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Public Service Commission

COMMISSION  
CLERK

August 20, 2004

Ms. Sharon Hill  
6532 Sunrise Drive  
Panama City Beach, FL 32407

Re: Docket No. 030444-WS – Application for a rate increase in Bay County by Bayside Utility Services, Inc.

Dear Ms. Hill:

I am writing in response to your letter dated August 5, 2004, which the Commission received via facsimile on August 6, 2004. In that letter, you protest the Commission's proposed agency action (PAA) decision to increase the water and wastewater rates of Bayside Utility Services, Inc (Bayside). You also raise several questions concerning Bayside. I will attempt to address your protest and concerns below.

Because your protest was sent to the Commission by facsimile before the order was issued, the Commission cannot accept your letter as a valid protest. Under Florida law, a Commission PAA decision cannot be protested until the Commission codifies its decision in a written order. Substantially affected persons then have 21 days from the date of the issuance of the order to file a protest with the Commission. Under the current schedule for the Bayside case, the Commission is scheduled to issue its order by Monday, August 23, 2004. If the order is issued on the 23<sup>rd</sup> of August, you would have until September 13, 2004, to file a protest. In addition, the Commission does not accept filings by facsimile. Instead, filings can be made in person, by mail, or by e-mail. I have attached a copy of the Commission's e-filings procedures for your convenience. If you choose to mail a protest, the correct address will be listed at the end of the PAA order.

If you choose to file another protest, please note that there are certain legal requirements that have to be followed. The most important of these is Rule 28-106.201, Florida Administrative Code. I have also enclosed a copy of this rule with my letter. In particular, Rule 28-106.201 requires you to include the above docket number, and specifically identify the Public Service Commission as the agency affected. You must also include your name, along with a current telephone number and address. In addition, you must include statements showing how you are substantially affected by the order; when and how you received notice of the order; what facts are in dispute; a concise statement of the ultimate facts alleged, as well as the rules and statutes that entitle you to relief; and finally the relief that you are requesting. I also wanted to make sure that you understand that under Section 120.80(13), Florida Statutes, any issues in the Commission's decision that are not protested are deemed stipulated. Thus, any protest should be as comprehensive as possible.

CMP \_\_\_\_\_  
COM \_\_\_\_\_  
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FPSC-COMMISSION CLERK

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I have asked our clerk's office to mail you a copy of the order when it is issued. You could also find the order on our web site after it is issued. The web site address is <http://www.psc.state.fl.us/>. Mr. Steve Reilly, Deputy Public Counsel, represents the citizens of the State of Florida and has been following this case. If you need further assistance, you may also wish to contact him at 850-488-9330 or write him at the Office of Public Counsel, c/o The Florida Legislature, 111 West Madison Street, Room 812, Tallahassee, FL 32399-1400.

With respect to the questions and concerns you raised, first, you state that the Commission voted to approve the rate increase proposed by Bayside. The utility had requested a 123.94% water increase and an 87.94% wastewater increase; however, the Commission approved a 47.83% water increase and a 42.77% wastewater increase.

As you noted, the Commission ordered an upgrade of Bayside's system. Under the terms of the decision, the utility has 90 days from the finalization of the PAA Order to complete the lift-station upgrades, and 180 days to complete the water main and wastewater gravity main improvements projects. Also, the Commission required the utility to file a plan of improvement for the wastewater collection system within 120 days from the finalization of the PAA Order. The Commission has statutory authority to fine the utility if it does not meet the requirements of the Order once it is final.

As to whether these improvements will be done in a professional manner, the utility must communicate with the Department of Environmental Protection (DEP) prior to performing the upgrades. Some of the work will require a professional engineer to prepare drawings and plans and submit them to the DEP for review to ensure that these improvements meet standard design criteria. Typically, the construction work will be bid out and completed by licensed contractors approved to do business in the State of Florida. The finished work will be inspected by the utility, and the required testing and certification will be submitted to the DEP to ensure quality construction. For the water main and wastewater gravity main improvement projects, the utility will be required to show that any costs are reasonable and prudent. In addition to the utility's and DEP's inspections, staff engineers and accountants will review the projects.

You have also expressed concern about health issues concerning the neglect of the wastewater system and sewage backup. The Commission believes that the first step in alleviating this problem with sewage backup is the upgrading of the lift stations within the allotted 90 days. If the PAA Order is protested, this could delay the accomplishment of these improvements. Staff has been in contact with the Bay County Department of Health (DOH) and DEP, and, at this time, neither DOH nor DEP have health issues with Bayside.

