

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Complaint by Lewis) DOCKET NO. 961034-WS
Hughes against Betmar Utilities,) ORDER NO. PSC-96-1550-FOF-WS
Inc. in Pasco County regarding) ISSUED: December 19, 1996
backflow prevention devices.)

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 RESOLVING INVESTIGATION AND COMPLAINT
AND CLOSING DOCKET

BY THE COMMISSION:

Background

On September 17, 1991, Betmar Utilities, Inc., (Betmar or utility) filed a limited proceeding pursuant to Section 367.0822, Florida Statutes, to increase its rates to recover the cost of maintaining and testing backflow prevention devices (Docket No. 910963-WU). By Order No. PSC-92-0408-FOF-WU, issued June 9, 1992, the Commission proposed to allow the utility to recover \$23,486 on an annual basis for the cost of refurbishing 50 percent of the dual check valve devices. On June 30, 1992, the utility filed a timely protest to that Order. The utility subsequently filed an offer of settlement on November 16, 1992, which was accepted by the Commission and memorialized in Order No. PSC-92-1467-AS-WU. Betmar Acres Club, Inc., timely filed a protest to Order No. PSC-92-1467-AS-WU, issued December 17, 1992.

A Section 120.57, Florida Statutes, hearing was held August 4, 1993, in Zephyrhills, Florida. By Order No. PSC-93-1719-FOF-WU, issued November 30, 1993, the Commission denied Betmar's request to recover the cost of testing the devices. In doing so the Commission found that Betmar did not prove that the dual check valve devices or any backflow prevention devices should be installed on all connections. The Commission further found that the Department of Environmental Protection's (DEP) rules do not require a device on all connections.

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FPSC-RECORDS/REPORTING

In January, 1996, Commission staff began receiving information which indicated that Betmar was threatening to disconnect service to any customer refusing to install a backflow prevention device. Mr. Turco, Betmar's manager, allegedly told these customers that after running tests, he discovered "prohibited cross-connections" which warranted the installation of a backflow prevention device. Staff first referred some calls to DEP for verification of whether a prohibited cross-connection did in fact exist. On January 3, 1996, the customers were granted a temporary injunction against Betmar by Circuit Court Judge Swanson. By letter dated January 11, 1996, DEP, after consulting with the Department of Health and Rehabilitative Services (HRS), informed Mr. Turco that the situation he described did "not constitute a change in the classification of its low hazard status."

By letter dated January 22, 1996, staff, after consulting with DEP, informed Mr. Turco that disconnection of service for the alleged cross connection was not appropriate pursuant to the Commission's rules. By letter dated February 13, 1996, Betmar requested an official interpretation by the Commission and an evidentiary hearing on the entire matter. By Order No. PSC-96-0656-FOF-WS, issued May 10, 1996, the Commission denied Betmar's request for an evidentiary hearing and directed staff to: 1) investigate the number of customers who paid for the installation of the backflow prevention devices in response to Betmar's threat to disconnect service, and 2) determine whether a refund is appropriate for those customers.

By letter dated April 12, 1996, staff informed Betmar that it should stop requiring new customers to install backflow devices unless a specific health risk is identified that requires installation of a device under DEP rules. In addition, staff directed the utility to refund to one customer the amount collected for the backflow prevention device installed on his connection. By letter dated August 19, 1996, staff again reminded Betmar that new residential connections should pose no greater risks and should be treated no differently than existing residential connections. Staff also requested that the utility provide the necessary data to investigate whether further refunds are appropriate. On August 29, 1996, staff received the data requested by facsimile. On September 3, 1996, staff received a letter from Mr. Hughes requesting, among other things, that the Commission take action against Mr. Turco for not obeying previous orders and to stop Betmar from installing backflow devices on typical residential single family dwellings.

