

FLORIDA PUBLIC SERVICE COMMISSION
Capital Circle Office Center • 2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

M E M O R A N D U M

NOVEMBER 14, 1996

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF LEGAL SERVICES (JABER) *WHS*
DIVISION OF WATER & WASTEWATER (GROOM, RIEGER) *SR* *AB*

RE: DOCKET NO. 961034-WS - BETMAR UTILITIES, INC. - COMPLAINT
BY LEWIS HUGHES AGAINST BETMAR UTILITIES, INC. REGARDING
BACKFLOW PREVENTION DEVICES.
COUNTY: PASCO

AGENDA: 11/26/96 - REGULAR AGENDA - PROPOSED AGENCY ACTION -
INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: S:\PSC\LEG\WP\961034WS.RCM

DOCUMENT NUMBER-DATE

12143 NOV 14 88

FPSC-RECORDS/REPORTING

CASE 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., (BAC) 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. Order at pp. 8 and 10. Prior to the Commission's decision in that docket, DEP issued a final order on a petition for declaratory statement filed by Betmar. The Commission took official recognition of DEP's order which contained the following conclusions of law:

1. Rule 17-555.360(2), Florida Administrative Code, does apply to Betmar as a community water system, even though there are no reclaimed water systems operating within Betmar's service territory;
2. Implementation of a cross-connection control program is mandatory;
3. Betmar's installation of residential dual check valves is not an acceptable component of a routine cross-connection control program designed to detect and prevent cross-connections that create or may create an imminent and substantial danger to public health;
4. The cross-connections in Betmar's service territory do constitute prohibited cross-connections as defined in Rule 17-555.360(3), Florida Administrative Code;

5. DEP is convening meetings and workshops to address the entire issue of cross-connection control. Whether DEP would begin enforcement of Rule 17-555.360, Florida Administrative Code, is a decision to be evaluated later; and
6. Maintenance of the devices is required and annual testing is consistent.

In January, 1996, Commission staff began receiving phone calls from Betmar customers, Thomas McAlvanah, Esq., and Representative Littlefield informing staff that Betmar was threatening to disconnect service for 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 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 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. (Attachment A) 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 and to provide the necessary data to investigate whether further refunds are appropriate. (Attachment B) On August 29, 1996, staff received by facsimile the requested data.

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On September 3, 1996, staff received a letter from Mr. Lewis 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 wants Betmar to remove all previous devices that had been installed and refund those monies. 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. (Attachment C) 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. (Attachment D) 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. (Attachment E) By facsimile dated November 6, 1996, Betmar provided written proof that all seven refunds were made in the customers' respective October bills. This recommendation addresses whether this complaint has been resolved.

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DISCUSSION OF ISSUES

ISSUE 1: Has the complaint by Mr. Lewis Hughes against Betmar Utilities, Inc. been resolved?

RECOMMENDATION: Yes, since refunds have been made this complaint has been resolved and this docket should be closed. (JABER, RIEGER, GROOM)

STAFF ANALYSIS: As noted in the Case Background, Order No. PSC-96-0656-FOF-WS, issued May 10, 1996, directed staff to investigate the number of those customers that were required to install a backflow prevention device and whether a refund of those monies is appropriate. In addition, on September 3, 1996, staff received a letter from Mr. Lewis Hughes requesting, among other things, the Commission to take action against Mr. Turco for not obeying previous orders and to refrain Betmar from installing backflow devices on typical residential single family dwellings.

After the information requested from the utility was received, staff determined that seven residential customers should receive a refund for the installation of a backflow prevention device. As discussed in the case background, staff has informed the utility by numerous letters (see attachments) and telephone conversations that refunds should be made to two existing and five new residential customers. By facsimile dated November 6, 1996, Betmar has provided proof that a refund has been made to these seven customers. Therefore, staff believes this complaint is resolved and that no other issues are pending regarding this complaint.

However, the parties continue to disagree over this matter. Mr. Turco still believes Betmar has tariff authority to install the devices and he further believes that a hearing is necessary on this matter. Staff contacted Mr. Hughes on November 13, 1996, to inform him of staff's proposed resolution. By telephone, Mr. Hughes expressed a concern over previous collections for unauthorized testing fees. It is Mr. Hughes' position that Mr. Turco was ordered to refund monies collected for the testing. Additionally, Mr. Hughes requests that the Commission order Betmar to remove the devices that are not necessary.

