



# 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-**

**DATE:** NOVEMBER 18, 1998

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

**FROM:** DIVISION OF APPEALS (BELLAK) *RB JS*  
 DIVISION OF WATER AND WASTEWATER (WILLIS) *W* (RENDELL) *W*  
 DIVISION OF LEGAL SERVICES (GERVASI) *PS* *MS*

**RE:** DOCKET NO. 981071-WS - REQUEST BY ROBERT P. CROCETTA, SR.  
 TO INITIATE RULEMAKING TO AMEND RULE 25-30.360, F.A.C.,  
 REFUNDS.

**AGENDA:** DECEMBER 1, 1998 - REGULAR AGENDA

**SPECIAL INSTRUCTIONS:** NONE

**FILE NAME AND LOCATION:** S:\PSC\APP\WP\981071.RCM

### CASE BACKGROUND

On August 21, 1998, the Commission received a letter from Robert P. Crocetta, Sr. concerning refunds made by North Peninsula Utility Corp. (Utility) pursuant to Commission orders establishing that customers of the Utility had been overcharged. Though the letter began with a request that a docket be opened "so that the petition may be ruled upon; Petition to Challenge, Rule # 25-30.360(2)", no petition as such was filed. Moreover, the letter itself appeared not to contain any challenge to the rule, but asked instead for "new rulings" on the "unfair decision" made pursuant to the rule. Moreover, no petition for rulemaking appears to be at issue, contrary to the title on this docket.

Specifically, Mr. Crocetta alleged that customers (presumably including Mr. Crocetta) who had sold their property during the period from May 1996 to May 1997 did not receive a refund even though they had lived in the area for years and the period of the overcharge was for a period of time predating the spring of 1996. He further stated that the Utility, a Class C wastewater utility providing service to approximately 480 customers in Volusia County,

DOCUMENT NUMBER-DATE

**13028 NOV 19 98**

RECORDS AND REPORTING

DOCKET NO. 981071 WS  
DATE: November 18, 1998

informed me they were not sending me a refund as the Public Service Commission said they didn't have to as I was not a customer of record with the utility as of March 20, 1997. However, I was the one who was overcharged and was entitled to be reimbursed.

There was no indication of the number of customers similarly situated.

On March 11, 1997, the Commission issued Order No. PSC-97-0263-FOF-SU in Docket No. 960984-SU, Order Requiring Continuation of Escrow of Funds Collected Subject to Refund Pending Final Determination and Notice of Proposed Agency Action Order Establishing Rate Base, Requiring Refunds of Index and Pass-Through Rate Adjustments and Revenues Collected During Interim Collection Period, and Reducing Rates. The Order, which became final on March 25, 1997, specifically provided that refunds of the overcharges at issue be made as follows:

The refund shall be made to customers of record as of the effective date of this Order pursuant to Rule 25-30.360(3), Florida Administrative Code. [e.s.]

#### **DISCUSSION OF ISSUES**

**ISSUE 1:** Is this letter a timely filed request for new rulings on the Commission's decision to make the refunds to "customers of record as of the date of this [March 11, 1997] Order"?

**RECOMMENDATION:** No. The letter appears to be an untimely protest of the Commission's proposed agency action order, which became final March 25, 1997.

**STAFF ANALYSIS:** According to the Notice of Further Proceedings or Judicial Review attached to Order No. PSC-97-0263-FOF-SU, a request for a formal proceeding would have to have been filed no later than March 25, 1997. Moreover, the 30-day time period for filing a notice of appeal was also long gone by the August 26, 1998 filing date of this letter. Therefore, the letter is not a timely request for "new rulings", whether considered as a protest to the PAA order or a notice of appeal.

DOCKET NO. 981071 WS  
DATE: November 18, 1998

**ISSUE 2:** Is this letter a properly filed rule challenge as to Rule 25-30.360?

**RECOMMENDATION:** No. The letter is not a properly filed rule challenge as to Rule 25-30.360.

**STAFF ANALYSIS:** According to Section 120.56(1)(c), "The [rule challenge] petition shall be filed with the division..." Section 120.52(5) defines the "Division" as "The Division of Administrative Hearings". Therefore, even if the contents of the filed letter met the requirements of Section 120.56(1)(a) and (b), which does not appear to be the case, the petition could not have been properly filed with this Commission.

DOCKET NO. 981071 WS  
DATE: November 18, 1998

**ISSUE 3:** Should this docket be closed?

**RECOMMENDATION:** Yes.

**STAFF ANALYSIS:** The letter request for "new rulings" should be denied based on the analysis in Issues 1 and 2, supra. The docket may then be closed.

RCB

State of Florida  
**Public Service Commission**

2500 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

*Corrected address  
and re-mailed ack  
letter 9/14/98*

*18*

Robert P. Crocetta, Sr.  
4 Sea Dune Terrace  
Ormond by the Sea, Florida 32176

CROC004 321762097 IN 22 09/07/98  
RETURN TO SENDER

NO FORWARD ORDER ON FILE  
UNABLE TO FORWARD  
RETURN TO SENDER

32176-2097-0250

