its wastewater system with Pasco County and discontinue use of the utility's wastewater treatment plant. By letter dated November 20, 1996, DEP recognizes that construction was complete as of November 20, 1996, and that they are threatening the utility with fines should the utility not immediately interconnect with Pasco County.

Pursuant to Section 367.0822, Florida Statutes, Forest Hills filed this limited proceeding to increase its wastewater rates to recover the added cost for the wastewater interconnection with Pasco County. The added cost relates to construction of the interconnection between the existing wastewater collection facilities, retiring the existing wastewater treatment facilities and the changes in expenses that result from this change in mode of operations. The utility indicated in its filing that it would like for the Commission to grant emergency rates within 45 days of the date of this application in order for the utility to comply with DEP mandates. Staff originally believed that the utility's application did not present an immediate need for emergency rates. It was after the utility furnished additional data and a copied letter from DEP, that staff realized the immediate need for the emergency rates. Forest Hills is at risk of incurring fines from DEP for everyday that the utility does not interconnect with Pasco County. Forest Hills is ready and able to interconnect to Pasco County immediately.

Although Chapter 367, Florida Statutes, does not expressly authorize "emergency" rates, Section 367.011, Florida Statutes, provides that the Commission has exclusive jurisdiction over a utility's rates. Further, the Commission has granted similar emergency rates in previous limited proceeding dockets. By Order Nos. PSC-92-0127-FOF-SU and 25711, issued March 31, 1992 and February 12, 1992, in Dockets Nos. 911146-SU and 911206-SU, respectively, the Commission granted emergency rates to Aloha Gardens Wastewater System and Mad Hatter Utility, Inc. In both dockets, the purpose of the emergency rates was for the payment of bulk wastewater treatment by Pasco County, following DEP required interconnection to the county.

The Commission has also granted emergency rates to Ortega Utility Company by Order No. 25685, issued February 4, 1992, in Docket No. 911168-WS, and to Betmar Utilities, Inc. by Order No. 93-0525-FOF-WU, issued April 7, 1993, in Docket No. 910963-WU.

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In consideration of the above, staff believes that the tariff request for emergency wastewater rates, as requested by the utility, should be approved subject to refund until the Commission makes its final decision. Staff has reviewed the filing and believes it is reasonable and necessary to require further amplification and explanation regarding this request, and to require production of additional and/or corroborative data. The Commission is scheduled to decide the final rates and required refund, if any, of the emergency rates at its May 6, 1997, Agenda Conference.

The tariffs filed by Forest Hills should be effective for service rendered on or after the stamped approval date on the tariff sheets pursuant to Rule 25-30.475(1), Florida Administrative Code, provided the customers have received notice. The rates may not be implemented until proper notice has been received by the customers. The utility should provide proof of the date notice was given within 10 days after the date of the notice. If, however, the tariff request for emergency rates is denied, the tariffs should be suspended.

A comparison of the utility's original rates and requested emergency rates are shown on Schedule No. 1.

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ISSUE 2: What is the appropriate security to guarantee the emergency rate increase?

RECOMMENDATION: The utility should be required to file an escrow agreement to guarantee any potential refunds of wastewater revenues collected under the emergency rates. The utility should deposit in the escrow account each month the difference in revenue between the emergency rates and the previously approved rates. In addition, the escrow agreement should allow for withdrawals each month by the utility for payments to Pasco County for bulk wastewater service. Under no circumstances should the utility be allowed to withdraw any amount of monies except for payments to Pasco County for bulk wastewater service. Pursuant to Rule 25-30.360(6), Florida Administrative Code, the utility should provide a report by the 20th day of each month indicating in detail the total amount collected from its wastewater customers, the additional revenue collected through the emergency rates and the amount of the withdrawals to Pasco County, all on a monthly and total basis.
(GROOM, AUSTIN)

STAFF ANALYSIS: The excess of emergency rates over the previously authorized rates should be collected subject to refund with interest. The amount of potential refund in this case cannot be accurately calculated by staff. Therefore, the utility should deposit in the escrow account each month the difference in revenue between the emergency rates and the previously approved rates. In addition, the escrow agreement should only allow for withdrawals by the utility for payments to Pasco County for bulk wastewater service. Under no circumstances should the utility be allowed to withdraw any amount of monies except for payments to Pasco County for bulk wastewater service.

Pursuant to Rule 25-30.360(6), Florida Administrative Code, the utility should provide a report by the 20th day of each month indicating in detail the total amount collected from its wastewater customers, the additional revenue collected through the emergency rates and the amount of the withdrawals to Pasco County, all on a monthly and total basis.

The escrow agreement should be established between the utility and an independent financial institution pursuant to a written escrow agreement. The Commission should be a party to the written escrow agreement and a signatory to the escrow account. The written escrow agreement should state the following: That the account is established at the direction of this Commission for the purpose set forth above; that withdrawals of funds to pay only Pasco County for bulk wastewater service each month can occur

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without the prior approval of the Commission; that the account should be interest bearing; that the Director of Records and Reporting must be signatory to the escrow agreement; that all information concerning the escrow account be available from the institution to the Commission or its representative at all times; and that pursuant to Cosentino v. Elson, 263 So. 2d 253 (Fla. 3d. DCA 1972), escrow accounts are not subject to garnishments.

If a refund to the customers is required, all interest earned by the escrow account should be distributed to the customers and undertaken in accordance with Rule 25-30.360, Florida Administrative Code. If a refund to the customers is not required, the interest earned by the escrow account should revert to the utility.

In no instance should maintenance and administrative costs associated with any refund be borne by the customers. The costs are the responsibility of, and should be borne by, the utility.

UTILITY: FOREST HILLS UTILITIES, INC.
 COUNTY: PASCO
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 TEST YEAR ENDED: JULY 31, 1996

Schedule No. 1

RATE SCHEDULE

WASTEWATER

Monthly Rates

	Rates prior to Filing	Emergency Requested Rates
<u>Residential</u>		
Base Facility Charge:		
All meter sizes:	\$9.24	\$18.80
Gallage Charge, per 1,000 Gallons (Wastewater Cap - 10,000 Gallons)	\$1.29	\$2.62
<u>Commercial</u>		
Base Facility Charge:		
Meter Size:		
5/8" x 3/4"	\$9.24	\$18.80
1"	\$23.09	\$46.98
1-1/2"	\$45.83	\$93.25
2"	\$73.91	\$150.38
3"	\$147.81	\$300.75
4"	\$230.93	\$469.87
6"	\$461.92	\$939.87
Gallage Charge, per 1,000 Gallons	\$1.29	\$2.62

Typical Residential Bills

5/8" x 3/4" meter

3,000 Gallons	\$13.11	\$26.66
5,000 Gallons	\$15.69	\$31.90
10,000 Gallons (Maximum) (Wastewater Cap - 10,000 Gallons)	\$22.14	\$45.00