

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for a staff- ) DOCKET NO. 950966-WS  
assisted rate case in Highlands ) ORDER NO. PSC-96-1184-FOF-WS  
County by Sebring Ridge ) ISSUED: September 20, 1996  
Utilities, Inc. )  
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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

ORDER DENYING REQUEST FOR THE ISSUANCE OF CORRECTED CUSTOMER NOTICE, GRANTING REQUEST FOR FORMAL PROCEEDING, AND DENYING MOTION TO STRIKE REQUEST FOR FORMAL PROCEEDING

BY THE COMMISSION:

Sebring Ridge Utilities, Inc. (Sebring Ridge or utility), is a Class C water and wastewater utility located in Highlands County. On August 15, 1995, the utility applied for a staff assisted rate case. By Proposed Agency Action Order No. PSC-96-0869-FOF-WS, issued July 2, 1996, in this docket, we proposed to approve a water and wastewater rate increase as well as new miscellaneous service charges and service availability charges for the utility.

This Commission ordered the utility to, among other things, submit and have approved a proposed customer notice of the increased rates and charges prior to the implementation thereof. The utility obtained approval of the customer notice and advised by letter dated July 22, 1996, that the notice was mailed to the customers on July 19, 1996, four days before the protest period to Proposed Agency Action Order No. PSC-96-0869-FOF-WS expired.

The protest period to Proposed Agency Action Order No. PSC-96-0869-FOF-WS expired at the close of business on July 23, 1996. No timely protests were filed. However, on July 25, 1996, the Commission received a letter from Mr. Charles Wiggins (Mr. Wiggins or customer), a Sebring Ridge customer, in response to the utility's notice of the increased rates and charges. Apparently interpreting that notice as a vehicle for protesting the proposed agency action order, Mr. Wiggins states that he considers the notice to be invalid. The heading of the notice erroneously

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references "Sebring Utilities," rather than "Sebring Ridge Utilities." Mr. Wiggins argues that if the notice was indeed intended for the customers of Sebring Ridge, the rate increase should not be put into effect on July 24, 1996. He requests that the rate increase not be put into effect until after customers receive a corrected notice. He also requests that more than four days be given within which to submit a petition for formal proceeding pursuant to Rule 25-22.029, Florida Administrative Code.

The customer advised our staff by telephone that he requests a hearing on the proposed rate increase, stating that he will do what he can to delay, postpone, or change it. The customer stated that because he did not receive the notice until July 20, 1996, he was not afforded enough time in which to protest the proposed action prior to the expiration of the protest period. He again requested that more than four days be given within which to file a request for a hearing. He also argued that customers could assume that the customer notice was not intended for them, as a now defunct company named "Sebring Utilities, Inc.," once existed in the area. He reiterated his request that a corrected notice be issued.

On August 15, 1996, the utility filed a motion to strike the customer's request for formal proceeding. The utility argues that Sebring Ridge is referenced on three separate occasions within the body of the notice, thereby placing the customers on notice that a typographical error occurred in the heading and that the notice pertained to them. According to the utility, the fact that the customer quotes the rule set forth in the body of the notice shows that he thoroughly read the entire notice and was therefore aware that it pertained to him. Moreover, the utility argues that the request should be denied because the customer fails to allege that his interests are substantially affected by the rate change and because the request was untimely filed.

We are persuaded that the customers received adequate notice that the proposed rate increase pertains to them despite the omission of the word "Ridge" from the name of the utility as it appears in the heading. The name of the utility is otherwise correctly referenced in the title, and is correctly referenced throughout the body of the notice. Moreover, we note that the customers became aware of Sebring Ridge's request for a rate increase when they received notice of the customer meeting which was held in this docket on April 2, 1996. Indeed, Mr. Wiggins was in attendance at the customer meeting. For these reasons, we find that it is unnecessary to require the utility to incur the expense involved in the preparation and issuance of a corrected customer

notice. The customer's request for the issuance of a corrected notice is therefore denied.

