

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for Approval ) DOCKET NO. 910560-WS  
of a Rate Increase in Lee County ) ORDER NO. PSC-92-0232-PCO-WS  
by TAMIAMI VILLAGE UTILITY, INC. ) ISSUED: 4/22/92  
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Pursuant to Notice, a Prehearing Conference was held on April 3, 1992, in Tallahassee, Florida, before Commissioner Susan F. Clark, as Prehearing Officer.

APPEARANCES:

Robert S. Medvecky, Esquire, Suite 230, 1500  
Colonial Blvd., Ft. Myers, Florida 33907  
On behalf of Tamiami Village Utility, Inc.

Matthew J. Feil, Esquire, Florida Public Service  
Commission, 101 E. Gaines Street, Tallahassee,  
Florida 32399-0863  
On behalf of the Commission Staff.

PREHEARING ORDER

I. CASE BACKGROUND

On December 3, 1991, Tamiami Village Utility, Inc., (TVU or utility) met the minimum filing requirements for an increase in its water and wastewater rates. The approved test year for this proceeding is the twelve-month period ending July 31, 1991. Tamiami requested interim rates and final rates designed to generate \$204,045 in annual water system revenues, an increase of \$89,996 (79.91%), and \$210,491 in annual wastewater system revenues, an increase of \$114,831 (120.04%). By Order No. 25669, issued February 3, 1992, the Commission suspended Tamiami's requested rates; granted, in part, its request for an interim increase in wastewater rates; and denied Tamiami's request for an interim increase in water rates.

An administrative hearing is scheduled for April 29 and 30, 1992.

DOCUMENT NUMBER-DATE

03973 APR 22 1992

FPSC-RECORDS/REPORTING

II. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

A. Any information provided pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the Commission and the parties as confidential. The information shall be exempt from Section 119.07(1), Florida Statutes, pending a formal ruling on such request by the Commission, or upon the return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been used in the proceeding, it shall be returned expeditiously to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of the proceeding, it shall be returned to the person providing the information within the time periods set forth in Section 367.156, Florida Statutes.

B. It is the policy of the Florida Public Service Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 367.156, Florida Statutes, to protect proprietary confidential business information from disclosure outside the proceeding.

In the event it becomes necessary to use confidential information during the hearing, the following procedures will be observed:

- 1) Any party wishing to use any proprietary confidential business information, as that term is defined in Section 367.156, Florida Statutes, shall notify the Prehearing Officer and all parties of record by the time of the Prehearing Conference, or if not known at that time, no later than seven (7) days prior to the beginning of the hearing. The notice shall include a procedure to assure that the confidential nature of the information is preserved as required by statute.
- 2) Failure of any party to comply with 1) above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.
- 3) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the Court Reporter, in envelopes clearly marked with the

nature of the contents. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.

- 4) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise the confidential information. Therefore, confidential information should be presented by written exhibit when reasonably possible to do so.
  
- 5) At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the Court Reporter shall be retained in the Commission Clerk's confidential files.

### III. PREFILED TESTIMONY AND EXHIBITS

Testimony of all witnesses to be sponsored by the parties and Staff has been prefiled. All testimony which has been prefiled in this case will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to appropriate objections. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. After all parties and Staff have had the opportunity to object and cross-examine, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer.

IV. ORDER OF WITNESSES

<u>Witness</u>	<u>Appearing For</u>	<u>Issues #</u>
<u>Direct</u>		
Henry F. Thomas	Utility	1, 2, 3, 4, 6, 9, 10, 11, 12, 14, 15, 16, 17, 19, 24, 27, 28, 29, 30, 31, 32, 33, 34, 35
Sara L. Willett	Utility	1, 29, 34
John J. Ustica	Utility	4, 5, 6, 7, 8, 13, 15, 18, 19, 20, 21, 22, 23, 25
James Grob	Staff	1
Kathy Welch	Staff	5, 19
Robert Crouch	Staff	3, 13, 14

Rebuttal

Henry F. Thomas	Utility	1, 9, 10, 11, 12, 17
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The utility agreed to the Commission's taking Staff witnesses Grob and Welch out of order to accomodate their schedules.

