

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for approval of
bulk irrigation class of service
in Martin County by Miles Grant
Water and Sewer Company.

DOCKET NO. 020925-WU
ORDER NO. PSC-02-1517-TRF-WU
ISSUED: November 5, 2002

The following Commissioners participated in the disposition of
this matter:

LILA A. JABER, Chairman
J. TERRY DEASON
BRAULIO L. BAEZ
MICHAEL A. PALECKI
RUDOLPH "RUDY" BRADLEY

ORDER APPROVING BULK IRRIGATION CLASS OF SERVICE AND
DECLINING TO REQUIRE UTILITY TO SHOW CAUSE

BY THE COMMISSION:

Miles Grant Water and Sewer Company ("Miles Grant" or "the utility") is a Class B utility providing water and wastewater service in Martin County. Based on its 2001 Annual Report, the utility serves approximately 1,274 water customers and 1,207 wastewater customers. Revenues for 2001 were reported as \$260,856 and \$315,738 for water and wastewater, respectively. Net operating income for 2001 was \$33,406 for water and \$97,838 for wastewater.

On July 2, 2002, Miles Grant filed an application for a 2002 Price Index rate adjustment for water and wastewater. During its review of the application, our staff became aware of a "bulk irrigation" gallonage charge used in revenue calculations for which there was no Commission-approved tariff on file.

In a letter dated August 9, 2002, Miles Grant was notified of our staff's findings and was asked to provide detail about its bulk irrigation service, including the number of customers receiving the service, the date it began providing the service, and an explanation of why the utility had not filed for a new class of

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service pursuant to Section 367.091 Florida Statutes. The utility was cooperative in providing this information.

On August 28, 2002, Miles Grant filed for approval of its bulk irrigation service. The utility provided us with letters between it and Miles Grant Country Club outlining an agreement between the two parties for such service, a new tariff sheet for the bulk irrigation service (Tariff Sheet No. 18.1), and the annual revenues produced by the bulk irrigation service since 1998. This Order addresses Miles Grant's request for approval of the new tariff sheet as well as the timeliness of its request for such approval.

I. Request for Approval of Bulk Irrigation Class of Service

Rule 25-9.005(4), Florida Administrative Code, states:

Whenever a new or additional service classification or rate schedule is filed with the Commission, the information required by subsection (1) above need not be furnished. In lieu thereof, a statement shall be filed stating the purpose and reason for the new service classification or schedule and, if determinable, the estimated annual revenue to be derived therefrom and the estimated number of customers to be served thereby.

Miles Grant has asserted that its bulk irrigation service was provided to one customer, Miles Grant Country Club, pursuant to an agreement between the two parties entered into in August 1988. This service is provided at a mutually agreed upon price of \$0.50 per thousand gallons. Under this 1988 agreement, Miles Grant is to provide bulk irrigation water for area ponds of Miles Grant Country Club. As water is drawn from the ponds for irrigation of the golf course, Miles Grant provides the country club with bulk water in order to maintain the ponds at levels of six inches above mean sea level as required by the Department of Environmental Protection ("DEP"). Miles Grant Country Club only requires this service when there is not enough readily available effluent to keep the area ponds at their required levels.

The annual revenues produced for bulk irrigation service under this arrangement since 1998 are as follows:

Year	Revenue
1998	\$ 0.00
1999	\$ 0.00
2000	\$ 253.70
2001	\$ 511.90
2002 (YTD)	\$ 268.40

The utility did not provide any cost justification or support for how the rate of \$0.50 per thousand gallons was derived, other than that it was mutually agreed upon by the utility and Miles Grant Country Club.

Section 367.091(6), Florida Statutes, states:

An application to establish, increase, or change a rate or charge other than the monthly rates for service pursuant to s. 367.081 or service availability charges pursuant to s. 367.101 must be accompanied by a cost justification.

Although no cost justification was provided in the filing by the utility, we find that the rate of \$0.50 per thousand gallons is reasonable in this instance. By Order No. PSC-95-1417-FOF-WS, issued November 21, 1995, in Docket No. 941234-WS, this Commission approved bulk irrigation rates for Aquarina Developments, Inc., of \$0.50 per thousand gallons. Also, by Order No. PSC-96-0124-FOF-WU, issued January 24, 1996, in Docket No. 950120-WU, we approved bulk irrigation rates for Braden River Utilities, Inc., including a gallonage charge of \$0.47 per thousand gallons.

While the Braden River Utilities, Inc., rates also included a base facility charge, we find that a base facility/gallonage rate structure is not appropriate for Miles Grant's proposed new class of service. In Order No. PSC-95-1417-FOF-WS, we approved a gallonage-only rate for Aquarina Development, Inc., stating that a

base facility/gallonage rate structure was not appropriate given the usage characteristics of that service. Because Miles Grant Country Club only requires this bulk irrigation service when there is not enough readily available effluent to keep area ponds at DEP-required levels, we find that a gallonage-only rate is appropriate.

