

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for a Limited) DOCKET NO. 910963-WU
Proceeding to Adjust Water Rates) ORDER NO. PSC-93-1069-PHO-WU
in Pasco County by BETMAR) ISSUED: July 22, 1993
UTILITIES, INC.)
_____)

Pursuant to Notice, a Prehearing Conference was held on July 9, 1993, in Tallahassee, Florida, before Commissioner Susan F. Clark, as Prehearing Officer.

APPEARANCES:

Scott L. Knox, Esquire, P.O. Box 443, Palm Harbor, Florida 34682.
On behalf of Betmar Utilities, Inc.

Bebb Jones, 36744 Lakewood Drive, Zephyrhills, Florida 33541.
On behalf of Betmar Acres Club, Inc.

Stephen C. Reilly, Esquire, Office of Public Counsel, Claude Pepper Building, Room 812, 111 West Madison Street, Tallahassee, Florida 32399-1400.
On behalf of the Citizens of the State of Florida.

Suzanne F. Summerlin, Florida Public Service Commission, 101 E. Gaines Street, Tallahassee, Florida 32399-0863.
On behalf of the Commission Staff.

PREHEARING ORDER

I. CASE BACKGROUND

On September 17, 1991, Betmar Utilities, Inc., filed a limited proceeding pursuant to Section 367.0822, Florida Statutes, to increase its rates to recover the cost of maintaining and testing the backflow prevention devices previously installed.

In Proposed Agency Action (PAA) 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 assemblies. On June 30, 1992, the

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utility filed a timely protest to that Order. Pursuant to the utility's protest the Commission issued an Order Establishing Procedure, Order No. PSC-92-0690-PCO-WU, issued July 22, 1992. The utility subsequently filed an offer of settlement on November 16, 1992, which was memorialized in Order No. PSC-92-1467-AS-WU. Betmar Acres Club, Inc., (BAC) timely filed a protest to Order No. PSC-92-1467-AS-WU, issued December 17, 1992. By Order No. PSC-93-0648-PCO-WU, issued April 27, 1993, the Office of Public Counsel's (OPC) intervention was acknowledged. Order No. PSC-93-0146-PCO-WU, issued January 27, 1993, establishing procedure, supersedes the prior order establishing procedure (PSC-92-0690-PCO-WU).

This matter is currently scheduled for an administrative hearing on August 4 and 5, 1993.

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(2), 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. POST-HEARING PROCEDURE

Rule 25-22.056(3), Florida Administrative Code, requires each party to file a post-hearing statement of issues and positions. You must include in that statement, a summary of each position of no more than 50 words, set off with asterisks. If a party's position has not changed since the issuance of the prehearing order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 50 words, it must be reduced to no more than 50 words. The rule also provides that if a party fails to file a post-hearing statement in conformance with the rule, that party shall have waived all issues and may be dismissed from the proceeding.

A party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 60 pages, and shall be filed at the same time. The prehearing officer may modify the page limit for good cause shown. Please see Rule 25-22.056, Florida Administrative Code, for other requirements pertaining to post-hearing filings.

IV. 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.

V. ORDER OF WITNESSES

<u>Witness</u>	<u>Appearing For</u>	<u>Issues #</u>
<u>Direct</u>		
Joseph Turco	Utility	1 - 9
Ruth Bundy	Utility	
Scott Casseaux	Utility	1 - 2
Dan O'Lone	Utility	1 - 4
Ray Perry	BAC	3 - 5
Michael P. Murphy	OPC	1 - 5
Connie L. McCaskill	Staff	1, 5 - 9
Robert T. Davis	Staff	1 - 4
<u>Rebuttal</u>		
Joseph Turco	Utility	

VI. BASIC POSITIONS

UTILITY: Betmar Utilities, Inc., takes the position that annual testing of residential and commercial dual check valve devices is a reasonably prudent cost of operating the utility which should be incorporated into the Utility's rates. The Utility also takes the position that the base facility rate should be increased by \$2.87 per customer per month to cover the cost of the annual testing program.

BAC: Betmar Acres Club, Inc., is the owner of both commercial and residential property within the area serviced by Betmar Utilities, Inc. Betmar Acres Club, Inc., owns

recreational facilities, utilized by the residents of the family of Betmar subdivisions, which comprise the overwhelming majority of the utilities' customers. Betmar Acres Club, Inc., believes that backflow devices should not be required in the service area; that Betmar and its members are being unfairly singled out, insomuch as other similarly situated parks are not required to have backflow devices. Additionally, the corporation's members object to the type of backflow devices installed, the proposed frequency of inspection or maintenance, and the cost attendant thereto. Betmar Acres Club, Inc., holds the opinion that the backflow devices should be removed at the utility's expense and that rebates should be provided to all customers for installation of the unnecessary backflow device as well as the cost of maintenance.