Although the Commission believes that the above-noted improvements will help alleviate some of the sewage backup problems that the customers have noted, there is also a question as to whether some of the laterals themselves will have to be redone. In some places, it appears that there may be five or six customers connected to one four-inch lateral. A four-inch lateral may be too small to handle that many customers. Therefore, the Commission has directed the utility to file a plan within 120 days of the PAA Order becoming final for improvements to the wastewater collection system.

Also, for water outages, the Commission believes that the upgrading of the water mains with looping and additional isolation valves will allow the utility to cut off fewer people when maintenance is required on any section of the water distribution system. Also, staff has checked the number of fire hydrants, and it appears that the utility has seven. Staff believes this is adequate for a utility this size, and, therefore, there are no plans to require additional fire hydrants.

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As to how long a rate increase remains in effect and any future rate reductions, the only planned reduction at this time is the reduction in rates in four years due to amortization of rate case expense. A utility is allowed to recover in its rates the prudent and reasonable costs of filing and prosecuting a rate case. In this rate case, without any formal hearing, the Commission has proposed to approve \$59,369 in rate case expense. This expense is to be amortized over four years, for an annual expense of \$14,842. If there is a protest and a settlement is not reached, the utility could request that the Commission consider the prudent and reasonable costs incurred by the utility for the formal hearing.

Also, staff has written a letter to the City Manager of Panama City Beach (City). In that letter, staff asked the City to review the rates that it charges to Bayside for bulk water and wastewater service. If that expense is reduced, the Commission will consider whether it is appropriate to reduce the utility's rates.

In your last paragraph, you note that despite having heard the customers, the Commission still has "faith" that Bayside "will do the right thing with the upgrade." As noted above, the Commission will require proof that the upgrades are made and can impose penalties if the utility does not make the improvements. However, the sections of the PAA Order requiring improvements must become final before any of the timelines begin to run.

I hope this satisfactorily responds to your letter. If after receiving the PAA Order, you still wish to protest, you must file a protest in the form required by the enclosed rule with the Division of the Commission Clerk and Administrative Services within 21 days of the issuance date of that PAA Order. Any representations in this letter are my own and are not binding on the Commission. If you have any legal questions, please call me at 850-413-6234.

Sincerely,



Ralph R. Jaeger  
Senior Attorney

RRJ:jb

Enclosures

cc: Division of Economic Regulation (Fletcher, Redemann)  
Division of the Commission Clerk and Administrative Services (Docket File)

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presiding officer may enter an order requiring that the absent person be notified of the proceeding and be given an opportunity to be joined as a party of record.

Specific Authority 120.54(5) FS. Law Implemented 120.569, 120.57 FS.

*History—New 4-1-97.*

**28-106.110 Service of Papers.** Unless the presiding officer otherwise orders, every pleading and every other paper filed in a proceeding, except applications for witness subpoenas, shall be served on each party or the party's representative at the last address of record.

Specific Authority 120.54(5) FS. Law Implemented 120.569, 120.57 FS.

*History—New 4-1-97.*

**28-106.111 Point of Entry into Proceedings and Mediation.**

(1) The notice of agency decision shall contain the information required by Section 120.569(1), F.S. The notice shall also advise whether mediation under Section 120.573, F.S., is available as an alternative remedy, and if available, that pursuit of mediation will not adversely affect the right to administrative proceedings in the event mediation does not result in a settlement.

(2) Unless otherwise provided by law, persons seeking a hearing on an agency decision which does or may determine their substantial interests shall file a petition for hearing or for mediation with the agency within 21 days of receipt of written notice of the decision.

(3) An agency may, for good cause shown, grant a request for an extension of time for filing an initial pleading. Requests for extension of time must be filed with the agency prior to the applicable deadline. Such requests for extensions of time shall contain a certificate that the moving party has consulted with all other parties, if any, concerning the extension and that the agency and any other parties agree to said extension. A timely request for extension of time shall toll the running of the time period for filing a petition until the request is acted upon.

(4) Any person who receives written notice of an agency decision and who fails to file a written request for a hearing or mediation within 21 days waives the right to request a hearing or mediation on such matters.

(5) The agency may publish, and any person who has timely requested

mediation may, at the person's own expense, cause the agency to publish, a notice of the existence of the mediation proceeding in the Florida Administrative Weekly or in a newspaper of general circulation in the affected area. The mediation notice can be included in the notice of intended agency action.