V. BASIC POSITIONS

UTILITY: Applicant is providing water and sewer services within a mobile home and RV Park. It became a regulated utility by exercising the rights granted to it under the Florida Mobile Home Act when the prior operator entered into a contract of sale. Initially organized as non-profit corporation staffed exclusively by volunteers, the utility is attempting to establish itself on a business-like basis as a traditional utility. It has raised capital by the sale of stock to tenant-users. Stock was sold and investments made on representation that the utility was entitled as a matter of right to earn a fair return on the fair value of its

investment. Thus far the utility with its present rate structure is not currently earning enough revenue to cover its operating expenses, has no earned surplus, has no credit standing and is in a precarious condition regarding its ability to provide good service and a return to the many small park residents who invested savings. The utility needs increased revenues to enable it to become financially healthy, to enable it to continue providing service under its certificate in an acceptable manner and in the face of emergencies. It is a new utility that should be given an opportunity to establish its roots and to grow, rather than to be cut back to bare minimum's as a result of disallowances or application of archaic utility doctrines which favor consumers over investors; and non application of more modern utility doctrines which foster growth and financial well being in utilities. Although very small, the utility believes that the same basic constitutional and legal principles and doctrines which have developed with giant utilities are applicable to it and to its owners. Small utilities such as TVU should be allowed to sink roots and grow and prosper under regulation as the giant utilities did in their day rather than being stifled and driven into abandonment and bankruptcy by regulation.

STAFF: The information gathered through discovery and prefiled testimony indicates, at this point, that the utility may be entitled to some level of increase. The specific level cannot be determined until the evidence presented at hearing is analyzed.

## VI. ISSUES AND POSITIONS

### QUALITY OF SERVICE

ISSUE 1: Is the quality of service provided by Tamiami Village Utility satisfactory?

### POSITIONS

UTILITY: Yes. (Thomas, Willett)

STAFF: No position pending receipt of customer testimony at hearing. (Mr. Grob will also testify on this issue.)

RATE BASE

**ISSUE 2:** Is an adjustment necessary to reflect the added costs the utility incurred to have its office comply with county building codes?

POSITIONS

**UTILITY:** Yes, expense was reasonable and necessary. (Thomas)

**STAFF:** Yes, reasonably incurred additional costs should be allowed.

**ISSUE 3:** Should the utility's requested pro forma adjustment for shut-off valves be included in rate base?

POSITIONS

**UTILITY:** Yes. (Thomas)

**STAFF:** Yes. However, the utility should provide the Commission assurance that it will install the shut-off valves in the near future. Such assurance can be provided by the utility's submitting a contract for the work required. (Crouch)

**ISSUE 4:** What is the appropriate amount of land to be included in rate base?

POSITIONS

**UTILITY:** The land should be in the rate base at its value at the time TVU first dedicated the land to public use. This value was determined by the Commission's own staff in a prior proceeding; and, the land has been regularly valued by the County tax assessor. (Thomas, Ustica)

**STAFF:** The appropriate amount of land to be included in rate base is its \$15,000 original cost.

**ISSUE 5:** What are the appropriate test year amortization rates?

POSITIONS

**UTILITY:** As stated in the MFRs. (Ustica)

STAFF: The composite amortization rate should be adjusted yearly based on depreciation expense. Accumulated amortization should be reduced by \$3,302 for water and \$2,822 for wastewater. (Welch)

ISSUE 6: What is the appropriate method to calculate working capital and what is the proper amount to be included in rate base?

POSITIONS

UTILITY: Ad hoc method producing adequate working capital considering the utility's overall financial position. (Thomas, Ustica)

STAFF: The formula method (1/8th of operating and maintenance expense) should be used to calculate working capital. The amount of working capital to be included in rate base cannot be determined at this time.

ISSUE 7: What is the test year rate base?

POSITIONS

UTILITY: As stated in the MFRs. (Ustica)

STAFF: The final amount is subject to the resolution of other issues.

COST OF CAPITAL

ISSUE 8: What is the appropriate balance of accumulated deferred income taxes?

POSITIONS

UTILITY: As stated in the MFRs. (Ustica)

STAFF: No position at this time.

ISSUE 9: What is the appropriate equity ratio?

POSITIONS

UTILITY: The utility is confronted with an actual capital structure. Due to current insolvency, it cannot raise capital or change capital structure. (Thomas)

STAFF: No position at this time.

ISSUE 10: What is the appropriate return on equity?

POSITIONS

UTILITY: Ad hoc determination to produce sufficient income to pay expenses, establish credit, provide return to investors commensurate with investments of similar risk and to attract capital. (Thomas)

STAFF: The return on equity should be determined based on the Commission leverage graph formula in effect at the time of the Commission's vote on final rates in this case. A range of reasonableness of plus or minus 1% should be authorized.

ISSUE 11: What is the appropriate capital structure?

POSITIONS

UTILITY: Utility is confronted with actual capital structure. Due to current and past insolvency, it cannot raise capital or change its capital structure. (Thomas)

STAFF: No position at this time.

ISSUE 12: What is the appropriate overall cost of capital?

POSITIONS

UTILITY: TVU is entitled to a rate of return which fits its own unique and peculiar circumstances, not determined according to a sterile generic formula. TVU as a new utility has no credit standing, cannot attract or raise capital, cannot pay its operating expenses in a timely manner, and is exposed to extinction in the event of the happening of any unusual weather or other situation. It is more risky that virtually all other similar utilities since it is currently under attack pursuant to ordinances designed to appropriate TVU's private property for public use without the payment of just compensation.