Nevertheless, the customer has indicated that he requests a hearing on the proposed rate increase and we find that there is nothing to be gained by requiring him to restate this request. Therefore, we shall construe the customer's letter as a request for formal hearing. Moreover, we find that the customer's failure to allege that his interests are substantially affected is not fatal to his request. Rule 25-22.036(9)(b), Florida Administrative Code, permits, but does not require, us to deny a petition on proposed agency action if it does not adequately state a substantial interest in the Commission determination. It is clear that utility customers are substantially affected by proposed rate changes regardless of whether they succeed in articulating this standard.

By Proposed Agency Action Order No. PSC-96-0869-FOF-WS, and pursuant to Rule 25-22.029(2), Florida Administrative Code, we provided notice of the proposed agency action to all parties of record and required that protests be filed within twenty-one days of the order issuance date. Thus we granted affected parties the requisite clear point of entry to protest the proposed action, as required under Capeletti Bros., Inc. v. DOT, 362 So. 2d 346, 348 (Fla. 1st DCA 1978), cert. denied, 368 So. 2d 1374 (Fla. 1979).

As previously noted, the customer's request for formal hearing was untimely filed two days beyond the filing deadline. We note that Rule 25-22.036(9)(b), Florida Administrative Code, also permits, but does not require, us to deny a petition on proposed agency action if it is untimely filed. Whether to grant or deny an untimely petition is within our discretion. This Commission has granted such petitions in rare cases upon a showing of good cause why the petition is untimely. See Orders Nos. PSC-95-0630-FOF-TC, issued May 23, 1995, in Docket No. 940719-TC (granting untimely petition for formal proceeding when petition was filed one day late); and PSC-95-1386-FOF-WS, issued November 8, 1995, in Docket No. 950695-WS (denying utility's motion to dismiss untimely filed objection to transfer application when objection was filed five days late).

At the April 2, 1996, customer meeting, our staff explained the procedures involved in filing a protest to our proposed action upon issuance of the order. Our staff offered to send copies of the order to those customers who volunteered to receive them, and asked those volunteers to circulate their copies among the remainder of the customer group. Nevertheless, although he attended the meeting, Mr. Wiggins did not request to receive a copy

of the order. Nor did he obtain a copy of the order from another customer.

By Order No. PSC-96-0869-FOF-WS, we required that the utility provide notice of the increased rates and charges to the customers prior to the implementation thereof, not necessarily prior to the expiration of the protest period. We imposed this requirement upon the utility so that the customers would receive notice of the increased rates and charges before beginning consumption at the new rate levels. As previously noted, the utility mailed the customer notice four days prior to the expiration of the protest period. The notice states, among other things, that "[t]he approved rates and charges will become final on July 24, 1996, unless a person whose interests are substantially affected files a petition for formal proceeding pursuant to Rule 25-22.029, Florida Administrative Code."

Under these circumstances, we find that Mr. Wiggins reasonably interpreted the utility's notice as being a valid point of entry to protest the proposed order. Since he received this notice only four days before the expiration of the protest period, we find that good cause has been shown why his request for hearing was untimely filed. Therefore, we hereby grant the customer's request for formal proceeding. Accordingly, the utility's motion to strike the customer's request is denied.

This matter shall proceed to hearing and this docket shall remain open pending the final resolution of the protest to Proposed Agency Action Order No. PSC-96-0869-FOF-WS.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the request by Mr. Charles Wiggins for issuance of a corrected customer notice is hereby denied. It is further

ORDERED that the request by Mr. Charles Wiggins for a formal proceeding is hereby granted. It is further

ORDERED that Sebring Ridge Utilities, Inc.'s, motion to strike the request for formal proceeding is hereby denied. It is further

ORDERED that this matter shall proceed to hearing. It is further

ORDERED that this docket shall remain open pending the final resolution of the protest to Proposed Agency Action Order No. PSC-96-0869-FOF-WS.

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By ORDER of the Florida Public Service Commission, this 20th  
day of September, 1996.

BLANCA S. BAYÓ, Director  
Division of Records and Reporting

by: Kay Flynn  
Chief, Bureau of Records

( S E A L )

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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 this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) 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 wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.