OPC: The Commission should not have permitted the utility to include in its rate base the cost of installing backflow prevention devices in all of Betmar Utility's residential connections. Contrary to representations made by the company, DER Rule No. 17-555.360, Florida Administrative Code, does not require such wholesale use of backflow prevention devices in all residential connections. Betmar has never adequately documented the existence of any special backflow problem with its residential connections which create or may create an imminent and substantial danger to public health. Absent this showing, Rule 17-555.360 does not require the installation of backflow prevention devices.

In fact, Rule 17-555.360 expressly provides that the residential dual check valves installed by Betmar Utility in its residential connections are acceptable only as added backflow prevention in areas served by reuse systems defined in Chapter 17-610, Part III, F.A.C. Since the Betmar's service area is not served by a reuse system, Rule 17-555.360, which supposedly mandates the company's cross-connection program, expressly provides that the company's use of such devices is unacceptable.

While the Citizens are not proposing that the company's investment in these residential devices be removed from rate base, we strongly urge the Commission not to compound this one-time mistake with an unnecessary and

burdensome annual requirement. To perpetuate this unnecessary program, the company proposes a 91% increase in the base facility charge for standard residential connections.

At a time when water and wastewater rates are increasing statewide because of DER mandates, the Commission should refrain from approving a substantial rate increase which is not required by DER regulations. The company and its residential customers should be spared the annual cost of this unnecessary program. The devices should be left in place with no inspection and refurbishment program, which will provide diminishing extra protection against any potential cross-connection problem that might conceivably occur at the residential connections. A device should be removed only when it hinders the company's ability to deliver water to the residential connection. If and when a special condition warrants a cross-connection device to be installed, an approved device should be installed with the reasonable cost of installing and maintaining the device to be borne by the affected customer.

STAFF: Staff's positions are preliminary and based on materials filed by the parties and gained through discovery. The preliminary positions are offered to assist the parties' preparation for the hearing. Staff's final positions will be based upon all the evidence in the record and may differ from the preliminary positions. Proposed Agency Action Order No. PSC-92-0480-FOF-WU, issued June 9, 1992, stated that refurbishment of backflow prevention devices is appropriate. This is Staff's preliminary position in this proceeding. However, Staff believes that only recovery of the cost of refurbishing 50 percent of the residential dual check valve devices is appropriate.

VII. ISSUES AND POSITIONS

ISSUE 1: Should the Commission allow Betmar Utilities, Inc., to recover the cost of annual testing and/or refurbishment of all residential dual check valve devices as a prudent cost of providing service?

POSITIONS

UTILITY: Yes. The Utility should be allowed to recover the cost of testing, refurbishment, maintenance and replacement, (as necessary) which are all included in the company's proposed rate increase. The corrosive quality of the of the water in Betmar's service area and the strong seasonal customer base result in maintenance problems associated with dormant water. The manufacturer has recommended annual testing due to this problem. (Turco, Casseaux, O'Lone)

BAC: No, the utility has failed to demonstrate the need to maintain any backflow prevention devices on its residential connections. The customers should not be made to bear the cost to maintain these devices. The amount of water consumed by seasonal residential consumers of the Utility is low. Additionally, the corrosivity of the Utilities' water is normal to low. It is BAC's position that any backflow device installed would only require inspection once every five years. It is BAC's position that the work performed in inspecting the devices is so minimal that it can be performed for approximately half of what the Utility requests.

OPC: No. The company and its residential customers should be spared the annual cost of this unnecessary program. The devices should be left in place with no inspection and refurbishment program, which will provide diminishing extra protection against any potential cross-connection problem that might conceivably occur at the residential connections. If and when a special condition warrants a cross-connection device to be installed, an approved device should be installed, with the reasonable cost of installing and maintaining the device to be borne by the affected customer.

The company's program is not a cost effective means of addressing potential backflow problems. The company is in a position to monitor all losses of pressure in its system because of line breaks, flushing, fire fighting or for other reasons. When these events occur the company should immediately inspect and monitor the affected areas and lines to verify that no harmful backflow has occurred. This monitoring program could be complimented

with a regular periodic public information campaign on the subject. The program could also include inspection of any likely sites of possible backflow problems and periodic random inspection of other connections. The potential backflow problems present in the Betmar service area do not justify the proposed program, which will increase by 91% the base facility charge for the standard residential connection. (Murphy)

STAFF: No. The Staff believes that recovery of only the cost of refurbishing 50 percent of the residential dual check valve devices per year is appropriate as proposed by the Commission in Order No. PSC-92-0480-FOF-WS. (McCaskill)

ISSUE 2: Should the customers be permitted to retain a certified technician to perform the maintenance or inspection program on their backflow devices at their own expense?