We recognize that the orders cited above approve rates for raw, untreated water for the purposes of irrigation and that Miles Grant provides this service utilizing potable water. We believe, though, that the rate charged by Miles Grant is a reasonable wholesale potable water rate as compared to a bulk raw water rate. We note that the appropriateness of this rate will be further evaluated in the utility's next rate proceeding.

In conclusion, we find that the requested bulk irrigation rate of \$0.50 per thousand gallons is a reasonable charge given the circumstances, and we grant Miles Grant's request for approval of its bulk irrigation class of service. Accordingly, the utility is hereby permitted to continue collection of the bulk irrigation rates currently being charged. Further, Tariff Sheet No. 18.1 shall be approved as filed pursuant to Rule 25-30.475, Florida Administrative Code, for service rendered as of the stamped approval date on the tariff sheet.

II. Timeliness of Miles Grant's Request for Approval of New Class of Service

As noted above, Miles Grant initiated a new class of bulk irrigation service on or about December 1988, providing bulk water to Miles Grant Country Club for irrigation and pond level maintenance purposes as required by the DEP. In doing so, Miles Grant failed to comply with Sections 367.091(4) and 367.091(5), Florida Statutes. Section 367.091(4), Florida Statutes, states:

A utility may only impose and collect those rates and charges approved by the commission for the particular class of service involved.

Section 367.091(5), Florida Statutes, states:

If any request for service of a utility shall be for a new class of service not previously approved, the utility

may furnish the new class of service and fix and charge just, reasonable, and compensatory rates or charges therefor. A schedule of rates or charges so fixed shall be filed with the commission within 10 days after the service is furnished. The commission may approve such rates or charges as filed or may approve such other rates or charges for the new class of service which it finds are just, reasonable, and compensatory.

Section 367.161, Florida Statutes, authorizes this Commission to assess a penalty of not more than \$5,000 per day for each offense, if a utility is found to have knowingly refused to comply with, or to have willfully violated any Commission rule, order, or provision of Chapter 367, Florida Statutes. Utilities are charged with the knowledge of the Commission's rules and statutes. Additionally, "it is a common maxim, familiar to all minds that 'ignorance of the law' will not excuse any person, either civilly or criminally." Barlow v. United States, 32 U.S. 404, 411 (1833).

Thus, any intentional act, such as the utility's failure to file for a new class of service with this Commission in a timely manner, would meet the standard for a "willful violation." In In Re: Investigation Into The Proper Application of Rule 25-14.003, Florida Administrative Code, Relating To Tax Savings Refund for 1988 and 1989 For GTE Florida, Inc., Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL, this Commission found that the company had not intended to violate the rule, but nevertheless found it appropriate to order the company to show cause why it should not be fined, stating that "'willful' implies an intent to do an act, and this is distinct from an intent to violate a statute or rule." Id. at 6.

Although Miles Grant did not comply with Sections 367.091(4) and 367.091(5), Florida Statutes, we find that a show cause proceeding is not necessary or appropriate for the following reasons. First, because the revenue generated by providing bulk irrigation service to only one customer is of an immaterial amount, (averaging less than \$250/yr.), we believe pursuit of a show cause proceeding or fine would be unnecessarily excessive. Second, Miles Grant has been cooperative in providing the necessary information to apply for a new bulk irrigation class of service since it was notified of our staff's findings. Finally, Miles Grant has

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provided assurances that while no approved tariff was on file with this Commission, all revenues generated by providing bulk irrigation services have been included in its annual reports for each of the past fourteen years, and appropriate Regulatory Assessment Fees have been remitted.

For these reasons, we find that it is not necessary to order Miles Grant Water and Sewer Company to show cause why it should not be fined by this Commission for failure to apply for a new class of service in compliance with Section 367.091(4), Florida Statutes.

Based on the foregoing, it is

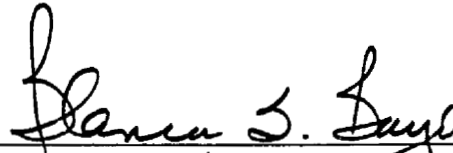
ORDERED by the Florida Public Service Commission that Miles Grant Water and Sewer Company's request for approval of a bulk irrigation class of service (Tariff Sheet No. 18.1) is granted, and the tariff is approved as filed, pursuant to Rule 25-30.475, Florida Administrative Code, for service rendered as of the stamped approval date on the tariff sheet. It is further

ORDERED that if a protest is filed within 21 days of issuance of this Order, the tariff shall remain in effect with any charges held subject to refund pending resolution of the protest. It is further

ORDERED that if no timely protest is filed, this docket shall be closed upon the issuance of a Consummating Order.

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By ORDER of the Florida Public Service Commission this 5th day
of November, 2002.



BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

(S E A L)

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NOTICE OF FURTHER PROCEEDINGS

The Florida Public Service Commission is required by Section 120.569(1), 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.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

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The Commission's decision on this tariff is interim in nature and will become final, unless a person whose substantial interests are affected by the proposed action files a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on November 26, 2002.

In the absence of such a petition, this Order shall become final and effective upon the issuance of a Consummating Order.

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.