



# Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FLORIDA 32399-0850

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

**DATE:** FEBRUARY 20, 2003

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

**FROM:** DIVISION OF ECONOMIC REGULATION (FITCH) *RF*  
OFFICE OF THE GENERAL COUNSEL (HARRIS) *WJH*

**RE:** DOCKET NO. 010828-SU - APPLICATION FOR STAFF-ASSISTED RATE  
CASE IN HIGHLANDS COUNTY BY HARDER HALL - HOWARD, INC.

**AGENDA:** *3/4/03* *WJH* 04/04/03 - REGULAR AGENDA - ISSUE NO. 1 IS PAA -  
INTERESTED PERSONS MAY PARTICIPATE

RECEIVED - FPSC  
FEB 19 PM 4:23  
COMMISSION CLERK  
JOS

**CRITICAL DATES:** NONE

**SPECIAL INSTRUCTIONS:** NONE

**FILE NAME AND LOCATION:** S:\PSC\ECR\WP\010828.RCM

### CASE BACKGROUND

Harder Hall-Howard, Inc. (HHH or utility) is a Class C wastewater utility, serving approximately 86 residential customers in the Harder Hall development in Highlands County. HHH also serves two 14-unit time-share condominiums, and five general service customers. On June 11, 2001, the utility filed an application for a staff assisted rate case (SARC) and paid the appropriate filing fee on July 18, 2001. By Order No. PSC-02-0382-PAA-SU, issued March 21, 2002, the Commission approved the utility's current rates, charges, and rate base. A portion of the rate base approved included pro forma additions to plant.

In the above-referenced order, the utility was ordered to complete the pro forma improvements within nine months of the effective date of the order. A number of the pro forma items approved were required by the Department of Environmental Protection (DEP) to meet the demands of the wastewater system's high level of flows. Once the utility began repairing its

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collection system, it was apparent that the high level of flows were caused by excessive inflow and infiltration. Since the collection system repairs have begun, the DEP is no longer requiring a number of the pro forma additions approved in the above referenced order. Therefore, the utility has not completed these pro forma improvements. The Commission has jurisdiction in this case pursuant to Section 367.0814, Florida Statutes.

**ISSUE 1:** Should HHH's rates be reduced to remove the rate impact of the pro forma plant items not completed by the utility?

**RECOMMENDATION:** Yes, wastewater rates should be reduced by 16.64% (\$13,722) annually. The utility should file revised tariff sheets and a proposed customer notice to reflect the Commission-approved rates. The approved rates should be effective for service rendered on or after the stamped approval date on the tariff sheet, pursuant to Rule 25-30.475(1), Florida Administrative Code. The appropriate wastewater rates are reflected on Schedule A. (FITCH)

**STAFF ANALYSIS:** As discussed in the case background, the utility was required to complete several pro forma items by Order No. PSC-02-0382-PAA-SU, issued March 21, 2002, within 9-months of the effective date of the order. This order also specified that this docket remain open pending staff's verification that the utility completed the pro forma improvements ordered. The utility has provided staff with cost verification of the items completed.

Staff discovered that the utility did not complete several of the pro forma items approved in the above referenced order. Among the items not completed by the utility include installation of a Splitter Box/ Bar Screen, Aeration Tank, Blower, and Automated testing equipment. These items were required by the DEP to meet the high level of flows the wastewater system was treating. The utility was also required to make repairs to its collection system. During the process of these repairs, the utility discovered that the collection system required more attention than was requested and approved in the above referenced order. The utility has spent well in excess of the amount approved in the above referenced order repairing the collection system and has replaced two lift station pumps.

