



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-

COMMISSION
CLERK

03 FEB 20 AM 10:39

RECEIVED FPSC

DATE: FEBRUARY 20, 2003

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

FROM: DIVISION OF ECONOMIC REGULATION (FITCH, RENDELL) ^{RF} OFFICE OF THE GENERAL COUNSEL (RODAN) JAR *max*

RE: DOCKET NO. 030005-WS - ANNUAL REESTABLISHMENT OF PRICE INCREASE OR DECREASE INDEX OF MAJOR CATEGORIES OF OPERATING COSTS INCURRED BY WATER AND WASTEWATER UTILITIES PURSUANT TO SECTION 367.081(4)(a), F.S.

AGENDA: MARCH 4, 2003 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: MARCH 31, 2003 - STATUTORY REESTABLISHMENT DEADLINE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\GCL\WP\030005.RCM

CASE BACKGROUND

By Proposed Agency Action Order No. PSC-03-0149-PAA-WS (PAA order), issued January 28, 2003, the Commission established a price index increase or decrease for major categories of operating costs incurred by water and wastewater utilities pursuant to Section 367.081(4)(a), Florida Statutes, and Rule 25-30.420, Florida Administrative Code. On February 11, 2003, Florida Waterworks Association, Inc. (FWA) timely filed a petition for formal administrative hearing on the PAA order, along with the direct testimony of David Porter, P.E. In the PAA order, the Commission had voted to include an affirmation with the price index application regarding information concerning the utility's active complaints, corrective orders, and outstanding citations with the Department of Environmental Protection, County Health Departments, and the Public Service Commission. The FWA objects to the

DOCUMENT NUMBER-DATE

01763 FEB 20 8

FPSC-COMMISSION CLERK

affirmation being added to the price index application through an order, rather than through rulemaking. The FWA asserts that the affirmation is vague and contains the undefined terms "active complaint," "corrective order," and "outstanding citation." In addition, the FWA protests the requirement in the PAA order that prefiled testimony must be included with the petition. The FWA asserts that this requirement is an attempt to deny due process by further shortening an already abbreviated protest period and that it provides no opportunity for investigation or discovery. Notwithstanding this objection, the FWA prefiled testimony along with its petition. This matter is currently set for an expedited administrative hearing on March 7, 2003.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission withdraw the provision in Proposed Agency Action Order No. PSC-03-0149-PAA-WS requiring that an affirmation be added to the price index application regarding the utility's active complaints, corrective orders, and outstanding citations with the Department of Environmental Protection, County Health Departments, and the Public Service Commission?

RECOMMENDATION: Yes, the affirmation requirement should be withdrawn from Proposed Agency Action Order No. PSC-03-0149-PAA-WS. According to the FWA, once the affirmation is withdrawn from the PAA order, it will withdraw its protest. Once the protest is withdrawn, the March 7, 2003 hearing should be cancelled and staff should initiate the rulemaking process. All other provisions of Proposed Agency Action Order No. PSC-03-0149-PAA-WS should remain intact and will become final since there was no protest concerning those provisions. (FITCH, RODAN)

STAFF ANALYSIS: Rule 25-30.420(4), Florida Administrative Code, specifies that:

Upon finding of good cause, the Commission may require that a rate increase pursuant to section 367.081(4)(a), Florida Statutes, be implemented under a bond or corporate undertaking in the same manner as interim rates. For purposes of this subsection "good cause" shall include:

- (a) Inadequate service by the utility;

- (b) Inadequate record-keeping by the utility such that the Commission is unable to determine whether the utility is entitled to implement the rate increase or decrease under the rule.

Historically, for every index filed with the Commission, a staff engineer is assigned to determine whether the utility's service should be considered adequate. In order to do this, staff contacts the different regulatory agencies with oversight of the applying utility to find out if the utility has any active complaints, corrective orders, and outstanding citations with these agencies. The majority of the index applications either have no outstanding complaints, corrective orders, and citations, or those that do are not considered by staff to rise to the level of inadequate service. Staff was unable to find an instance over the last ten years where staff recommended that a utility that filed an index application be required to implement the increase under a bond or corporate undertaking.

