

FLORIDA PUBLIC SERVICE COMMISSION  
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MEMORANDUM

SEPTEMBER 25, 1997

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FPSC - Records/Reporting

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

FROM: DIVISION OF WATER & WASTEWATER (GALLOWAY)  
DIVISION OF LEGAL SERVICES (VACCARO) *BLR* *AK*

RE: DOCKET NO. 961529-WU - FLORIDA PUBLIC UTILITIES COMPANY  
(FERNANDINA BEACH SYSTEM) - REQUEST FOR APPROVAL OF  
AGREEMENT WITH CITY OF FERNANDINA BEACH, AND TARIFF  
REVISION TO ALLOW FOR DISCONTINUANCE OF WATER SERVICE TO  
ANY CUSTOMER OWING UNPAID SEWER BILLS TO CITY PURSUANT TO  
SECTION 159.18(2), FLORIDA STATUTES

AGENDA: OCTOBER 7, 1997 - REGULAR AGENDA - PROPOSED AGENCY ACTION  
- INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: 8 MONTHS EFFECTIVE DATE - AUGUST 24, 1997  
(WAIVED)

SPECIAL INSTRUCTIONS: I:\PSC\WAW\WP\961529.RCM

CASE BACKGROUND

Florida Public Utilities Company (FPUC or utility) provides electric, gas and water service to various areas in Florida. The Fernandina Beach division in Nassau County, furnished electricity and water service to approximately 11,600 electric customers and 5,800 water customers as of December 31, 1996. In its 1996 annual report, the utility recorded operating revenues of \$1,854,192 for water service and net operating income of \$388,176. The Fernandina Beach division is the sole division within the company providing water service. Water rates were last established for this utility in Order No. 17444, issued on April 20, 1987, in Docket No. 860662-WU.

Prior to December 24, 1996, FPUC negotiated a contract with the City of Fernandina Beach (City) whereby FPUC would perform the billing, collecting and accounting services for the City's sewer and sanitation services. This contract contained a provision by which FPUC would request Commission approval to discontinue the utility's water service for nonpayment of the City's sewer service

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charges. As a result thereof, on December 24, 1996, FPUC filed with the Commission a tariff revision and requested approval to enter into an agreement with the City to discontinue water service to any customer who does not pay its sewer bills to the City.

After an initial review of the request, staff determined that the proposed tariff revision which implemented the agreement between FPUC and the City may not meet the requirements of Rule 25-30.320(2)(g), Florida Administrative Code. Staff advised the utility of the possibility of a rule waiver as a remedy, pursuant to Section 120.542, Florida Statutes. Upon request and pursuant to Section 120.542(4), Florida Statutes, staff provided the utility's attorney with copies of the proposed uniform rules and referred the attorney to the statute section governing rule waiver requests. Staff further provided the utility's attorney with a copy of Order No. PSC-92-0866-FOF-WU, which dealt with the same type of contract into which FPUC and the City of Fernandina are contemplating entering.

Following staff's discussion with the utility, on January 23, 1997, the utility filed a Petition for Waiver of Rule 25-30.320(2)(g), Florida Administrative Code and waived the statutory time limit imposed on the Commission for tariff filings. On February 11, 1997, in response to staff's request for further information, the utility submitted a copy of the unexecuted agreement between the City and the utility. On April 2, 1997, staff filed a recommendation to deny the utility's requested rule waiver. Staff's reasons for denial centered around the requirement that the utility "show hardship" presented by the Rule. Prior to the Commission's consideration of the recommendation, on April 14, 1997, FPUC filed a Notice of Withdrawal of Rule Waiver Petition.

On June 3, 1997, the utility filed an Amended Petition for Waiver of Rule 25-30.320(2)(g), Florida Administrative Code. Pursuant to Section 120.542(6), Florida Statutes, the Commission provided notice to the Department of State, which published notice of the waiver request in the Florida Administrative Weekly. The Commission received no comments during the 30 day comment period. The Commission was required to rule on the amended petition by September 1, 1997, pursuant to Section 120.542(8), Florida Statutes.

While the amended petition was more complete and included the utility's reasons for requesting the rule waiver along with the utility's beliefs regarding hardship caused by the rule, on July 24, 1997, staff filed a recommendation to deny the utility's requested rule waiver.

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In both instances, staff's reasons for denial centered on the requirement that the utility "show hardship." In both instances, staff believed the utility failed to present hardship. The reasons listed by the utility in its amended petition represented hardship for the City rather than hardship for the utility. Therefore, staff's recommendation was to deny the rule waiver request.

Subsequent to staff filing the July 24, 1997 recommendation, the utility requested a conference call with staff. Among other topics, during the conference call, utility representatives stated that a franchise agreement existed between the City and the utility. The utility stated that it was this agreement which presented hardship for the utility. The utility stated that without the ability to discontinue water service for non-payment of the wastewater bill, the franchise agreement would not be renewed.

