

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Complaint of Customers) DOCKET NO. 950533-WS
of Betmar Utilities, Inc.,) ORDER NO. PSC-95-0737-FOF-WS
Concerning Notices of Service) ISSUED: June 20, 1995
Discontinuance in Pasco County)
_____)

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK, Chairman
J. TERRY DEASON
JOE GARCIA
JULIA L. JOHNSON
DIANE K. KIESLING

NOTICE OF PROPOSED AGENCY ACTION
ORDER DISMISSING COMPLAINT

BY THE COMMISSION:

NOTICE IS HEREBY GIVEN by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

BACKGROUND

Betmar Utilities, Inc., (Betmar or utility) is a Class B water and wastewater utility in Pasco County. In 1993, the utility served approximately 1,580 water and 980 wastewater customers.

In Order No. PSC-93-1719-FOF-WU, issued November 30, 1993, in a limited proceeding through which Betmar sought recovery of costs of maintaining and testing backflow prevention devices (dual check valves), which it had installed at each service connection, we ordered the utility, following a Section 120.57, Florida Statutes, hearing, to pursue the elimination of hazardous cross-connections in the following manner:

Betmar's request to recover the costs related to the testing and refurbishing of its backflow prevention devices is denied. Instead, Betmar should focus on a backflow prevention program that includes customer

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education and elimination of identified cross-connections that create or may create a health hazard. Once a severe hazard has been identified, it should be eliminated by the customer. If elimination is not feasible, then the cross-connection should be contained by installing a more reliable cross-connection prevention device by the customer. Elimination or containment should include either plumbing modifications or installations of devices more cost-effective than the dual check valve. A program with these elements provides a reasonable and less costly approach and appears to be consistent with [Department of Environmental Protection] DEP rules and its adopted guidelines on cross connection.

In Order No. PSC-94-0437-FOF-WU, responding to a customer's complaint that Betmar had threatened to refuse service for failure to install a backflow prevention device, we found no instance of service refusal, and set forth once again our findings in Order PSC-93-1719-FOF-WU in order to make clear the applicability of those findings to service refusal. In these findings, in addition to instructing the utility to conduct a backflow prevention program in the manner noted above, we stated that the DEP rules do not require that a backflow prevention device be used for detection purposes on every customer connection, but that upon discovery of a prohibited cross-connection, the rules require public water systems to either eliminate the cross-connection by installation of an appropriate backflow prevention device or discontinue service until the contaminant source is eliminated; that Betmar had not proven that the dual check valve devices or any backflow prevention devices should be installed on all connections; and that if the customer creates a cross-connection that presents an imminent and substantial danger to the public health, then that customer should bear the responsibility for its elimination.

This docket was opened as a complaint when a number of the utility's customers filed a Request for Order to Cease and Desist on April 20, 1995. Following the issuance of Order No. PSC-93-1719-FOF-WU, the utility again notified its customers of their responsibility to prevent backflow. The customers requested that the Commission consider their filing to be a complaint or a request to require Betmar to cease and desist from threats to discontinue service to customers who failed to install backflow devices. The filing was precipitated by the customers' receiving a second notice from the utility, a five day notice of discontinuance of service. The notice stated that the utility had recently advised the customers that a "high hazard cross-connection" existed on their properties, and that, as a result, they would be required to install a reduced pressure backflow preventer. The notice further

stated that, pursuant to Rule 25-30.320, Florida Administrative Code, the customers would incur service discontinuance for failure to install the backflow prevention device.

The utility had sent a first notice that advised the customers of the utility's discovery of a backflow on their premises. As authority for the notice, the utility stated in the notice that it relied upon the DEP's declaratory statement in OGC Case No. 93-1619, issued August 27, 1993, in which the agency advised that "once a prohibited cross-connection is discovered ... the public water system must either require the installation of the backflow prevention device or no longer provide water to that service connection until the contaminant source is eliminated." It specified a certain backflow prevention device that the customer was required to install, dependent upon the risk identified.

In a letter dated April 6, 1995, the customers expressed their concerns with these notices to, and requested assistance from, the DEP, as well. Our staff and the DEP met on this issue.

THE COMPLAINT

As stated in the background, Betmar recently sent notices to its customers in Zephyrhills, advising them that a hazardous cross-connection had been discovered on their premises (an in-ground sprinkler system) and that consequently they were required to install a "reduced pressure backflow preventer" or face discontinuance of service under Rule 25-30.320 Florida Administrative Code. The Rule provides that a utility may discontinue service, provided that the customer shall be given written notice and allowed a reasonable time to comply, for noncompliance with or violation of any state or municipal law or regulation governing the utility's service.

In requesting from us an order to cease and desist, the utility's customers allege that the utility's demand that they install backflow devices is in violation of Order No. PSC-93-1719-FOF-WU. However, we find that the utility's conduct in pursuing its cross-connection elimination program is compliant with the requirements we set forth in Order No. PSC-93-1719-FOF-WU, and restated for purposes of clarity in Order No. PSC-94-0437-FOF-WU. The utility must identify cross-connections that create or may create a health hazard. Upon identifying a hazardous cross-connection, the utility may require the customer to eliminate or contain the hazard. The utility may specify a device more cost-effective than a dual check valve.

In the first notice to customers, following inspections apparently conducted in December, 1994, the utility appears to have identified specific hazards, characterizing some of them, such as in-ground sprinkler systems, as "high hazards." The notice explains what cross-connections are and the potential danger they represent to potable water supplies. The notice advises that DEP rules require the elimination of discovered cross-connections. The utility recommends particular devices, consistent, in the view of the utility, with the level of hazard identified.

The utility seeks to implement DEP Rule 62-555.360, Florida Administrative Code, which provides that public water systems, upon discovery of a prohibited cross-connection, shall eliminate the cross-connection by installation of an appropriate backflow prevention device or discontinue service until the contaminant source is eliminated. We find that the DEP, not the Commission, must determine the necessity for installing a backflow prevention device and the acceptability of a particular type of device in each single circumstance.

As noted earlier, the utility's customers have filed a similar complaint with the DEP. In a meeting with our staff on May 3, 1995, the DEP's representative stated that the DEP will respond to the customers' complaint on the basis of Rule 62-555.360, Florida Administrative Code. The DEP also represented that a district field technician will be assigned to accompany the utility on a further inspection to confirm the utility's discoveries. We suggest to the DEP that a customer representative be present during this inspection. We concur with the DEP that it is the appropriate agency to respond to the customers.

We find, therefore, that the complaint of the Betmar customers filed with the Commission, concerning the utility's threat to discontinue service for failure to install a backflow prevention device, shall be dismissed for lack of jurisdiction. Upon expiration of the protest period, if a timely protest is not received from a substantially affected person, this docket shall be closed.

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that the complaint of the customers of Betmar Utilities, Inc., is dismissed. It is further


ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective unless an appropriate petition, in the form provided by Rule 25-22.036,

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Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings or Judicial Review" attached hereto. It is further

ORDERED that in the event this Order becomes final, this Docket shall be closed.

By ORDER of the Florida Public Service Commission, this 20th day of June, 1995.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

CJP

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.

The action proposed herein is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on July 11, 1995.

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In the absence of such a petition, this order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If this order becomes final and effective on the date described above, any party substantially affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or wastewater 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 of the effective date 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.