

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for approval) DOCKET NO. 941263-SU
of a flat rate for wastewater) ORDER NO. PSC-95-0359-FOF-SU
service in Pinellas County by) ISSUED: March 14, 1995
MID-COUNTY SERVICES, INC.)
_____)

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 APPROVING FLAT RATES FOR
UNMETERED WASTEWATER CUSTOMERS IN PINELLAS COUNTY

BY THE COMMISSION:

BACKGROUND

Mid-County Services, Inc. (Mid-County or utility), a wholly owned subsidiary of Utilities, Inc., is a Class B utility, located in Pinellas County, Florida. Mid-County provides wastewater service to customers located in Dunedin, Florida. The utility is located in a region which has been designated by the South Florida Water Management District (SFWMD) as a critical use area. As of December 31, 1993, the utility served approximately 1,244 residential customers and 185 general service customers.

We last established rates for this utility in a rate case in Docket No. 921293-SU, by Order No. PSC-93-1713-FOF-SU, issued November 30, 1993. We proposed a \$761,574 wastewater revenue requirement for Mid-County, which represented an annual increase in revenue of \$262,803 or 52.69 percent.

On December 20, 1993, Suntech Homes, Inc. (a developer) timely filed a petition on proposed agency action, wherein it requested a Section 120.57, Florida Statutes, hearing. The developer's protest was limited to the service availability charge which was later resolved by Order No. 94-1042-FOF-SU, issued August 24, 1994. The final rates were approved in Order No. PSC-93-1713-FOF-SU.

On November 16, 1994, Mid-County filed tariff sheets and a request for approval of flat rate wastewater service to three

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customers (one mobile home park and two single family residences) with rates consistent with those established for its metered use customers in Order No. PSC-94-1042-FOF-SU.

On December 23, 1994, the utility waived the 60-day period for Commission action until February 1, 1995, and again on January 18, 1995, until February 21, 1995. These waivers were filed to allow sufficient time for consideration of the utility's request.

TARIFF REQUEST

The utility's filing was not in accordance with Section 367.091, Florida Statutes, which in part provides the following:

(3) A utility may only impose and collect those rates and charges approved by the Commission for the particular class of service involved. A change in any rate schedule may not be made without Commission approval.

(4) 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.

(5) 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. The Commission may withhold consent to the operation of any or all portions of the new rate schedules, by a vote to that effect within 60 days giving a reason or statement of good cause for withholding its consent. The Commission shall render its final decision on the application within 8 months after the official date of filing.

When Mid-County filed for its last rate case (Docket No. 921293-SU), it provided tariffs for metered customers only. As part of that filing, Mid-County included revenues for the three flat rate customers. Mid-County provided service to these three customers before filing tariffs at rates set without Commission approval. Therefore, Mid-County is in violation of Section

367.091, Florida Statutes. Further, the application did not contain the cost justification as required by Section 367.091(5), Florida Statutes.

FLAT RATES FOR UNMETERED CUSTOMERS

Utility counsel asserts that while Mid-County was under prior ownership, the utility agreed to provide wastewater service to three customers (including the mobile home park) who obtained water service from private wells.

Utility counsel further asserts the following: Mid-County apparently never had approved tariff sheets for flat rate wastewater service; all price indexing and pass-through rate adjustments to the customers billed on a flat rate basis have been applied on an equal percentage basis, since the utility was acquired by its current owner; the revenues generated from the three flat rate customers were included in the utility's test year revenues for its recent rate case; those customers received notice of the proposed rate increase; Mid-County inadvertently failed to file tariff sheets covering this flat rate service and the current filing is to correct that oversight.

After the utility submitted its tariff sheets for flat rate wastewater customers, staff initiated an investigation (even though the rates are presently being charged) to determine if the rates being charged are just, reasonable and not overly compensatory. The utility currently bills the mobile home park \$1,522.04 monthly and its unmetered residential customers \$48.33 bi-monthly. By letter dated January 24, 1995, the utility provided staff a cost justification. The utility stated that the current monthly and bi-monthly charges were derived by applying the most recent index and pass-through rate increases to the prior rates in effect at the time the system was acquired by its current owners.

If the utility had requested a new class of service without a specified rate, our analysis shows that the flat rate for the mobile home park would be \$1,616.74 monthly and \$47.04 bi-monthly for the residential customers. Based on this analysis, the mobile home park rate being charged by the utility is \$94.70 less than staff's calculated rate and the bi-monthly residential charge is \$1.29 more than staff's calculated rate. We believe that the rates being charged by the utility are just, reasonable and compensatory. Revenue generated by the unmetered customers was included in the last rate case (Docket No. 921293-SU) as special contract revenue. The approval of the tariff sheets submitted by the utility reflecting the flat rates for unmetered customers will not cause the utility to generate revenue in excess of our approved revenue

requirement. Therefore, we find it appropriate to approve the utility's tariff sheets reflecting flat rates for wastewater service. In accordance with Rule 25-30.475, Florida Administrative Code, the flat rate shall become effective for service rendered as of the stamped approval date on the tariff sheets provided the customers have received notice. The utility shall provide proof that the customers have received the notice within 10 days of the date of the notice.