POSITIONS

UTILITY: No position. If customers are permitted to retain certified technicians to perform maintenance or inspection it must be done under the supervision of the utility's certified technician since the utility is ultimately responsible for the water quality. If the customer is allowed to maintain the device, any cost of replacement maintenance, refurbishment and testing should be paid by the customer. The utility's certified technician would be a new position which needs to be funded. In the event the individual customer would not perform requisite maintenance and testing, the utility would be required to do that testing and maintenance at the customer's cost. (Turco, Casseaux, O'Lone)

BAC: The devices previously installed by the utility, were purchased by each individual customer. It is BAC's position that each consumer should be permitted to retain the technician of his choice to perform the inspection and affect any necessary repairs. The consumer should not be required to use the Utility at a rate fixed by the government. Rather, the consumer should be allowed to utilize the free market system to obtain the best rate available. The consumer should thereafter provide the Utility with satisfactory proof of inspection or repair.

OPC: If the Commission continues to permit the utility to require the use of backflow prevention devices, the customers should be permitted to maintain them. (Murphy)

STAFF: No. The devices have been recognized as utility investment in a prior rate case. As utility property the utility should be responsible for maintenance and repair. (Davis)

ISSUE 3: Does DER Rule 17-555.360, Florida Administrative Code, require Betmar Utility to install backflow prevention devices in all of its residential connections?

POSITIONS

UTILITY: The issue is moot. The Public Service Commission has already approved installation of dual check valve devices for all Betmar's residential customers. Subsection 2 of that referenced rule requires the implementation of a backflow detection and prevention program. The installation of dual check valves was part of that program. Subsection 3 of the referenced rule requires installation of an approved backflow prevention device when cross connections have been detected. (Turco, O'Lone)

BAC: No, backflow devices are not necessary to secure quality of service in the service area. In addition, protester is not aware of any other utility that is entitled to require backflow devices to its customers on similar factual situations. (Perry)

OPC: Absolutely not. This rule requires the utility to establish a program to detect and prevent cross-connections that create or may create an imminent and substantial danger to public health. Instead of implementing a program to detect and prevent such special hazards, the company has merely installed backflow prevention devices on all of its residential connections. (Murphy)

STAFF: No. The rule requires the utility to have a backflow prevention program to detect and prevent cross connections that may create an imminent and substantial danger to public health. (Davis)

ISSUE 4: Has Betmar Utility installed the proper backflow prevention devices on its residential connections?

POSITIONS

UTILITY: Yes. The dual check valve is an appropriate device for backflow prevention and detection under a cross connection detection and prevention program. The device is not an approved device where an actual cross connection has been discovered. (Turco, O'Lone)

BAC: No, regulations only require installation of dual check valves in residential communities when the community is served by reuse systems. BAC is not in a reuse area and the devices installed by the Utility are improper. (Perry)

OPC: No. According to DER Rule 17-555.360, Florida Administrative Code, the residential dual check valve device is not an acceptable device to install in the Betmar service area. (Murphy)

STAFF: No position pending further development of the record. (Davis)

ISSUE 5: What is the revenue impact of the Commission's decision in Issue 1?

POSITIONS

UTILITY: The total revenue requirement is \$47,792.67 or \$2.87 per customer per month, which is the amount by which the base facility rate should be increased, plus reasonably prudent rate case expenses. (Turco)

BAC: Agrees with OPC. (Perry)

OPC: If the Commission accepts the Citizens' positions on Issue 1 there will be no annual cost to maintain the residential dual check valve devices. The only cost to be borne by the ratepayers would be the amortization of any reasonable rate case expense associated with this limited proceeding. (Murphy)

STAFF: The revenue impact of refurbishing 50 percent of the devices is \$22,701. This figure reflects rate case expense incurred through May, 1992, and should therefore be adjusted for the final rate case expense approved in this proceeding. (McCaskill)

ISSUE 6: What is the appropriate amount of current rate case expense?

POSITIONS

UTILITY: Reasonable and prudent rate case expenses should be approved and incorporated in the rate increase. This amount will be determined upon development of the record at the hearing and upon submittal of additional detailed information. (Turco)

BAC: Agrees with OPC.

OPC: Only reasonable and prudent rate case expense should be approved. This amount cannot be determined until more detailed information is supplied and the record is developed at the hearing.