On September 3, 1996, this docket was opened to address the Commission's direction to staff to determine whether a refund is appropriate and to address Mr. Hughes' concerns. Mr. Hughes has

requested that the Commission order Betmar to remove all previous devices that had been installed and refund all monies collected. By letter dated September 13, 1996, staff, after reviewing the submitted data, informed Betmar that seven customer connections were low risk connections and those customers should be granted a refund as indicated in Order No. PSC-96-0656-FOF-WS. By letter dated September 23, 1996, Betmar agreed to make a refund to two of the seven customers by a credit to the bill. These two customers were the existing customers that had responded to the threat of disconnection. However, there was no mention in this letter regarding the five other residential customers (new connections). Therefore, by letter dated September 30, 1996, staff informed Betmar that if the five remaining customers did not receive a refund by October 11, 1996, a show cause proceeding against the utility would be initiated. On October 10, 1996, Betmar informed staff, by facsimile, that it will refund under "protest and duress" the five remaining customers. By letter dated November 5, 1996, staff requested from Betmar written proof indicating these refunds had been made. By facsimile dated November 6, 1996, Betmar provided written proof that all seven refunds were made in the customers' respective October bills.

Resolution of Investigation

After reviewing the information received from the utility, we have determined that seven residential customers (two existing customers and five new residential customers) should receive a refund for the installation of a backflow prevention device. By facsimile dated November 6, 1996, Betmar provided proof that a refund has been made to these seven customers. Therefore, we find that our investigation into the matters identified herein has been fully resolved.

Resolution of Complaint

We recognize that the parties continue to disagree over this matter. The utility continues to believe that it has tariff authority to install the devices. Mr. Hughes believes that previous collections for unauthorized testing fees should be refunded and the utility should be ordered to remove the devices.

At this point, we do not believe that any further action is required because all points raised by the parties have been fully addressed herein or in previous Commission orders. For example, in addressing Mr. Hughes' concerns, we look to Order No. PSC-94-0991-FOF-WU, issued August 16, 1994, which clearly stated that no previous refund was required because the monies were, at that time, collected by Environmental Specialists Group (ESG). The Commission

determined that it did not have jurisdiction over ESG. The Commission stated that any dispute between ESG and Betmar customers should be addressed by the courts. The Commission also determined that the collection of those monies was appropriate because the services (testing) were performed and there was no previous order prohibiting Betmar from testing the devices.

In addressing Betmar's assertions, we look to Order No. PSC-96-0656-FOF-WS which clearly states DEP's and HRS's position on requiring a backflow device on typical residential single family homes. DEP has stated in a letter to Betmar dated January 11, 1996, that Chapter 62-555, Florida Administrative Code, "dictates prudent application of the industry standards and recognizes that protective public health measures are needed on residential premises that have developed auxiliary water supplies (e.g. private wells or pumps withdrawing surface waters), employ wastewater reuse, or have underground sprinkler systems". DEP goes on to state that "[t]ypical residential single family premises do not pose public health implications sufficient to warrant the application of the rule to require all such connections to install a device to meet the requirements of the State rule." More importantly, DEP's letter also states that: "[s]imulation by a utility representative of a backflow event from the resident side of the meter does not constitute a change in the classification of its low hazard status".

Further, by memorandum dated March 20, 1996, from HRS to DEP, HRS officially informed DEP that after reviewing the Betmar situation, it was HRS's opinion that:

a normal single family residential connection does not present a substantial threat to the integrity of the suppliers water system, and therefore it would not mandate the requirement of a backflow prevention device at the water meter. In the case of Betmar Utilities, it is apparent that the utility is creating a backflow at the meter through their own actions. This of course, is a natural hydraulic response to the severing of the service line to replace the water meter. Additionally, the presence of warm water in a service line is not viewed by this department as a source of contamination and a threat to public health. This is not viewed as a cross connection, and hence, does not pose a threat to the quality of the water supply and mandate corrective action.

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Based on the foregoing, we find that all issues raised in the complaint have been resolved in this docket or by previous Commission orders. Accordingly, no further action is required and this docket shall be closed.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that all matters raised in this docket have been fully resolved. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission, this 19th day of December, 1996.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

by: Kay Dejean
Chief, Bureau of Records

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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, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, 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 and/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 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.