According to the utility, once the collection system upgrades began, the flows to the wastewater system decreased. The utility believes that these decreased flows are a result of repairing the collection system thus reducing the level of inflow and infiltration. Because of the decrease in wastewater flows treated by the utility, the DEP is no longer requiring the Splitter Box/ Bar Screen, Aeration Tank, Blower, and Automated testing equipment approved in the above referenced order. Therefore, the utility decided not to install these items and to continue its repairs of the collection system. The utility believes that going forward with installation of the Splitter Box/ Bar Screen, Aeration Tank,

Blower, and Automated testing equipment would not be an appropriate use of the rates collected from existing customers.

The utility was also ordered to install a back up generator, and a new chlorine contact chamber. Since the order was issued, the utility determined that repairing the chlorine contact chamber rather than replacing it would be the most cost effective solution. The utility also discovered, after discussions with its purchased power provider, that the electrical outages were occurring at one lift station, and that repairing the electrical panel at the lift station would reduce the outage problem. The utility also believes that this is the least cost alternative. Therefore, the utility has not installed a backup generator or new chlorine contact chamber, rather, the utility has gone forward with the repairs listed above.

Staff believes that the utility has been prudent in seeking the least costly options to address the changes in circumstance not contemplated in the above referenced order. However, the cost associated with the ordered pro forma improvements is included in the utility's existing rates. Although staff believes that the utility was prudent in its expenditures, customers should not have to pay for costs the utility has not incurred. Staff has compared the pro forma allowance approved in the above-referenced order with the actual cost of the improvements discussed above provided by the utility. The following is a schedule of Commission approved pro forma plant and actual cost:

<u>Description</u>	<u>PSC-02-0382-PAA-SU</u>	<u>Actual</u>	<u>Difference</u>
Backup Generator	\$40,000	\$0	(\$40,000)
Walkway/Stairway	\$3,000	\$300	(\$2,700)
Fence Percolation Ponds	\$20,000	\$296	(\$19,704)
Chlorine Contact Chamber	\$10,000	\$294	(\$9,706)
Splitter Box/Bar Screen	\$10,000	\$0	(\$10,000)
Clay Pipe Upgrade	\$7,000	\$28,287	\$21,287
Aeration Tank	\$25,675	\$0	(\$25,675)
Blower	\$8,000	\$0	(\$8,000)
Testing Equipment	\$6,000	\$0	(\$6,000)
Lift station pumps	<u>N/A</u>	<u>\$7,226</u>	<u>\$7,226</u>
Total	<u>\$129,675</u>	<u>\$36,403</u>	<u>(\$93,272)</u>

The Commission approved pro forma allowances accounted for \$19,020 of the revenue requirement approved in the above referenced order. Applying the same methodology to the actual pro forma cost incurred would result in a revenue requirement of \$5,298, from pro forma additions. The difference in revenue requirement (\$13,722) represents the amount staff believes existing rates should be reduced. The utility has requested that rates not be reduced since future repairs will need to be completed at the utility. The utility requested that the decrease in rates be held subject to refund pending the completion of future projects. However, the utility is unable to provide staff with a time frame for these repairs or estimated cost for these repairs. Therefore, staff does not believe that allowing the utility to continue to collect the current rates with the difference subject to refund is appropriate. The utility has the option to file for a limited proceeding if the need arises in the future.

The Commission approved wastewater rates are designed to recover \$82,466. Applying the reduction to the revenue requirement

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of \$13,722 discussed above results in a 16.64% ( $\$13,722 \div \$82,466$ ) reduction in existing wastewater rates.

Therefore, staff recommends that wastewater rates should be reduced by 16.64% (\$13,722) annually. The utility should file revised tariff sheets and a proposed customer notice to reflect the Commission-approved rates. The approved rates should be effective for service rendered on or after the stamped approval date on the tariff sheet, pursuant to Rule 25-30.475(1), Florida Administrative Code. The appropriate wastewater rates are reflected on Schedule A.

**ISSUE 2:** In the event of a protest of the PAA Order, what is the appropriate security to guarantee the amount subject to refund?