STAFF: The allowed provision for rate case expense should reflect, as of May 19, 1992, actual payments of \$8900 and estimated completion costs to the extent that they are reasonable and prudent. The utility should be ordered to submit a detailed statement of the actual rate case expense incurred within sixty days after the final order is issued or, if applicable, within sixty days after the issuance of an order entered in response to a motion for reconsideration of such final order. Information should be submitted in the form prescribed for Schedule B-7 in the MFRs. (McCaskill)

ISSUE 7: What are the resulting rates and rate structure?

POSITIONS

UTILITY: The final dollar amount is subject to the resolution of other issues. (Turco)

BAC: The final dollar amount is subject to the resolution of other issues. (Turco)

OPC: The final dollar amounts are subject to the resolution of other issues.

STAFF: The final dollar amount is subject to the resolution of other issues. (McCaskill)

ISSUE 8: In determining whether any portion of the interim increase granted should be refunded, how should the refund be calculated, and what is the amount of the refund, if any?

POSITIONS

UTILITY: The final revenue requirement should be determined first. Once the final revenue requirement is established the need for refund, if any, can be determined. These amounts are subject to resolution of other issues. (Turco)

BAC: Agrees with Staff.

OPC: Agrees with Staff.

STAFF: The final revenue requirement should be compared with the interim revenue requirement to determine whether a refund is necessary. The amounts are subject to the resolution of other issues. (McCaskill)

ISSUE 9: What is the appropriate amount by which rates should be reduced four years after the established effective date to reflect the removal of the amortized rate case expense as required by Section 367.081(6), Florida Statutes?

POSITIONS

UTILITY: The appropriate recovery period is four years. The actual rate reduction can not be determined until an actual rate case has been approved. (Turco)

BAC: Agrees with Staff.

OPC: Agrees with Staff.

STAFF: The appropriate recovery period is four years. The actual rate reduction cannot be determined until a final rate case expense is approved. (McCaskill)

VIII. EXHIBIT LIST

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
<u>Direct</u>			
Joseph Turco	Utility	JT-1	DER Rules 17-555.360 and 17-550.200, Florida Administrative Code
	Utility	JT-2	Video Tape
	Utility	JT-3	Dual Check Valve
	Utility	JT-4	Backflow Prevention Theory and Practice (Pages 130-131)
	Utility	JT-5	PSC Order 92-0480
	Utility	JT-6	Replacement Kit
	Utility	JT-7	EPA Cross Control Manual
	Utility	JT-8	Manual of Cross Connection Control - City of Altamonte Springs, Florida

Direct continued

Turco	Utility	JT-9	July 31, 1992 Letter From Scott Casseaux
	Utility	JT-10	Bids From Independent Contractor
	Utility	JT-11	ASSE 1024 Standards
	Utility	JT-12	September 23, 1992 Letter From the Ford Meter Box Company, Inc. to Betmar Utilities
	Utility	JT-13	Manual M14 (Late Filed Exhibit)
	Utility	JT-14	Application for Ltd. Proceeding
	Utility	JT-15	Cross Connection and Backflow Preven- tions, 1974 Edition
	Utility	JT-16	Updated Rate Case Expense Summary
	Utility	JT-17	September 24, 1992 Notice of Nonrenewal
Scott Casseaux	Utility	SC-1	Deposition of Scott Casseaux
Dan O'Lone	Utility	DO-1	Deposition of Dan O'Lone
Michael Murphy	OPC	MM-1	Appendix I

Connie L. McCaskill	Staff	CLM-1	Calculation of the Rate Increase
Robert T. Davis	Staff	RTD-1	Patrick Sylvester's letter dated April 22, 1993
	Staff	RTD-2	Foreword by A.S.S.E. (Dual Check Valves)
	Staff	RTD-3	Ford Meter Box's letter dated April 30, 1993

Rebuttal

Joseph Turco	Utility	JT-18	DER Declaratory Statement Application
	Utility	JT-19	DER Declaratory Statement (Late Filed Exhibit if Available)

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

IX. PROPOSED STIPULATIONS

There are no proposed stipulations at this time.

X. PENDING MOTIONS

There are no pending motions at this time.

XI. RULINGS

1. Betmar Utilities, Inc.'s Motion to correct testimony of Dan O'Lone was granted.
2. Betmar Utilities, Inc.'s Motion to file supplemental testimony for Joe Turco was granted.
3. The Staff and other parties represented to the Prehearing Officer that they had no objections to the utility's request for official recognition of the exhibits identified herein as JT-1, JT-4, JT-7, JT-8, JT-15, and JT-13.

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 July, 1993.



SUSAN F. CLARK, Commissioner and
Prehearing Officer

(S E A L)

LAJ/ES

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.

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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.