In its January 9, 2003, recommendation, staff had recommended that to streamline the process of determining whether or not a utility's service is adequate, the attached affirmation should be included in the price index application. Currently, staff spends an inordinate amount of time addressing the issue of adequate service of utilities filing for indexes. The affirmation was designed to allow staff to focus its efforts on investigating those utilities that do have active complaints, corrective orders, and outstanding citations and make a determination of service. Staff used a similar affirmation to process the index application of Florida Water Services Company (FWSC), which included 79 water and 35 wastewater systems. It would have been difficult for staff to investigate each of those systems individually and complete the index application before the end of the statutory time frame expired. This new process proved to be effective and provided administrative efficiency in processing FWSC's voluminous application.

Staff does not believe that the affirmation will cause an unnecessary burden on utilities filing for an index. Each utility should be aware of and have documentation for any active complaints, corrective orders, and outstanding citations and should be able to provide those to staff.

The FWA protested the method by which the Commission added the affirmation to the price index application. According to the FWA, the affirmation meets the definition of a rule, and, as such, the Commission should be required to go through the rulemaking process before imposing this requirement on all water and wastewater utilities seeking a price index increase. Staff agrees that the rulemaking process would be appropriate. The FWA has indicated that it would be amenable to working with staff in the rulemaking process.

This matter is currently set for an expedited administrative hearing on March 7, 2003. If the PAA order is upheld at the hearing, the FWA has indicated that it would challenge the PAA order's affirmation provision as an unauthorized rule at the Division of Administrative Hearings. Staff believes that this possible outcome of the March 7, 2003 administrative hearing would be counterproductive to its efforts in having the affirmation facilitate greater administrative efficiency as soon as possible. Staff believes that its resources would be better spent in a rulemaking proceeding, than before DOAH in a rule challenge.

Therefore, staff recommends that the provision in Proposed Agency Action Order No. PSC-03-0149-PAA-WS adding an affirmation to the price index application regarding a utility's active complaints, corrective orders, and outstanding citations with the Department of Environmental Protection, County Health Departments, and the Public Service Commission should be withdrawn from Proposed Agency Action Order No. PSC-03-0149-PAA-WS. The remaining provisions of Proposed Agency Action Order No. PSC-03-0149-PAA-WS would become final once a Consummating Order is issued. According to the FWA, once the affirmation is withdrawn from the PAA order, it will withdraw its protest. Once the protest is withdrawn, the March 7, 2003 hearing should be cancelled and staff should initiate the rulemaking process.

DOCKET NO. 030005-WS

DATE: February 20, 2003

ISSUE 2: Should this docket be closed?

RECOMMENDATION: No, this docket should remain open until the FWA withdraws its protest. Once the withdrawal is received, staff will bring it to the Commission for acknowledgment, and the docket can be closed after the acknowledgment is made. (RODAN)

STAFF ANALYSIS: This docket should remain open until the FWA withdraws its protest. Once the withdrawal is received, staff will bring it to the Commission for acknowledgment, and the docket can be closed after the acknowledgment is made.

AFFIRMATION

I, _____, hereby affirm that

(Utility Name)

[] does not have any active complaints, corrective orders, or outstanding citations, with the Department of Environmental Protection (DEP) and/or the County Health Departments and/or the Public Service Commission.

[] does have the attached active complaint(s), corrective order(s), and/or outstanding citation(s), with the Department of Environmental Protection (DEP) and/or the County Health Department(s) and/or the Public Service Commission. The attachment(s) includes the specific system(s) involved with DEP permit number and the nature of the active complaint, corrective order, or outstanding citation.

I, the undersigned/officer of the above-named utility, have read the foregoing and declare that, to the best of my knowledge and belief, the information contained in this affirmation is true and correct.

This affirmation is intended such that the Florida Public Service Commission can make a determination of quality of service pursuant to Section 367.081(4)(a), Florida Statutes, and Rule 25-30.420(4)(a), Florida Administrative Code.

Further, I am aware that pursuant to Section 837.06, F.S., whoever knowingly makes a false statement in writing with the intent to mislead a public servant in the performance of his official duty shall be guilty of a misdemeanor of the second degree.

Signature: _____
Title: _____
Telephone Number: _____
Fax Number: _____

Sworn to and subscribed before me this _____ day
of _____, 20__.

My Commission expires:

(SEAL)

Notary Public
State of Florida