

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for a staff-)	DOCKET NO. 900501-WS
assisted rate case in Volusia)	ORDER NO. 24931
County by Tymber Creek Utilities)	FILED: 8/19/91
_____)	

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman
 J. TERRY DEASON
 BETTY EASLEY
 MICHAEL MCK. WILSON

ORDER CORRECTING PRIOR COMMISSION ORDER
AND REQUIRING REFUND

BY THE COMMISSION:

CASE BACKGROUND

Tymber Creek Utilities (TCU or utility) is a class "C" water and wastewater utility serving the Tymber Creek residential community in Ormond Beach, Florida. TCU is a partnership.

By proposed agency action Order No. 24206, issued March 7, 1991, this Commission approved an increase in TCU's wastewater rates. As there was no timely protest to the Order, it became final on March 29, 1991. Subsequent to that time, we discovered errors in the wastewater consumption rates contained in Order No. 24206. In addition, it has come to our attention that TCU has been charging unauthorized rates since April 30, 1991. This Order addresses these two issues.

CORRECTION TO ORDER NO. 24206

According to Order No. 24206, the wastewater consumption rates for TCU are \$2.71 per 1,000 gallons for residential customers and \$3.25 per 1,000 gallons for general service customers. The principal error contained in the rates approved in Order No. 24206 is that there is no gallonage cap on the consumption charge for residential wastewater service. Since it is our policy to have a cap on the consumption charge for residential wastewater service, we hereby modify Order No. 24206 so that the consumption charge for

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residential wastewater customers is capped at 10,000 gallons. The other error in the approved rates appears in the consumption charges themselves. A mistake was made in calculating said charges. Accordingly, we hereby modify Order No. 24206 so that the appropriate consumption charges are \$2.69 per 1,000 gallons for residential customers, capped at 10,000 gallons of consumption, and \$3.23 per 1,000 gallons for general service customers.

We do not believe that the above corrections to Order No. 24206 violate the doctrine of administrative finality as that doctrine is defined in Reedy Creek Utilities Co. v. Florida Public Service Commission, 418 So.2d 249 (Fla. 1982). In Reedy Creek, we amended an order two and one-half months after it was issued. The length of time correcting the Order in this instance is not much greater than that in Reedy Creek. More importantly, no one will be prejudiced by the correction in this case since our corrections do not affect the approved revenue requirement. By making these corrections to the rates and rate structure, the strong possibility of the utility's overearning is averted.

UNAUTHORIZED RATES

By Order No. 24206, we ordered the utility to establish an escrow account in the event that a refund to its customers was ultimately required. As stated in the Order, one of the conditions for approval of the revised tariff sheets was the establishment of this escrow account. We did not receive the utility's proposed escrow agreement until May 28, 1991. By letter dated June 13, 1991, we notified the utility that the proposed escrow agreement was adequate. Revised tariff sheets could have been approved at this time. However, due to an oversight, the revised tariff sheets were not approved.

That oversight notwithstanding, we were informed by a customer, who sent us a copy of his bill, that the utility implemented the Order No. 24206 rates effective April 30, 1991--before the escrow requirement had even been met. The utility had no authority to implement the approved rates when it did.

Because of the delay in approving the revised tariff sheets, we shall not initiate a show cause proceeding or assess a fine against the utility in this instance.

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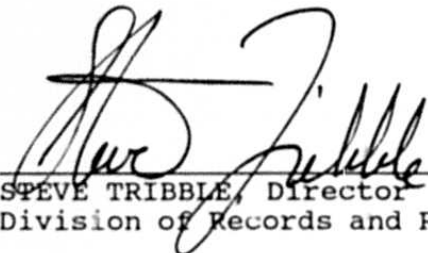
The utility shall refund the difference between the rates in Order No. 24206 and the rates in Order No. 24206 as modified herein. Said refund shall be made with interest and in accordance with Rule 25-30.360, Florida Administrative Code.

It is, therefore

ORDERED by the Florida Public Service Commission that Order No. 24206, issued March 7, 1991, is hereby corrected as set forth herein. It is further

ORDERED that by no later than November 17, 1991, Tymber Creek Utilities shall refund with interest and in accordance with Rule 25-30.360, Florida Administrative Code, the difference between the rates in Order No. 24206 as issued and the rates in Order No. 24206 as modified herein.

By ORDER of the Florida Public Service Commission, this 19th day of AUGUST, 1991.



STEVE TRIBBLE, Director
Division of Records and Reporting

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water or sewer utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.