**RECOMMENDATION:** The security should be in the form of a bond or letter of credit in the amount of \$9,248. Alternatively, the utility could establish an escrow agreement with an independent financial institution. If security is provided through an escrow agreement, the utility should escrow 16.64% of its monthly wastewater services revenues as detailed in Issue No. 1. By no later than the twentieth day of each month, the utility should file a report showing the amount of revenues collected each month and the amount of revenues collected to date relating to the amount held subject to refund. Should a refund be required, the refund should be with interest and undertaken in accordance with Rule 25-30.360, Florida Administrative Code. (HARRIS, FITCH)

**STAFF ANALYSIS:** Pursuant to Section 367.082, Florida Statutes, when revenues are held subject to refund, the utility is authorized to continue collecting the previously authorized rates. As recommended in Issue No. 1, the amount of the recommended rate reduction is \$13,722 for wastewater on an annual basis. Assuming the PAA Order is protested by the utility, and assuming an eight-month time frame to complete the hearing process, the potential refund amount would be \$9,148. Interest, calculated in accordance with Rule 25-30.360, Florida Administrative Code, is \$100, making the total potential refund \$9,248, which should be collected under guarantee, subject to refund with interest.

The security should be in the form of a bond or letter of credit in the amount of \$9,248. Alternatively, the utility could establish an escrow agreement with an independent financial institution.

If the utility chooses a bond as security, the bond should contain wording to the effect that it will be terminated only under the following conditions:

- 1) The Commission denies the rate decrease; or
- 2) If the Commission approves the decrease, the utility shall refund the amount collected that is attributable to the decrease.

If the utility chooses a letter of credit as security, it should contain the following conditions:

- 1) The letter of credit is irrevocable for the period it is in effect.
- 2) The letter of credit will be in effect until the final Commission order is rendered, and the amount of refund, if any, is determined.

If security is provided through an escrow agreement, the utility should escrow 16.64% of its monthly wastewater services revenues as detailed in Issue No. 1, and the following conditions should be part of the escrow agreement:

- 1) No funds in the escrow account may be withdrawn by the utility without the express approval of the Commission.
- 2) The escrow account shall be an interest bearing account.
- 3) If a refund to the customers is required, all interest earned by the escrow account shall be distributed to the customers.
- 4) If a refund to the customers is not required, the interest earned by the escrow account shall revert to the utility.
- 5) All information on the escrow account shall be available from the holder of the escrow account to a Commission representative at all times.
- 6) The amount of revenue subject to refund shall be deposited in the escrow account within seven days of receipt.
- 7) This escrow account is established by the direction of the Florida Public Service Commission for the purpose(s) set forth in its order requiring such account. Pursuant to Cosentino v. Elson, 263 So. 2d 253 (Fla. 3d DCA 1972), escrow accounts are not subject to garnishments.
- 8) The Director of Commission Clerk and Administrative Services must be a signatory to the escrow agreement.



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In no instance should the maintenance and administrative costs associated with any refund be borne by the customers. These costs are the responsibility of, and should be borne by, the utility. Also, by no later than the twentieth day of each month, the utility should file a report showing the amount of revenues collected each month and the amount of revenues collected to date relating to the amount subject to refund. Should a refund be required, the refund should be with interest and undertaken in accordance with Rule 25-30.360, Florida Administrative Code.

**ISSUE 3:** Should HHH be ordered to show cause, in writing, within 21 days, why it should not be fined for failing to complete all of the pro forma additions required by Order No. PSC-02-0382-PAA-SU?

**RECOMMENDATION:** No, a show cause proceeding should not be initiated. (HARRIS, FITCH)

**STAFF ANALYSIS:** As previously discussed, HHH was required to complete several pro forma items by Order No. PSC-02-0382-PAA-SU, issued March 21, 2002, within 9-months of the effective date of the order. That order also specified that this docket remain open pending staff's verification that the utility has completed the pro forma additions. The utility has provided staff with cost verification of the items completed.