(a) The notice of the mediation proceeding shall include:

1. A statement that the mediation could result in a settlement adopted by final agency action;

2. A statement that the final action arising from mediation may be different from the intended action set forth in the notice which resulted in a timely request for mediation;

3. A statement that any person whose substantial interests may be affected by the outcome of the mediation shall within 21 days of the notice of mediation proceeding file a request with the agency to participate in the mediation; and

4. An explanation of the procedures for filing such a request.

(b) The notice shall also advise that in the absence of a timely request to participate in the mediation, any person whose substantial interests are or may be affected by the result of the mediation waives any right to participate in the mediation, and that waiver of participation in the mediation is also a waiver of that person's ability to challenge the mediated final agency action pursuant to Chapter 120, F.S.

(6) If mediation does not result in the settlement of the administrative dispute, the agency shall, within 7 days of the conclusion of the mediation, advise all participants in writing of the right to request, within 14 days, an administrative hearing pursuant to Sections 120.569 and 120.57, F.S.

Specific Authority 120.54(5) FS. Law Implemented 120.569, 120.57, 120.573 FS.

*History—New 4-1-97.*

**PART II HEARINGS INVOLVING DISPUTED ISSUES OF MATERIAL FACT**  
**28-106.201 Initiation of Proceedings.**

(1) Unless otherwise provided by statute, initiation of proceedings shall be made by written petition to the agency responsible for rendering final agency action. The term "petition" includes any document that requests an evidentiary proceeding and asserts the

existence of a disputed issue of material fact. Each petition shall be legible and on 8½ by 11 inch white paper. Unless printed, the impression shall be on one side of the paper only and lines shall be doublespaced.

(2) All petitions filed under these rules shall contain:

(a) The name and address of each agency affected and each agency's file or identification number, if known;

(b) The name, address, and telephone number of the petitioner; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding; and an explanation of how the petitioner's substantial interests will be affected by the agency determination;

(c) A statement of when and how the petitioner received notice of the agency decision;

(d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;

(e) A concise statement of the ultimate facts alleged, as well as the rules and statutes which entitle the petitioner to relief; and

(f) A demand for relief.

(3) Upon receipt of a petition involving disputed issues of material fact, the agency shall grant or deny the petition, and if granted shall, unless otherwise provided by law, refer the matter to the Division of Administrative Hearings with a request that an administrative law judge be assigned to conduct the hearing. The request shall be accompanied by a copy of the petition and a copy of the notice of agency action.

(4) A petition may be dismissed if it is not in substantial compliance with subsection (2) of this rule or it has been untimely filed. Dismissal of a petition shall, at least once, be without prejudice to petitioner's filing a timely amended petition curing the defect, unless it conclusively appears from the face of the petition that the defect cannot be cured.

(5) The agency shall promptly give written notice to all parties of the action taken on the petition, shall state with particularity its reasons if the petition is not granted, and shall state the deadline for filing an amended petition if applicable.

Specific Authority 120.54(5) FS. Law Implemented 120.569, 120.57 FS.

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March 29, 2004

## COMMISSION TO ACCEPT E-FILINGS

The Florida Public Service Commission is pleased to announce that, beginning Thursday, April 1, 2004, we will accept filings submitted electronically, that is, filings attached to e-mails and sent to the Commission's electronic filings address:

[filings@psc.state.fl.us](mailto:filings@psc.state.fl.us)

As with any procedure, there are guidelines to follow. The PSC's guidelines are posted at:

<http://www.floridapsc.com/RandR/e-req.cfm>

In preparing the guidelines, our intent was to make the process as uncomplicated as possible, while providing enough instruction that all your questions would be answered. However, we realize you may have a question we didn't address, so we welcome your questions as well as any comments you wish to share. You can address either to the e-mail address above, or call us at (850) 413-6770.

As we gain experience in handling e-filings, we anticipate the requirements may require modification. You should check the Web site periodically; any changes will be announced there with a link to the latest version of the requirements.

E-filing with the PSC has been under consideration for some time, and has generated a great deal of interest among entities that routinely file with the Commission, as well as those seeking assistance when filing for the first time. We are pleased to now make this option available to anyone with electronic filing capability, and we trust the e-filing experience will be a positive one for you.

BLANCA S. BAYÓ, Director  
Division of the Commission Clerk  
And Administrative Services

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## Florida Public Service Commission Electronic Filing Requirements

The Commission accepts documents for filing by electronic transmission ("electronic filing" or "e-filing") provided the following requirements are met. Documents that fail to meet these requirements will not be accepted for electronic filing.