A copy of this franchise agreement was not filed with the Commission. It was only during the conference call that this information was presented by the utility. Staff believes that the possibility of the City not renewing the franchise agreement with the utility may represent "hardship" for the utility. However, this information was not made available for staff's consideration in the July 24, 1997 recommendation filing. The utility, rather than risk the Commission ruling to deny the rule waiver request, chose to withdraw the amended petition. Prior to the Commission's consideration of the recommendation, on August 1, 1997, FPUC filed a Notice of Withdrawal of Rule Waiver Petition.

Since the utility withdrew its petition prior to the Commission's consideration of the July 24, 1997 recommendation, no action was necessary. However, at this point, a recommendation is necessary regarding the utility's request for approval of its proposed tariff, which, allows for discontinuance of water service to any customer owing unpaid sewer bills to the City of Fernandina Beach. Staff's recommendation follows.

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### DISCUSSION OF ISSUES

**ISSUE 1:** Should the request for approval to enter into an agreement with the City of Fernandina Beach and the proposed tariff revision filed by FPUC which allows for discontinuance of water service to any customer owing unpaid sewer bills to the City of Fernandina Beach be approved?

**RECOMMENDATION:** No. Pursuant to Rule 25-30.320(2)(g), Florida Administrative Code, discontinuance of service for nonpayment of bills must be for service provided by the same or an affiliated utility. The proposed tariff revision should not be approved. Therefore, the request for approval to enter into an agreement with the City of Fernandina Beach is moot. (VACCARO, GALLOWAY)

**STAFF ANALYSIS:** As stated earlier, FPUC filed a request for approval to enter into an agreement with the City to allow FPUC to discontinue water service to any customer who does not pay its sewer bills to the City. The utility, in the same filing, also requested approval of a proposed tariff revision which implemented the agreement. Rule 25-30.320(2)(g), Florida Administrative Code, states a utility may discontinue service

for nonpayment of bills or noncompliance with the utility's rules and regulations in connection with the same or a different type or a different class of utility service furnished to the same customer at the same premises by the same or affiliated utility only after there has been a diligent attempt to have the customer comply, including at least 5 working days' written notice to the customers....  
(emphasis added)

Staff believes that, in order for FPUC to include in its tariff a provision which allows discontinuing service to one of its customers for the nonpayment of wastewater charges to the City, an established affiliation should exist. Staff does not believe that the City and FPUC are affiliated utilities.

Based on staff's discussions with utility representatives, the utility disagrees with staff's recommendation and argues that the City is an affiliated utility given the franchise association. Staff has not been provided with a copy of any franchise agreement. However, even with such an agreement, it is staff's belief that to be affiliated, a utility must share common investments accounted for by the equity method by the company.

According to Financial Accounting Statement 57, paragraph 24a, an affiliate is defined as "a party that, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with an enterprise." Staff does not believe that the City and FPUC are "under common control."



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When reviewing the definition of related parties, as defined by Financial Accounting Statement 57, paragraph 24f, an affiliate is further referenced as an entity "for which investments are accounted for by the equity method by the enterprise;" Staff has not been provided with any documentation which would lend credibility to the argument that the City and FPUC are affiliates. In accordance with the definitions above, Staff does not believe that the utility and the City are affiliates.

Referencing a similar situation, on March 31, 1992, The Peoples Water Service Company (Peoples) in Escambia County filed its application for a water certificate under grandfather rights, pursuant to Section 367.171, Florida Statutes in Docket No. 920289-WU. Included in that docket was a request by Peoples for the Commission to grant the utility the authority to enter into an agreement with Escambia County to terminate water service to the existing water customer for non-payment of wastewater bills to the County.

By Order No. PSC-92-0866-FOF-WU in that docket, the Commission denied the utility's request to enter into the agreement with Escambia County but offered the utility guidance for the request. The Commission stated that the utility could "submit a tariff filing along with full justification at a later date requesting a waiver of the Rule for this arrangement." Likewise, for the Commission to approve the tariff revision implementing the agreement in this docket, staff believes full justification for such an arrangement must be provided. Staff believes that the utility has been given this opportunity twice, but has failed to provide full justification for such an arrangement.

Therefore, based on the definitions provided above, along with above-mentioned Order and the provisions of Rule 25-30.320(2)(g) Florida Administrative Code, it is our recommendation that the request for approval of the proposed tariff revision should be denied. Furthermore, staff believes that the request for approval to enter into an agreement with the City allowing FPUC to discontinue water service to any customer who does not pay its sewer bills to the City is moot.

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ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes. This docket should be closed if no person whose interests are substantially affected by the proposed action, files a protest within the 21 day protest period. (VACCARO)

STAFF ANALYSIS: This docket should be closed if no person whose interests are substantially affected by the proposed action, files a protest within the 21 day protest period.