Staff discovered that the utility did not complete several of the pro forma items approved in the above referenced order. Among the items not completed by the utility include installation of a Splitter Box/ Bar Screen, Aeration Tank, Blower, and Automated testing equipment. These items were required by the DEP to meet the high level of flows the wastewater system was treating. The utility was also required to make repairs to its collection system. During the process of these repairs, the utility discovered that the collection system required more attention than was requested and approved in the above referenced order. The utility has spent well in excess of the amount approved in the above referenced order on repairing the collection system.

According to the utility, once the collection system upgrades began, the flows to the wastewater system decreased. The utility believes that these decreased flows are a result of repairing the collection system thus reducing the level of inflow and infiltration. Because of the decrease in wastewater flows treated by the utility, the DEP is no longer requiring the Splitter Box/ Bar Screen, Aeration Tank, Blower, and Automated testing equipment approved in the above referenced order. Therefore, the utility decided not to install these items and to continue its repairs of the collection system.

The utility was also ordered to install a back up generator, and a new chlorine contact chamber. Since Order No. PSC-02-0382-PAA-SU was issued, the utility determined that repairing the chlorine contact chamber (rather than replacing it) would be the most cost effective solution. The utility also discovered after

discussions with its purchased power provider that the electrical outages were occurring at one lift station, and that repairing the electrical panel at the lift station would reduce the outage problem. The utility also believes that this is the least cost alternative. Therefore, the utility has not installed a backup generator or new chlorine contact chamber; rather, the utility has gone forward with the repairs listed above.

Section 367.161, Florida Statutes, authorizes the Commission to assess a penalty of not more than \$5,000 per day for each offense, if a utility is found to have knowingly refused to comply with, or to have willfully violated any Commission rule, order, or provision of Chapter 367, Florida Statutes. Utilities are charged with the knowledge of the Commission's rules and statutes. Additionally, "it 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).

Thus, any intentional act, such as failing to install the hydro pneumatic tank within the time period specified in Order No. PSC-01-1246-PAA-WS, would meet the standard for a "willful violation." In In Re: Investigation Into The Proper Application of Rule 25-14.003, F.A.C., Relating To Tax Savings Refund for 1988 and 1989 For GTE Florida, Inc., Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL, the Commission having found that the company had not intended to violate the rule, nevertheless found it appropriate to order it to show cause why it should not be fined, stating that "'willful' implies an intent to do an act, and this is distinct from an intent to violate a statute or rule." Id. at 6.

Staff does not believe, however, that HHH's apparent violation of Order No. PSC-02-0382-PAA-SU rises in these circumstances to the level which would warrant the initiation of a show cause proceeding. Staff believes that it is not reasonable to require the utility to install unnecessary items of plant to its wastewater system. The Commission's decision in the above-referenced order reflected the facts of this case at that time. Obviously, the Commission would not have ordered the pro forma additions if a lower cost option was known to be available and the existing requirements of the DEP were not present.

Further, it should be noted that the utility was proactive in addressing the problem as it changed rather than blindly following the requirements of the order. However, the utility should have

kept staff aware of the changing situation so that staff could bring before the Commission a recommendation addressing the change in pro forma additions rather than the utility's going forward with an apparent violation of the order. The utility should be placed on notice that it should abide by the orders of the Commission. If the utility believes that circumstances have changed such that following the order would not be prudent, the utility should contact staff to discuss the circumstance and options available to the utility.

In Issue No. 1, staff is recommending that the rates be reduced to remove the rate impact of the pro forma improvements not completed by the utility and recognize the prudent expenses of the utility. Because the majority of the pro forma items were associated with increased flows (which were later reduced by the collection system repairs), existing customers would in effect have been paying for an expansion of the capacity of the existing plant. By removing these items from rates, the existing utility customers will not be paying for plant for which they will not benefit.

As explained above, staff does not believe that HHH's apparent violation of Order No. PSC-02-0382-PAA-SU rises in these circumstances to the level which would warrant the initiation of a show cause proceeding. Thus, staff recommends that a show cause proceedings should not be initiated.

