

## BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for a staff-	)	DOCKET NO. 900501-WS
assisted rate case in Volusia	)	ORDER NO. 25173
County by TYMBER CREEK UTILITIES	)	ISSUED: 10/08/91
_____)		

The following Commissioners participated in the disposition of this matter:

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

ORDER REQUIRING COMPLETION OF PLANT IMPROVEMENTS

BY THE COMMISSION:

TyMBER Creek Utilities (TCU or utility) is a class "C" utility located in Volusia County. On May 18, 1990, TCU requested the instant staff-assisted rate case. By proposed agency action Order No. 24206, issued March 7, 1991, we granted TCU an increase in wastewater revenue requirement, but did not adjust its water revenue requirement. No timely protests to Order No. 24206 were filed, so the Order became final. By Order No. 24931, issued August 19, 1991, we made a correction to the wastewater consumption rate contained in Order No. 24206 and required TCU to make a refund within ninety days, November 17, 1991.

In Order No. 24206, we allowed in rate base \$308,780 in proforma plant improvements to the utility's wastewater treatment facility. We anticipated that the utility would be able to comply with a Department of Environmental Regulation (DER) construction permit for building the plant, so we required only that the utility submit executed contracts for the pertinent work within six months of the date of the Order. We ordered that the portion of the rate increase attributable to the proforma plant was to be escrowed by TCU, subject to refund.

The DER construction permit issued to TCU expires on November 1, 1991. As a condition of the construction permit, the utility was required to submit to DER an application and supporting data for an operating permit no later than sixty days prior to the expiration of the construction permit. In sum, according to DER's

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timetable, TCU was to have the new wastewater facility completed and operational by September 1, 1991.

To date, no physical construction for the plant improvements has begun, and it is obvious that the timetable set forth in the DER construction permit will not be adhered to.

Pursuant to Order No. 24206, on August 5, 1991, TCU submitted to this Commission a signed contract for the installation of a new wastewater treatment plant. We have reviewed the contract and determined that TCU complied with our Order. Accordingly, on August 14, 1991, we authorized the release of the escrowed funds.

TCU claims that escrowing a portion of the rate increase caused financing problems and a delay in making construction arrangements and that the released escrowed funds will be used for a down payment on the new plant. According to TCU's engineer, once construction begins, it will take approximately ninety days to complete the project. It is therefore likely that TCU will petition DER for an extension for its construction permit.

At the September 10, 1991, Agenda Conference, it was brought to our attention that TCU and DER were negotiating and that, according to DER, it was likely that TCU would be allowed until February 15, 1992, to complete the plant improvements.

This Commission has routinely requires water and wastewater utilities to complete proforma plant when proforma plant is included in rate base. Considering the amount of money involved in this case and the apparent difficulty TCU has had in meeting deadlines, we hereby require TCU to complete the plant additions which we allowed in rate base in Order No. 24206 by February 15, 1992. This docket shall remain open so that we may monitor the construction of the plant improvements. Once the utility has satisfactorily completed both the proforma plant improvements and the required customer refunds, the docket may be closed administratively.

It is, therefore,

ORDERED by the Florida Public Service Commission that Tymber Creek Utilities shall, by February 15, 1992, complete the plant additions which were allowed in rate base in Order No. 24206. It is further

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ORDERED that this docket shall remain open pending completion of both the plant additions required herein and the customer refunds required by Order No. 24931.

By ORDER of the Florida Public Service Commission, this 8th  
day of OCTOBER, 1991.

  
STEVE TRIBBLE, Director  
Division of Records and Reporting

( S E A L )

MJF

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.