

State of Florida



Public Service Commission
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COMMISSION CLERK

-M-E-M-O-R-A-N-D-U-M-

DATE: MAY 9, 2002

TO: DIRECTOR, DIVISION OF THE COMMISSION CLERK & ADMINISTRATIVE SERVICES (BAYÓ)

FROM: DIVISION OF ECONOMIC REGULATION (KYLE, MERCHANT) *JBK*
OFFICE OF THE GENERAL COUNSEL (HARRIS) *M* *JDS*

RE: DOCKET NO. 011190-SU - INVESTIGATION OF POSSIBLE OVEREARNINGS BY TIERRE VERDE UTILITIES, INC. IN PINELLAS COUNTY.
COUNTY: PINELLAS

AGENDA: 05/21/02 - REGULAR AGENDA - PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\ECR\WP\011190.REC

CASE BACKGROUND

Tierre Verde Utilities, Inc. (Tierre Verde or utility) is a Class B utility providing wastewater service in Pinellas County. The utility is a wholly-owned subsidiary of Utilities, Inc. By Order No. PSC-01-2094-FOF-SU, issued October 22, 2001 (the Investigation Order), the Commission ordered that an investigation of the wastewater rates and charges of Tierre Verde be initiated. The Commission also ordered the utility to provide a corporate undertaking in the amount of \$25,000 as a guarantee of any potential refund of revenues collected subject to refund.

Subsequently, staff engaged in a series of discussions with the utility in an effort to reach a settlement agreement. In a letter dated March 20, 2002, the utility proposed a settlement to this case.

DOCUMENT NUMBER-DATE
05023 MAY-98
PSC-COMMISSION CLERK

The purpose of this recommendation is to present the settlement offer to the Commission for approval. The Commission has jurisdiction pursuant to Sections 367.081, 367.082 and 367.121, Florida Statutes.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission accept the settlement offer proposed by Tierre Verde Utilities, Inc.?

RECOMMENDATION: Yes. (KYLE, MERCHANT)

STAFF ANALYSIS: As discussed in the Case Background, subsequent to the Commission's order initiating an earnings investigation of Tierre Verde, staff entered into a series of negotiations with the utility in an effort to efficiently resolve the matter. Staff and the utility reached an agreement which was memorialized in a letter from the utility dated March 20, 2002, a copy which is included as Attachment A to this recommendation.

The utility proposes to resolve the Commission's concerns regarding the possibility of overearnings in the year 2000 by refunding \$10,000 to the current customers of the utility as soon as practical after the approval of the agreement. Further, Tierre Verde proposed to review its 2001 earnings by April 30, 2002, in order to determine if any overearnings occurred in 2001. In the event of overearnings, the utility agreed to propose a settlement for Commission approval to address the problem for 2001 and later years. The utility agrees that any actual or projected earnings for 2001 and 2002 in excess of the maximum of the range of the leverage formula in effect at April 30, 2002, will be subject to the Commission's jurisdiction. Finally, the utility proposes, and staff agrees, that the issue of lowering Tierre Verde's authorized return on equity and overall rate of return should be tabled, pending the Commission's decision in Docket No. 011189-WS,

DOCKET NO. 011190-SU
DATE: May 9, 2002

Investigation into the Authorized Return on Equity (ROE) of Alafaya Utilities, Inc. in Seminole County; Lake Groves Utilities, Inc. in Lake County; Miles Grant Water and Sewer Company in Martin County; and Utilities, Inc. of Longwood in Seminole County. This case is currently scheduled to be addressed at the October 1, 2002, agenda conference.

Due to a change in management personnel, the utility was unable to complete the proposed review of its 2001 earnings by April 30, 2002; however, staff has reviewed the 2001 Annual Report filed by Terre Verde, and, using the current leverage formula approved by the Commission in Order No. PSC-01-2514-FOF-WS, issued December 24, 2001, in Docket No. 010006-WS, the utility does not appear to be overearning for 2001. Using this formula, staff has calculated a ROE mid-point of 11.09%, with a range of 10.09% to 12.09%.

Staff has reviewed the settlement proposal submitted by the utility in this matter and believes that it is a reasonable resolution to this docket. Further, staff believes that it is in the public interest for the Commission to approve the settlement proposal, and that the settlement proposal avoids the time, expense and uncertainty associated with adversarial litigation, in keeping with the Commission's long-standing practice of encouraging parties in contested proceedings to settle issues whenever possible.

Staff notes that the utility's offer to hold 2001 and 2002 revenues subject to the Commission's jurisdiction will give the Commission jurisdiction to order refunds from those years' earnings. Staff has already completed a preliminary review of Terre Verde's 2001 earnings, and they appear to be within the utility's authorized range of return.

DOCKET NO. 011190-SU
DATE: May 9, 2002

ISSUE 2: Should the utility be released from its corporate undertaking in the amount of \$25,000?

RECOMMENDATION: Yes. The utility should be released from its corporate undertaking after providing evidence acceptable to staff that it has issued refunds to customers in accordance with the settlement agreement. (KYLE)

STAFF ANALYSIS: On October 24, 2001, as required by the Investigation Order, the utility filed a corporate undertaking in the amount of \$25,000. Tierre Verde should be released from this corporate undertaking after staff has reviewed and administratively approved evidence submitted by the utility that it has issued customer refunds in accordance with the settlement agreement.

DOCKET NO. 011190-SU

DATE: May 9, 2002

ISSUE 3: Should this docket be closed?

RECOMMENDATION: Yes. If no timely protest is filed by a substantially affected party, this docket should be closed upon the issuance of a consummating order. (HARRIS)

STAFF ANALYSIS: If no timely protest is filed by a substantially affected party, this docket should be closed upon the issuance of a consummating order. Staff notes that, with 2001 and 2002 revenues held subject to the Commission's jurisdiction and therefore subject to refund to customers, this docket can be closed at this time. Should staff subsequently discover overearnings in 2001 or 2002, a new docket can be opened at that time, with revenues available for customer refunds in the event the Commission then determines that refunds are appropriate.

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March 20, 2002

Ms. Patricia W. Merchant
Public Utilities Supervisor
Division of Economic Regulation
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

via Fax (850) 413-6919 and U.S. Mail

RE: Tierra Verde Utilities, Inc. Earnings Issues for 2000, 2001 and 2002

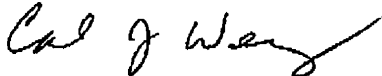
Dear Tricia:

This letter is to memorialize our agreement addressing your concerns about Tierra Verde Utilities, Inc.'s (TVUI) potential overearnings. In order to efficiently resolve this matter, TVUI will refund a total of \$10,000 to the current customers of the utility. The refund will be made as soon as practical after the approval of this agreement (note: Pinellas County bills for TVUI). This refund addresses your concerns regarding the possibility of overearnings in the year 2000.

Additionally, TVUI will review its 2001 by April 30, 2002 in order to determine if in fact any overearnings occurred for the year 2001. If the PSC Annual Report indicates an overearnings situation for 2001, TVUI will propose a settlement with the Staff to address a resolution of the problem for 2001 and later years. Any actual or projected earnings for 2001 and 2002 in excess of the maximum of the range of the leverage formula in effect at April 30, 2002 will be subject to the Commission's jurisdiction.

Regarding a lowering of TVUI's authorized return on equity and overall rate of return, we have agreed to table this issue pending the Commission's decision in Docket No. 011189-WS.

Respectfully submitted,



Carl J. Wenz
Vice President, Regulatory Matters