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**ISSUE 4:** Should the docket be closed?

**RECOMMENDATION:** Yes. If no timely protest is filed by a substantially affected person, this docket should be closed upon the issuance of a Consummating Order. If a protest is filed within 21 days of the issuance of the Order, the existing tariffs should remain in effect with the difference in revenues held subject to refund pending resolution of the protest, and the docket should remain open. (HARRIS, FITCH)

**STAFF ANALYSIS:** If no timely protest is filed by a substantially affected person, this docket should be closed upon the issuance of a Consummating Order. If a protest is filed within 21 days of the issuance of the Order, the existing tariffs should remain in effect with the difference in revenues held subject to refund pending resolution of the protest, and the docket should remain open.

RECOMMENDED RATE REDUCTION SCHEDULE

HARDER HALL-HOWARD, INC.  
 TEST YEAR ENDING 7/31/01

SCHEDULE NO. A  
 DOCKET NO. 010828-SU

CALCULATION OF RATE REDUCTION AMOUNT

MONTHLY WASTEWATER RATES

<u>BASE FACILITY CHARGE:</u>	<u>MONTHLY EXISTING RATES</u>	<u>MONTHLY RECOMMENDED RATES</u>
RESIDENTIAL (ALL METER SIZES)	\$ 22.76	18.97
Flat rate (no meter)	\$ 38.18	31.82
<b>GENERAL AND MULTI-RESIDENTIAL SERVICE</b>		
5/8"X3/4"	\$ 22.76	18.97
3/4"	34.14	28.46
1"	56.90	47.44
1-1/2"	113.81	94.87
2"	182.10	151.80
3"	364.19	303.59
4"	569.05	474.36
6"	1,138.09	948.72
<u>GALLONAGE CHARGE:</u>		
RESIDENTIAL GALLONAGE CHARGE PER 1,000 GALLONS (10,000 gallon cap)	\$ 3.53	2.94
GENERAL AND MULTI-RESIDENTIAL SERVICE GALLONAGE CHARGE PER 1,000 GALLONS	\$ 4.24	3.53
INN ON THE LAKES GALLONAGE CHARGE PER 1,000 GALLONS	\$ 4.67	3.89

**HARDER HALL-HOWARD, INC.**  
**TEST YEAR ENDING 7/31/01**

**SCHEDULE NO. B**  
**DOCKET NO. 010828-SU**

PRO FORMA IMPACT ON ANNUAL WASTEWATER REVENUE REQUIREMENT

	<u>PER ORDER</u>	<u>ACTUAL</u>	<u>DIFFERENCE</u>
Backup Generator	40,000	0	
Walkway/ Stairway	3,000	300	
Fence Percponds	20,000	296	
Chlorine Contact Chamber	10,000	Repair Expensed	
Splitter Box Bar Screen	10,000	0	
Clay Pipe Upgrade	7,000	0	
Aeration Tank	25,675	28,287	
Blower	8,000	0	
Testing Equipment	6,000	0	
Pumping Equipment	<u>0</u>	<u>7,226</u>	
<b>Total Pro Forma Plant</b>	<b>129,675</b>	<b>36,109</b>	
Accumulated Depreciation	(3,779)	(606)	
Non-Used and Useful	(11,739)	0	
Working Capital	<u>0</u>	<u>37</u>	
Rate Base	114,157	35,540	
Rate of Return	<u>10.00%</u>	<u>10.00%</u>	
<b>Return on Rate Base</b>	<b>11,416</b>	<b>3,554</b>	
O&M (Chlorine Repair)	0	294	
Depreciation Expense	<u>6,748</u>	<u>1,211</u>	
Total	18,164	5,059	
true up (RAF)	0.955	0.955	
<b>Revenue Requirement Impact</b>	<b><u>\$19,020</u></b>	<b><u>\$5,298</u></b>	<b>(\$13,722)</b>