At this point, staff does not believe that any further action is required because all points raised by the parties have been fully addressed by the Commission. First, staff has listened to the April 16, 1996 Agenda Conference to confirm that the Commission directed staff only to investigate whether a refund is appropriate for the customers that paid Betmar for the installation of a

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device. The Commission did not require Betmar to remove the devices. Staff has completed the investigation ordered by the Commission and has also reviewed the concerns expressed by Mr. Hughes. Staff has determined that a refund is appropriate for seven customers that paid monies to Betmar for the installation of the devices.

In an attempt to address Mr. Hughes' further concerns, staff has reviewed 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.

Further, Order No. PSC-96-0656-FOF-WS 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 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 "Typical 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: "Simulation 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".

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

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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.

Staff still believes that Order No. PSC-96-0656-FOF-WS states clearly that the two agencies with the primary responsibility of determining public health concerns have called Betmar's current situation a low hazard situation. The DEP, whose rules should control in this matter, has stated that backflow prevention devices are not required in this situation. Moreover, HRS does not even believe the current situation can be called a cross-connection.

Based on the foregoing, staff believes that all issues have been resolved in this docket or by previous Commission orders. Accordingly, no further action is required and staff recommends that this docket be closed.

Commissioners:
SUSAN F. CLARK, CHAIRMAN
J. TERRY DEASON
JULIA L. JOHNSON
DIANE K. KIESLING
JOE GARCIA



DIVISION OF WATER &
WASTEWATER
CHARLES HILL
DIRECTOR
(904) 413-6900

Public Service Commission

April 12, 1996

Joseph L. Turco
Betmar Utilities, Inc.
P.O. Box 370
Port Richey, FL 34673-0370

Dear Mr. Turco:

Re: Complaint by Robert Southcott against Betmar Utilities for refusal of service.

The Division of Consumer Affairs (CAF) has requested our assistance in processing Mr. Southcott's complaint against Betmar Utilities. It is our understanding that CAF has already informed you that based on the facts presented it was inappropriate for the utility to refuse service to Mr. Southcott. We agree with that position.

In our review of the utility's tariff, previous Commission orders and Commission and Department of Environmental Protection (DEP) rules, we found nothing that authorizes the utility to refuse service to new residential customers who fail to install backflow prevention devices. In fact, the DEP's January 11, 1996, letter to you states that "typical 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." The Department of Health and Rehabilitative Services, in its March 20, 1996, memorandum to the DEP (attached), also supports this position. After considering these facts, we conclude that new residential connections should pose no greater risks and be treated no differently than existing residential connections.

Therefore, the utility should refrain from requiring new customers to install backflow devices unless a specific health risk is identified that requires installation of a device under DEP rules. The utility should also refund to Mr. Southcott any amount collected for the backflow prevention device installed on his connection. The refund may be reflected as credit in his future billing. Failure to comply may result in a recommendation to the Commission that Betmar show cause why it should not be fined for refusal of service.

If you have any questions about this matter please contact Stan Rieger at (904)413-6970.

Sincerely,

A handwritten signature in cursive script, appearing to read "Charles H. Hill".

Charles H. Hill
Director

cc: Mr. Robert Southcott
Division of Legal Services (Jaber)
Division of Consumer Affairs (Smith)
Division of Water and Wastewater (Bethea, Rieger)

Commissioners:
SUSAN F. CLARK, CHAIRMAN
J. TERRY DEASON
JULIA L. JOHNSON
DIANE K. KIESLING
JOE GARCIA



DIVISION OF WATER &
WASTEWATER
CHARLES HILL
DIRECTOR
(904) 413-6900

Public Service Commission

August 19, 1996

Joseph L. Turco
Betmar Utilities, Inc.
6635 Hickory Wood Lane
Port Richey, FL 34653

Re: Investigation into possible refunds related to backflow prevention device installations.

Dear Mr. Turco:

As stated in Order No. PSC-96-0656-FOF-WS, issued on May 10, 1996, staff is directed to investigate the number of customers that have paid for the installation of backflow prevention devices in response to Betmar's threat to disconnect service. As a result of this investigation, a determination will be made as to whether a refund of those monies is appropriate. A copy of the above mentioned order is attached to this letter.

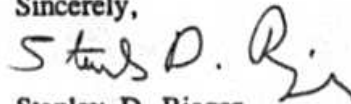
Please provide staff with the total number of customers that were affected, and the amounts paid. This information may be categorized between those connections representing low risk, and those of a higher hazard nature having among other items of concern, onsite private wells and irrigation systems.

Additionally, please provide number and cost information concerning new customers who were required to install backflow devices as a prerequisite for service. As was indicated in an April 12, 1996, letter to you, new residential connections should pose no greater risks and should be treated no differently than existing residential connections.

As a result of a previous conversation you had with Neil Bethea, staff had the understanding that you would volunteer to refund to the customers affected by the utility's threats to disconnect. We need to know if you still plan to do this, and how you intend to perform the refund.