TVU entitled to a rate of return which produces sufficient revenue to cover all of its present and known future expenses and provides a return to its small investors commensurate with returns on investments of



similar risk and sufficient for TVU to establish credit and to attract future capital as needed to fulfill its statutory and tariff obligations. (Thomas)

STAFF: The final amount is subject to the resolution of other issues.

NET OPERATING INCOME

ISSUE 13: What is the appropriate pro forma adjustment for sludge hauling expense?

POSITIONS

UTILITY: As stated in the MFRs. (Ustica)

STAFF: Since the utility will not have to pay a surcharge for greasy sludge, the amount the utility requested in the MFRs should be reduced from \$84 per 1,000 gallons to \$52 per 1,000 gallons. Chemical expense for lime should be reduced. (Crouch)

ISSUE 14: Is the amount of infiltration into the wastewater collection system excessive, and, if so, should any adjustments be made?

POSITIONS

UTILITY: No. (Thomas)

STAFF: Yes, infiltration is excessive. 21.57% of test year flows should be considered excessive infiltration. The utility's customers should be responsible in paying for only a reasonable amount of infiltration. Therefore, expenses for chemicals and purchased power should be reduced by 21.57% due to excessive infiltration. (Crouch)

ISSUE 15: What is the proper rate by which to calculate purchased water cost?

POSITIONS

UTILITY: 1992-1993 rate, as stated in the MFRs. Rates are made for application within period, not for retroactive application to 1991. Utility's insolvency does not

justify putting utility to expense and delay of pass-through proceeding: 1992-1993 water rates are presently known. (Thomas, Ustica)

STAFF: The current 1991-1992 purchased water rate, not the 1992-1993 rate, should be used. A pass-through rate adjustment can be requested for future rate increases for purchased water.

ISSUE 16: What is the appropriate level of test year non-rate case legal fees?

POSITIONS

UTILITY: Amount actually incurred. (Thomas)

STAFF: No position at this time as to amount; however, only those amounts which are prudent and of a recurring nature should be allowed.

ISSUE 17: What is the appropriate amount of rate case expense?

POSITIONS

UTILITY: Amount actually incurred. (Thomas)

STAFF: Reasonable and prudently incurred rate case expense should be allowed. The precise amount cannot be determined at this time.

ISSUE 18: Are the costs associated with the dissolution of non-profit status and purchase of the systems appropriately recovered as above-the-line expenses?

POSITIONS

UTILITY: Yes. (Ustica)

STAFF: No. These costs do not provide any benefits to the customers and should be treated as below-the-line expenses.

ORDER NO. PSC-92-0232-PCO-WS  
DOCKET NO. 910560-WS  
PAGE 11

**ISSUE 19:** Is an adjustment necessary to reduce water operating expenses for reimbursed line breaks?

POSITIONS

UTILITY: No. (Thomas, Ustica)

STAFF: Yes. Water operation and maintenance expense should be reduced by \$1,167.79. (Welch)

**ISSUE 20:** Are adjustments necessary for the operation and maintenance of lines within the RV park which are beyond the point of delivery?

POSITIONS

UTILITY: As stated in the MFRs. (Ustica)

STAFF: No position at this time.

**ISSUE 21:** What is the appropriate amount for repairs on the wastewater collection system?

POSITIONS

UTILITY: As stated in the MFRs. (Ustica)

STAFF: No position at this time.

**ISSUE 22:** What is the appropriate amount of test year income tax expense?

POSITIONS

UTILITY: As stated in the MFRs. (Ustica)

STAFF: No position at this time.

**ISSUE 23:** What is the test year operating income?

POSITIONS

UTILITY: As stated in the MFRs. (Ustica)

STAFF: The final amount is subject to the resolution of other issues.

**ISSUE 24:** Is TVU, notwithstanding the use of a past test year, to be permitted to recover all known and predictable increases in expenses such as the legislated increases in rates for purchased water and salaries and fees already committed for?

POSITIONS:

UTILITY: TVU applied for a future test year which was rejected. Its operations have been drastically altered since the test year. Pro forma adjustments have been filed. In particular, a large increase in purchase water will occur October 1, 1992, just a few weeks after the final order in this case. All of these expenses should be reflected in the rate in this case. TVU should not be put to a separate proceeding to pass through purchased water rates. (Thomas)

STAFF: Staff thinks that this issue, which was raised by TVU, is adequately addressed in prior issues.

REVENUE REQUIREMENT

**ISSUE 25:** What is the total revenue requirement?

POSITIONS

UTILITY: As stated in the MFRs. (Ustica)

STAFF: The final amount is subject to the resolution of other issues.