SHOW CAUSE

As noted earlier, Utilities, Inc. is the current owner of Mid-County. The prior owner was providing wastewater service to the three customers in question at the time of purchase by Utilities, Inc.

Under its current ownership, Mid-County applied to the Commission for a rate increase in Docket No. 921293-SU. On August 24, 1994, the Commission issued Order PSC-94-1042-FOF-WS establishing rates for Mid-County's metered use wastewater customers. As part of that rate case, Mid-County included the revenues of the three customers in question. However, Mid-County has never filed tariff sheets with the Commission for these customers.

Section 367.091(4) F.S. provides in part:

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 filed shall be filed with the commission within 10 days after the service is furnished.

Section 367.161(1), Florida Statutes, authorizes us to assess a penalty of not more than \$5,000 for each offense, if a utility is found to have knowingly refused to comply with, or to have willfully violated, any provision of Chapter 367, Florida Statutes. The utility's act was willful in the sense intended by Section 367.161, Florida Statutes.

In Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL titled In Re: Investigation Into The Proper Application of Rule 25-14.003, F.A.C., Relating To Tax Savings Refund for 1988 and 1989 For GTE Florida, Inc., this Commission, having found that the company had not intended to violate the rule, nevertheless

found it appropriate to order it to show cause why it should not be fined, stating that "In our view, willful implies an intent to do an act, and this is distinct from an intent to violate a statute or rule."

Although failure to file tariff sheets with the Commission within ten days after providing a new class of service is an apparent violation of Section 367.091(4), Florida Statutes, we do not believe that such violation rises to the level that warrants a show cause proceeding. There are mitigating circumstances. As noted above, Mid-County, provided service to the three customers in question prior to purchase of the utility by the current owner. After the Commission issued Order PSC-94-1042-FOF-WS, Mid-County discovered its failure to have the approved tariff sheets. Upon this discovery, the utility promptly filed the required tariff sheets.

For the above reasons, although we recognize that utilities are charged with knowledge of Chapter 367, Florida Statutes, we do not believe that this utility's apparent violation of Section 367.091(4), Florida Statutes, rises to the level of warranting that a show cause order be issued. We find it appropriate not to order Mid-County to show cause for failing to file tariff sheets with the Commission within ten days prior to providing the new class of service.

If there are no timely objections to the tariff, no further action will be required and this docket shall be closed. In the event that a timely protest is filed, the tariff shall remain in effect, and the revenues should be held subject to refund pending resolution of the protest.

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that Mid-County Services, Inc's tariff sheets reflecting flat rates for wastewater service are hereby approved. It is further

ORDERED that for the aforementioned reasons, show cause proceedings will not be initiated against Mid-County Services, Inc. It is further

ORDERED that the tariff sheets approved herein shall become effective for services rendered on or after the stamped approval date on the tariff sheets, in accordance with Rule 25-30.475, Florida Administrative Code, provided the customers have received notice. It is further

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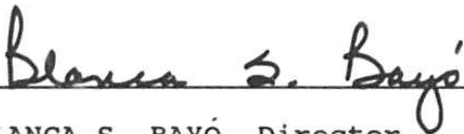
ORDERED that Mid-County Services, Inc. shall provide this Commission proof that the customers have received notice within ten days of the date of the Notice. If is further

ORDERED that the tariff sheets approved herein are interim in nature and shall become final unless a substantially affected person files a petition for a formal proceeding which is received by the Director, Division of Records and Reporting, by the date set forth in the notice of Further Proceedings or Judicial Review set forth below. It is further

ORDERED that if a timely protest is filed in accordance with the requirements set forth below, this tariff shall remain in effect subject to refund pending resolution of the protest. It is further

ORDERED that if no timely protest is filed, this docket shall be closed.

By ORDER of the Florida Public Service Commission, this 14th day of March, 1995.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

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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.

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 action proposed files a petition for a formal proceeding, as provided by Rule 25-22.036(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a)(d) and (e), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on April 4, 1995.

In the absence of such a petition, this order shall become final on the day subsequent to the above date.

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.

If this Order becomes final on the date described above, any party adversely affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water 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 of the date this Order becomes final, 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.