We appreciate your attention in this matter. Please provide the above requested information by August 26, 1996. If you have any questions please contact me.

Sincerely,



Stanley D. Rieger
Utility Systems/Comm Engineer

Attachment

cc: Division of Legal Services (Jaber)
Division of Water and Wastewater (Hill, Bethea)

Commissioners:
 SUSAN F. CLARK, CHAIRMAN
 J. TERRY DEASON
 JULIA L. JOHNSON
 DIANE K. KIESLING
 JOE GARCIA



Attachment C

DIVISION OF WATER &
 WASTEWATER
 CHARLES HILL
 DIRECTOR
 (904) 413-6900

Public Service Commission

September 13, 1996

Joseph L. Turco
 Betmar Utilities, Inc.
 6635 Hickory Wood Lane
 Port Richey, FL 34653

Re: Investigation into possible refunds related to backflow prevention device installations.

Dear Mr. Turco:

Thank you for providing the customer backflow prevention device information as requested in my August 19, 1996, letter to you. In review of those who have paid for the devices, we have determined that seven would be considered as low risk connections. They should be granted a refund as indicated in Order No. PSC-96-0656-FOF-WS, issued on May 10, 1996. Those seven customers are Burleigh of 36621 Dina, Heim of 36718 Dina, and the five new customers that have connected since December of 1995. They each paid \$150 for a device. It appears that these customers have normal residential connections which do not present a substantial health threat. This includes the Heim's connection who has severed the tie to an irrigation system and has removed the possible health risk.

Please respond in writing within ten days of the date of this letter as to how you plan to refund these customers.

Sincerely,

Stanley D. Rieger
 Utility Systems/Comm Engineer

cc: Division of Legal Services (Jaber)
 Division of Water and Wastewater (Hill, Bethea, Rendell, Groom)
 Lewis Hughes

Commissioners:
SUSAN F. CLARK, CHAIRMAN
J. TERRY DEASON
JULIA L. JOHNSON
DIANE K. KIESLING
JOE GARCIA



Attachment D
DIVISION OF WATER &
WASTEWATER
CHARLES HILL
DIRECTOR
(904) 413-6900

Public Service Commission

September 30, 1996

Joseph L. Turco
Betmar Utilities, Inc.
6635 Hickory Wood Lane
Port Richey, FL 34653

RE: Investigation into possible refunds related to backflow prevention device installations.

Thank you for your response to our letter dated September 13, 1996. However, there was no mention of the five remaining customers that should also be granted a refund as indicated in Order No. PSC-96-0656-FOF-WS, issued on May 10, 1996. Those five new customers that have connected since December of 1995, have all paid \$150 for a device. It appears that these customers have normal residential connections which do not present a substantial health threat. If the five remaining customers are not given a refund by October 11, 1996, staff will immediately initiate a show cause proceeding against Betmar Utilities, Inc.

Please provide verification by October 11, 1996, that all refunds have been made.

Sincerely,

Handwritten signature of Eric Groom in black ink.

Eric Groom
Regulatory Analyst

c: Division of Legal Services (Jaber)
Division of Water and Wastewater (Hill, Willis, Rendell, Bethea, Rieger)
Lewis Hughes

Commissioners:
SUSAN F. CLARK, CHAIRMAN
J. TERRY DEASON
JULIA L. JOHNSON
DIANE K. KIESLING
JOE GARCIA



Attachment E

DIVISION OF WATER &
WASTEWATER
CHARLES HILL
DIRECTOR
(904) 413-6900

Public Service Commission

November 5, 1996

Joseph L. Turco
Betmar Utilities, Inc.
P.O. Box 370
Port Richey, FL 34673

RE: Betmar Utilities - Installation of Backflow Prevention Devices
Docket No. 961034-WS

Dear Mr. Turco:

By letter dated October 10, 1996, Betmar Utilities has agreed to refund the monies collected for the installation of the backflow prevention devices. As your letter indicates, a refund will be credited in the October bill to the following customers: Heim, Burleigh, Sheeley, Southcott, Paine, Nicholson, and Parsons.

Please be advised that if a refund is not credited to the October bill, staff will immediately file a recommendation to initiate a show cause proceeding against Betmar Utilities. Therefore, please provide written proof (ie. copy of the October bills) to indicate that these refunds were made by November 15, 1996.

Sincerely,

A handwritten signature in black ink, appearing to read "Eric Groom".

Eric Groom
Regulatory Analyst

c: Division of Water and Wastewater (Hill, Willis, Rendell, Rieger)
Division of Legal Services (Jaber)