**ISSUE 26:** Is the adjustment necessary to comply with Section 367.0815, Florida Statutes, regarding the limitations of rate case expense?

POSITIONS

UTILITY: Does not apply. No intervenors in this case; therefore, it is not challenged.

STAFF: The final amount is subject to the resolution of other issues.

RATES AND RATE STRUCTURE

ISSUE 27: What are the appropriate final water and wastewater rates?

POSITIONS

UTILITY: As required to produce revenue requirement. (Thomas)

STAFF: The final amount is subject to the resolution of other issues.

ISSUE 28: Should the utility be permitted to remove the 6,000 gallon sewer cap?

POSITIONS

UTILITY: The utility should be permitted to remove the 6,000 gallon limit from its tariff. (Thomas)

STAFF: No position at this time.

ISSUE 29: Should the utility be permitted to restructure its rate design to deal with the special problems created by its location in a resort area serving mobile homes on a seasonal basis?

POSITIONS

UTILITY: All of the utilities fixed costs should be recoverable in a base rate with gallonage being employed only to recover variable costs. The present rate structure uses gallonage charges to cover fixed costs consistent with commission practice. TVU serves a seasonal clientele. For all of the summer and fall months TVU's customers are in northern states. Since water isn't being used, TVU is not recovering its fixed costs through gallonage charges. (Willett, Thomas)

STAFF: A base facility charge-gallonage charge rate structure, where fixed costs are recovered through the base facility charge and variable costs are recovered through the

gallongage charge, is appropriate. Under such a rate structure, each customer pays his/her fair share.

**ISSUE 30:** Should the utility's request for special water and wastewater rates for the recreational vehicle park be granted?

POSITIONS

UTILITY: TVU provides service through a master valve to a large RV park. The RV park operation provides service to hundreds of individual vehicles. Presently, there is only one rate. There should be a scale of rates depending upon the number of vehicles served by the RV operator. Presently, this group of users do not pay their fair share of the costs of operation. (Thomas)

STAFF: No.

**ISSUE 31:** Should the utility be allowed to charge for water used for private fire protection?

POSITIONS

UTILITY: Yes. (Thomas)

STAFF: Yes.

**ISSUE 32:** Should the utility begin charging for service availability, and if so, what are the appropriate charges?

POSITIONS

UTILITY: No. (Thomas)

STAFF: No position at this time.

**ISSUE 33:** Should the utility be required to refund unauthorized service availability charges?

POSITIONS

UTILITY: No. (Thomas)

STAFF: Yes. The utility should refund the \$750 in unauthorized service availability charges which it collected. CIAC

should be reduced accordingly.

**ISSUE 34:** Should the utility's requested miscellaneous service charges be approved?

POSITIONS

UTILITY: Yes. (Willett, Thomas)

STAFF: No. The utility has not supported its requested charges.

OTHER

**ISSUE 35:** Were TVU's initial MFRs properly found to be deficient thereby extending the filing date and all other statutory dates?

UTILITY: There were no material deficiencies in TVU's initial MFR filing. The stated objections were picayune and did not justify substantially extending all of the statutory dates. The case should have been assigned a filing date while TVU provided page numbers, etc. (Thomas)

STAFF: Staff does not think that this issue is relevant to this proceeding.

VII. EXHIBIT LIST

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Ustica	Utility	none	MFRs
Thomas	Utility	HFT-1	Rate Case Expense
Welch	Staff	KLW-1	Staff Audit Report
Crouch	Staff	RC-1	Calculation of Infiltration

At the prehearing conference, the utility waived the requirement that certified copies of Lee County Ordinances Nos. 89-20 and 90-32 be produced prior to the Commission's taking administrative notice of said ordinances.

Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

VIII. PROPOSED STIPULATIONS

Prior to the hearing, the utility and Staff stipulated to the following:

- (1) The utility's facilities should be considered 100% used and useful without regard to a margin reserve.
- (2) Water accumulated amortization should be reduced by \$2,144, and wastewater accumulated amortization should be reduced by \$4,404.
- (3) Accumulated deferred income taxes should have a zero cost rate.
- (4) Insurance expense should be allocated based on plant ratios, 25.71% for water and 74.29% for wastewater.

It is therefore,

ORDERED by Commissioner Susan F. Clark, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

By ORDER of Commissioner Susan F. Clark, as Prehearing Officer, this 22nd day of APRIL, 1992.

  
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SUSAN F. CLARK, Commissioner  
and Prehearing Officer

( S E A L )

MJF

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ORDER NO. PSC-92-0232-PCO-WS  
DOCKET NO. 910560-WS  
PAGE 17

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 25-22.038(2), 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.