### Manner of Electronic Transmission

- Filings submitted by electronic transmission must be attached to an e-mail sent to [filings@psc.state.fl.us](mailto:filings@psc.state.fl.us). Documents sent to any other Commission e-mail address will not be considered filed.
- The attachment containing the document to be filed must be in one of the following formats:
  - a. Adobe .PDF
  - b. Native word processing format (e.g., Word or WordPerfect) with numbered paragraphs. Use the document extension .doc for documents filed in Word format and .wpd for those in WordPerfect format.
- Documents shall be signed by typing "s/" followed by the signatory:  
  
s/ First M. Last
- When an e-mail enters the [filings@psc.state.fl.us](mailto:filings@psc.state.fl.us) mailbox, an acknowledgment e-mail will be generated automatically and sent to the address from which the filing originated. If the filer does not receive an acknowledgment, it is the filer's responsibility to contact the Division of the Commission Clerk and Administrative Services (the "Division") to confirm the filing was received
- The acknowledgment indicates the document has been received, but does not confirm the document meets the requirements for electronic filing.
- The Commission does not accept filings submitted by facsimile ("fax") transmission.

### Documents Eligible for Electronic Filing

- All documents permitted or required to be filed with the Commission shall be eligible for electronic filing, except those documents listed under "Documents Not Eligible."

- All documents filed electronically must be capable of being printed as paper documents without loss of content or appearance. Documents must be prepared using a clearly readable font which, when printed, will fit on an 8.5 by 11-inch page.

### **Documents Not Eligible for Electronic Filing**

- Minimum filing requirements (MFRs)
- Prefiled testimony
- Tariffs<sup>1</sup>
- Documents containing confidential information
- Documents that must be accompanied by a filing fee or other payment
- Documents over 50 pages
- Documents over 8.5 by 11 inches in size
- Any other documents identified in the Order Establishing Procedure for a particular docket as being ineligible for filing electronically in that docket
- Corrupt documents
- Documents containing a virus or attached to an e-mail containing a virus

### **Special Conditions**

- The party submitting a document for filing by electronic transmission acknowledges and agrees:
  - a. That the original physically signed document will be retained by that party for the duration of the proceeding and of any subsequent appeal or subsequent proceeding in that cause, and that the party shall produce it upon request of the other parties or the Commission.
  - b. That the party submitting the filing shall be responsible for any delay, disruption, or interruption of the electronic signals and accepts the full risk that the document may not be properly filed with the Division as a result.
  - c. That the filing date for an electronically transmitted document shall be the date the Division receives the complete document. If the document is received on a non-business day, or after 5:00 p.m. on a business day, it will be considered filed as of 8:00 a.m. on the following business day.
  - d. That the Commission does not have the authority to grant an extension of time for certain jurisdictional filings, including motions for reconsideration and notices of appeal.

- e. That the official copy of an electronically filed document is the copy printed by the Division upon receipt, document-stamped, and filed in the docket.
- f. That all electronically filed documents are public records and will be published on the Commission's local area network and its Internet website. Confidentiality is waived for any information in documents submitted for e-filing.

### **E-Mail Transmitting an Electronically Filed Document**

- The e-mail message transmitting the document(s) to be filed is not itself considered a filing. Therefore, documents contained within the text of an e-mail transmission will not be considered filed.
- Multiple documents may be attached to the same e-mail transmittal. However, any cover letter or certificate of service must be included in the electronic document to which it relates, and shall not be submitted as a separate attachment to the e-mail.
- The e-mail message to which the document is attached shall include the following information, in the order listed:
  - a. The full name, address, telephone number, and e-mail address of the person responsible for the electronic filing,
  - b. The docket number and title if filed in an existing docket,
  - c. The name of the party on whose behalf the document is filed,
  - d. The total number of pages in each attached document., and
  - e. A brief but complete description of each attached document.

### **Miscellaneous**

- If a document is filed electronically, no paper copies are required to be filed.
- The party filing a document remains responsible for serving the document in accordance with applicable rules and orders, including service on the appropriate Commission attorney.
- If a document is electronically filed in PDF format, the party submitting the filing remains responsible for compliance with any applicable provisions of Rule 25-22.028(1), F.A.C., relating to submission of the document on diskette in word processing or spreadsheet format.

*<sup>1</sup>While the Division does not accept tariffs filed electronically, the Division of Competitive Markets and Enforcement is considering acceptance of telecommunications tariffs and price lists electronically. Separate procedures for e-filing tariffs can be found on the Commission's Website.*



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